

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

MARVIN ROMERO FLORES,

Agency No. 

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, et. al.,

Respondents.

'25CV3576 RSH DEB

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

MARVIN ROMERO FLORES,)

Petitioner,)

v.)

Kristi NOEM, in her official capacity as Secretary)
of Homeland Security, Christopher J. LAROSE,)
in his official capacity as Warden of Otay Mesa)
Detention Center, Gregory J. ARCHAMBEAULT,)
in his official capacity as San Diego Field Office)
Director, ICE Enforcement Removal Operations;)
Todd LYONS, in his official capacity as Acting Director)
of ICE; and Pamela BONDI, U.S.)
Attorney General; IMMIGRATION AND)
CUSTOMS ENFORCEMENT; DEPARTMENT OF)
HOMELAND SECURITY,)

Respondents.)

'25CV3576 RSH DEB

**PETITION FOR WRIT
OF HABEAS CORPUS**



I. INTRODUCTION

1. Petitioner MARVIN ROMERO FLORES ("Pctitioner") is a 42-year-old Salvadorian national who last entered the United States in 2004.

2. On November 26, 2025, Petitioner was detained by Respondents at the Otay Mesa Detention Center.

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III. PARTIES

8. Petitioner is a 42-year-old Salvadorian national who resides in Newark, New Jersey. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California, pending removal proceedings.

9. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. Respondent La Rose is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent LaRose has immediate physical custody of the Petitioner. He is being sued in his official capacity.

10. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Archambeault is being sued in his official capacity.

11. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner and is being sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration

1 laws of the United States. Respondent Secretary Noem is being sued in her
2 official capacity.

3 IV. EXHAUSTION OF REMEDIES

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5 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;
6 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not
7 jurisdictionally required.

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9 14. Additionally, further agency steps will be futile. Recently, the BIA
10 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,
11 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals
12 similarly situated to Petitioner ineligible for release on bond.

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14 15. In Petitioner's case, any request for custody redetermination will be
15 dismissed by the Immigration Court for lack of jurisdiction and any appeal to
16 the BIA will be dismissed. *Matter of Yajure Hurtado* and *Lazaro Maldonado*
17 *Bautista, et al v. Ernesto Santacruz Jr, et al.*, 5:cv-01873 (C.D. Cal. Nov. 20,
18 2025) currently controls in Petitioner's case and any attempt to request agency
19 evaluation of his detention will be futile.

20 V. STATEMENT OF FACTS

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22 16. Petitioner is a Salvadorian national born on July 1, 1983. He last
23 entered the United States in 2004.

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25 17. On or about November 26, 2025, Petitioner was detained by
26 Respondents at the Otay Mesa Detention Center.

1 18. Petitioner has remained in Respondents' custody since that time.

2 19. Petitioner's next master hearing is scheduled for December 30, 2025,
3 at 9:00 a.m. before Immigration Judge Mark Sameit at 7488 Calzada de la
4 Fuente, San Diego, California.

5 20. Petitioner now seeks habeas relief because continuing his detention
6 exceeds statutory authority and violates the Fifth Amendment.
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9 **VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT**

10 21. Habeas corpus relief extends to a person "in custody under or by color
11 of the authority of the United States" if the person can show he is "in custody
12 in violation of the Constitution or laws or treaties of the United States." 28
13 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542
14 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under
15 28 U.S.C. section 2241 if they concern the continuation or execution of
16 confinement).
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18 22. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
19 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
20 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
21 in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553
22 U.S. 723, 779–80 (2008). "[W]hen the judicial power to issue habeas corpus
23 properly is invoked the judicial officer must have adequate authority to make
24 a determination in light of the relevant law and facts and to formulate and
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1 issue appropriate orders for relief, including, if necessary, an order directing
2 the prisoner's release." *Id.* at 787.

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5 **VII. CAUSES OF ACTION**

6 **COUNT ONE**

7 **8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER**

8 23. Petitioner incorporates paragraphs 1 through 22 as if fully set out
9 herein.

10 24. Recently, Respondents began arguing that those in situations similar
11 to Petitioner are detained pursuant to 8 U.S.C. § 1225(b)(2), which mandates
12 the detention of an "applicant for admission" throughout the entirety of
13 removal proceedings.

14 25. Respondents' newly formulated definition of "applicant for
15 admission," which would include any noncitizen who has not been formally
16 admitted regardless of years of residence in the United States, directly
17 contradicts both the plain text of the statute and controlling Ninth Circuit
18 precedent.
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21 26. As the Ninth Circuit explained in interpreting the phrase "applicant
22 for admission" under § 1225(b)(1), "*an immigrant submits an 'application for*
23 *admission' at a distinct point in time,*" and stretching that phrase to apply
24 "*potentially for years or decades ... would push the statutory text beyond its*
25 *breaking point.*" *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
26 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).
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1 27. Because Petitioner has resided continuously in the United States
2 since 2004, his period as an “applicant for admission” has long since closed.

3 28. Numerous courts across the United States have considered this issue
4 subsequent to Respondents’ new policy of treating the vast majority of
5 immigrants in their custody as being detained pursuant to 8 U.S.C. §
6 1225(b)(2) and the BIA’s decision supporting this interpretation in *Matter of*
7 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).

8 29. This Court, joining the general consensus with other courts across
9 this country, has previously held those similarly situated to Petitioner are
10 being held under 8 U.S.C. § 1226(a) and therefore are not subject to mandatory
11 detention under 8 U.S.C. § 1225(b). *See e.g., Martinez Lopez v. Noem, et al.*, No:
12 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).

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17 **COUNT TWO**
(PROCEDURAL DUE PROCESS)

18 30. Petitioner incorporates paragraphs 1 through 22 as if fully set out
19 herein.

20 31. The Fifth Amendment forbids deprivation of liberty without notice
21 and a meaningful opportunity to be heard before a neutral decision-maker. Due
22 process protects “all ‘persons’ within the United States, including [non-
23 citizens], whether their presence here is lawful, unlawful, temporary, or
24 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).

25 32. Subsection 1003.19(i)(2) strips Petitioner of that protection by
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1 allowing the prosecuting agency—after losing at the bond hearing—to veto the
2 Immigration Judge’s order with a one-page notice that requires no showing of
3 danger, flight risk, or likelihood of success on appeal.

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5 33. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
6 Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is
7 extreme considering the Immigration Judge’s determination that Petitioner is
8 not subject to mandatory detention under 8 U.S.C. § 1226(c) and does not pose
9 a danger to the community. Likewise, the risk of erroneous deprivation of
10 liberty is great due to the lack of a non-independent adjudicator. *Marcello v.*
11 *Bonds*, 39 U.S. 302, 305-306 (1955). In filing Form EOIR-43, ICE is acting as
12 both the prosecutor as well as the adjudicator.

13
14 34. While the government has discretion to detain individuals under 8
15 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
16 discretion is not “unlimited” and must comport with constitutional due process.
17 *See Zadvydas*, 533 U.S. at 698.

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20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays that this Court grant the following relief:

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23 1) Assume jurisdiction over this matter;
- 24 2) Grant Petitioner a writ of habeas corpus directing the Respondents to
25 immediately release him from custody, under reasonable conditions of
26 supervision;

- 1 3) Order Respondents to refrain from transferring Petitioner out of the
- 2 jurisdiction of this court during the pendency of these proceedings and while
- 3 the Petitioner remains in Respondents' custody;
- 4
- 5 4) Order Respondents to file a response within 3 business days of the filing of
- 6 this petition;
- 7
- 8 5) Award attorneys' fees to Petitioner; and
- 9
- 10 6) Grant any other and further relief which this Court deems just and proper.

11 I affirm, under penalty of perjury, that the foregoing is true and correct.

12 Respectfully submitted this 12th day of December, 2025.

13 /s/ Murray D. Hilts
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