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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **JOSE LISANDRO PINEDA**

12 Petitioner

13 v.

14 **Christopher LAROSE**, Senior Warden, Otay

15 Mesa Detention Center;

16 **Kristi NOEM**, Secretary, U.S. Department of

17 Homeland Security;

18 **Todd LYONS**, Acting Director, U.S.

19 Immigration and Customs Enforcement;

20 **Patrick DIVVER**, Field Office Director, San

21 Diego Field Office, U.S. Immigration and

22 Customs Enforcement.

23 **Sirce OWEN**, Acting Director of the Executive

24 Office for Immigration Review (EOIR),

25 U.S. Department of Justice.

26 **Pamela BONDI**, Attorney General, U.S.

27 Department of Justice.

28 Respondents

Case No.: '25CV3535 BJC AHG

Agency File No: 

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
REQUEST FOR ORDER TO  
SHOW CAUSE WITHIN THREE  
DAYS**

1 **INTRODUCTION**

2 1. Petitioner, Jose Lisandro Pineda, is a Salvadoran national who has lived in the United  
3 States since 1999 and has held Temporary Protected Status (TPS) since 2001. He is currently  
4 detained by the Department of Homeland Security (“DHS”) at the Otay Mesa Detention Center.

5 2. Petitioner now faces unlawful detention because DHS and the Executive Office for  
6 Immigration Review (EOIR) have adopted a new interpretation of the Immigration and  
7 Nationality Act (“INA”), recently formalized by the Board of Immigration Appeals (BIA) in  
8 *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this framework, all noncitizens  
9 who originally entered without inspection—regardless of decades of residence, family ties, or  
10 eligibility for relief—are treated as “applicants for admission” subject to mandatory detention  
11 under INA § 235(b)(2)(A).

12 3. Multiple recent decisions in this District have rejected DHS’s attempt to invoke §  
13 235(b) to detain noncitizens arrested in the interior long after entry. *See Valdovinos v. Noem*, No.  
14 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-  
15 JLS (BLM) (S.D. Cal. Oct. 24, 2025); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC  
16 (S.D. Cal. Oct. 31, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct.  
17 30, 2025); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025);  
18 *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Maceda-Garcia*  
19 *v. Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025); *Maravilla Amaya v. Noem*, No. 25-  
20 cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025); *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-  
21 RSH-JLB (S.D. Cal. Nov. 2025); *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC  
22 (S.D. Cal. Nov. 21, 2025); and *Chiapot Perez v. Noem*, No. 3:25-cv-03161-JES-VET (S.D. Cal.  
23 Nov. 2025). Each case reached the same conclusion: § 236(a), not § 235(b), governs custody for  
24 noncitizens arrested in the interior.

25 4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release  
26 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§  
27 1003.19(a), 1236.1(d).



1 live and work in the country, and despite having no available statutory mechanism to seek a bond  
2 hearing under § 236(a) due to DHS’s current custody posture—violates the plain text of the INA,  
3 longstanding agency practice, and the constitutional guarantees of Due Process.

4 11. This habeas petition challenges the government’s position that Petitioner is subject to  
5 mandatory custody under INA § 235 (8 U.S.C. § 1225).

6 12. Petitioner seeks a writ of habeas corpus ordering his immediate release, or, in the  
7 alternative, a constitutionally adequate custody hearing before a neutral decisionmaker at which  
8 the Government bears the burden of proving by clear and convincing evidence that continued  
9 detention is warranted, and where the adjudicator must consider alternatives to detention and  
10 Petitioner’s ability to pay any bond imposed.

11 **JURISDICTION AND VENUE**

12 13. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the  
13 custody of the Department of Homeland Security within this District and he challenges the  
14 legality of that custody.

15 14. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises  
16 under the Constitution and laws of the United States, including the Immigration and Nationality  
17 Act and the Due Process Clause of the Fifth Amendment.

18 15. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section  
19 1252(g) applies only to challenges to the Attorney General’s discretionary decisions to  
20 commence proceedings, adjudicate cases, or execute removal orders, and does not encompass  
21 independent challenges to unlawful detention. Likewise, § 1252(b)(9) channels review of  
22 removal orders to the courts of appeals, but does not foreclose habeas review of detention claims  
23 that are collateral to removal proceedings.

24 16. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is  
25 detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

26 **PARTIES**

1 17. Petitioner, Jose Lisandro Pineda, is a Salvadoran national currently detained at the  
2 Otay Mesa Detention Center in San Diego, California.

3 18. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention  
4 Center.

5 19. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
6 Security (DHS).

7 20. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs  
8 Enforcement (ICE).

9 21. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.  
10 Immigration and Customs Enforcement.

11 22. Respondent Sirce Owen is the Acting Director of the Executive Office for  
12 Immigration Review (EOIR).

13 23. Respondent Pamela Bondi is the Attorney General of the United States and the head  
14 of the U.S. Department of Justice (DOJ).

15 24. All Respondents are named in their official capacities.

16 **LEGAL FRAMEWORK**

17 25. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
18 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
19 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
20 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
21 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
22 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
23 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

24 26. Section 1225 provides that, for purposes of initial inspection at the border, “an alien  
25 who arrives in the United States or is present in this country but has not been admitted, is treated  
26 as an applicant for admission.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8  
27 U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in  
28

1 the United States “generally begin at the Nation’s borders and ports of entry, where the  
2 Government must determine whether an alien seeking to enter the country is admissible.” *Id.*  
3 Section 1225(b) governs this inspection and admission process, applying primarily to individuals  
4 encountered at or near the border, subjecting them either to expedited removal under § 1225(b)  
5 (1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to  
6 detention pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of*  
7 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

8 27. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
9 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
10 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
11 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
12 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
13 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
14 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
15 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
16 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
17 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
18 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
19 Rep. No. 104-469, pt. 1, at 229 (1996).

20 28. For decades, individuals who entered without inspection but resided in the United  
21 States and were later arrested in the interior were consistently treated as subject to § 1226(a)’s  
22 discretionary detention framework. This included those who could not lawfully be placed in  
23 expedited removal because they had been continuously present in the United States for more than  
24 two years, as required by § 1225(b)(1)(A)(iii)(II).

25 29. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—  
26 asserting that all noncitizens who entered without inspection must be treated as detained under §  
27

1 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled  
2 expectations regarding custody jurisdiction.

3 30. On July 8, 2025, ICE, “in coordination with the Department of Justice,” issued  
4 Interim Guidance Regarding Detention Authority for Applicants for Admission. The policy  
5 declared that all noncitizens who entered without inspection would henceforth be subject to  
6 mandatory detention under § 1225(b)(2)(A), regardless of when or where they were apprehended  
7—even if they had resided in the United States for many years.

8 31. That same interpretation was recently formalized in *Matter of Yajure-Hurtado*, a  
9 precedential decision eliminating Immigration Judge jurisdiction to redetermine custody for such  
10 individuals.

11 32. In January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a)—not § 1225(b)—  
12 governs custody for noncitizens apprehended in the interior. Through the Laken Riley Act of  
13 2025, Congress expanded mandatory detention only to a narrow subset of noncitizens  
14 inadmissible under § 1182(a)(6)–(7) who satisfy specific criminal-conduct criteria, confirming  
15 that § 1226(a) remains the general detention framework. If all such individuals were already  
16 mandatorily detained under § 1225(b)(2), Congress’s amendment would have been superfluous.

### 17 FACTS

18 33. Petitioner, Jose Lisandro Pineda, is a national of El Salvador who has lived in the  
19 United States since 1999, after entering without inspection.

20 34. Petitioner has deep and longstanding ties to the United States, having resided in the  
21 country for more than twenty-five years.

22 35. Petitioner has held Temporary Protected Status (TPS) since 2001 and has complied  
23 with TPS requirements for more than two decades. His TPS re-registration for the current  
24 designation period remains pending with USCIS.

25 36. USCIS issued a receipt notice confirming acceptance of Petitioner’s Form I-821 re-  
26 registration application for adjudication (*Exhibit 1*) and a receipt for his TPS-based Employment  
27 Authorization Document renewal under category A12 (*Exhibit 2*). Petitioner also holds a copy of

1 his prior TPS-based EAD (*Exhibit 3*). USCIS’s online case-status system confirms that his Form  
2 I-821 remains in processing and that USCIS does not currently need anything from him,  
3 indicating that he will be contacted if additional information is required. While his application is  
4 pending, Petitioner continues to possess lawful presence under the TPS statute and remains  
5 eligible for employment authorization.

6 37. Petitioner is the father of two United States citizen children, ages 12 and 15, and is  
7 the primary financial provider for his household. He works as an Uber driver pursuant to his  
8 valid TPS-based Employment Authorization Document.

9 38. On November 2, 2025, while working as a rideshare driver, Petitioner mistakenly  
10 drove to the entrance of a restricted military base. Military Police detained him, contacted  
11 Immigration and Customs Enforcement (“ICE”), and transferred him to ICE custody.

12 39. Petitioner has no prior removal order, and there is no record of any previously filed  
13 removal proceedings during his more than two decades of lawful presence under TPS.

14 40. Following his arrest, ICE transferred Petitioner to the Otay Mesa Detention Center,  
15 where he remains detained. Removal proceedings were subsequently initiated and are currently  
16 pending before the Otay Mesa Immigration Court.

17 41. Because Petitioner is a long-term TPS beneficiary who has been lawfully present and  
18 legally authorized to work in the United States for over twenty years, his sudden detention—  
19 without any indication that TPS has been withdrawn or that he has become ineligible for that  
20 status—has imposed severe hardship on his U.S.-citizen children and destabilized the family’s  
21 financial well-being.

22 42. Absent intervention by this Court, Petitioner faces continued immigration custody  
23 despite being lawfully present under TPS and without any statutory basis for mandatory  
24 detention, in violation of the INA and the Due Process Clause of the Fifth Amendment.

25  
26 **CLAIM FOR RELIEF**

27 **COUNT 1**

1 **Violation of the Immigration and Nationality Act (INA)**

2 43. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
3 paragraphs.

4 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
5 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does  
6 not extend to individuals who entered and remained in the country beyond the two-year  
7 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)  
8 (authorizing expedited removal only for those “who have not been physically present in the  
9 United States continuously for the 2-year period immediately prior to the date of the  
10 determination of inadmissibility”). Petitioner has lived in the United States since 1999 and is not  
11 lawfully detained under INA § 235(b); to the extent he remains in custody, detention must  
12 proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or  
13 conditional parole.

14 45. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully  
15 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to  
16 “applicants for admission” encountered at or near the border—not to individuals who, like  
17 Petitioner, entered the United States and were later arrested in the interior. See *Jennings v.*  
18 *Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,  
19 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under  
20 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,  
21 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

22 **COUNT 2**

23 **Violation of the Due Process Clause of the Fifth Amendment**

24 46. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
25 herein.

26 47. The Fifth Amendment provides that “[n]o person shall be deprived of life, liberty, or  
27 property, without due process of law.”

1 48. “Freedom from imprisonment—from government custody, detention, or other form of  
2 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533  
3 U.S. 678, 690 (2001).

4 49. Civil immigration detention is constitutionally permissible only when reasonably  
5 related to legitimate governmental objectives, such as preventing flight risk or protecting the  
6 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,  
7 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
8 punitive and violates the Due Process Clause.

9 50. By detaining Petitioner indefinitely under INA § 235(b) pursuant to the Board’s new  
10 interpretation in *Matter of Yajure-Hurtado*, —which categorically eliminates Immigration Judge  
11 jurisdiction to conduct custody redeterminations for individuals DHS classifies under § 1225(b)  
12 —Respondents have deprived Petitioner of any opportunity for an individualized custody  
13 determination. This deprivation of a meaningful opportunity to be heard violates the liberty  
14 interests protected by INA § 236(a) and the Due Process Clause of the Fifth Amendment.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests that this Court:

- 17 A. Assume jurisdiction over this matter pursuant to 28 U.S.C. §§ 2241 and 1331;
- 18 B. Order Respondents to refrain from transferring Petitioner outside this District while this  
19 habeas action is pending, so as to preserve the Court’s jurisdiction and the availability of  
20 effective relief;
- 21 C. Issue an Order to Show Cause within three (3) days under 28 U.S.C. § 2243, requiring  
22 Respondents to identify and justify the statutory authority for Petitioner’s continued detention;
- 23 D. Declare that Petitioner is not lawfully detained under INA § 235(b) and that, to the extent  
24 DHS continues to detain him, such custody must proceed under INA § 236(a);
- 25 E. Declare that Respondents’ continued detention of Petitioner without any meaningful  
26 opportunity to seek release violates the Immigration and Nationality Act and the Due Process  
27 Clause of the Fifth Amendment;

1 F. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release, or, in the alternative,  
2 order an individualized bond hearing under INA § 236(a) before a neutral and impartial  
3 Immigration Judge, consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), at which (1)  
4 the Government bears the burden of proving by clear and convincing evidence that continued  
5 detention is necessary, and (2) the adjudicator must consider alternatives to detention and  
6 Petitioner's ability to pay any bond imposed;

7 G. Grant such other and further relief as the Court deems just and proper.

8 Respectfully submitted,

9 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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15 Counsel for Petitioner

16 Dated: December 11, 2025