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

11 **JOSE ALVAREZ**

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.: '25CV3585 LL JLB

Agency File No: A 

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

1 **INTRODUCTION**

2 1. Petitioner, Jose Alvarez, is a Mexican national who has lived in the United States since
3 approximately 2006, and is currently in DHS custody at the Otay Mesa Detention Center.

4 2. Petitioner now faces unlawful detention because the Department of Homeland Security
5 (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new
6 interpretation of the Immigration and Nationality Act (INA), recently formalized by the Board of
7 Immigration Appeals (BIA) in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which
8 treats individuals who entered without inspection as “applicants for admission” subject to
9 mandatory detention under INA § 235(b)(2)(A).

10 3. Multiple recent decisions within this District have rejected DHS’s reliance on § 235(b)
11 to detain individuals apprehended in the interior years after entry. See *Valdovinos v. Noem*, No.
12 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No.
13 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*,
14 No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No.
15 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-
16 cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-
17 cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-
18 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-
19 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-
20 03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*, No. 3:25-
21 cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-
22 cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases resulted in the
23 same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior
24 years after entry, and such custody must proceed, if at all, under § 236(a).

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 5. Because DHS has classified Petitioner as subject to detention under 8 U.S.C. §
2 1225(b), the Immigration Court lacks jurisdiction to conduct a custody redetermination hearing.
3 See 8 C.F.R. § 1003.19(h)(2)(i)(B). As no administrative remedy exists to review his custody
4 classification or detention, exhaustion would be futile. Courts routinely excuse exhaustion where
5 administrative remedies are unavailable or would be futile. See *Singh v. Napolitano*, 649 F.3d
6 899, 900 (9th Cir. 2011).

7 6. Petitioner's continued detention on this basis violates the plain text of the INA,
8 decades of longstanding agency practice, and the constitutional guarantees of Due Process.

9 7. This habeas petition challenges the government's position that Petitioner is subject to
10 mandatory custody under INA § 235 (8 U.S.C. § 1225).

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

16 JURISDICTION AND VENUE

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

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

23 11. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
24 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence
25 proceedings, adjudicate cases, or execute removal orders," not independent challenges to
26 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts

1 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
2 removal proceedings.

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

5 **PARTIES**

6 13. Petitioner, Jose Alvarez, is a Mexican national detained at the Otay Mesa Detention
7 Center, in San Diego, California.

8 14. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
9 Center.

10 15. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
11 Security (DHS).

12 16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
13 Enforcement (ICE).

14 17. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.
15 Immigration and Customs Enforcement.

16 18. Respondent Sirce Owen is the Acting Director of the Executive Office for
17 Immigration Review (EOIR).

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

20 20. All Respondents are named in their official capacities.

21 **LEGAL FRAMEWORK**

22 21. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,
23 provides multiple detention authorities. For decades, courts, Congress, and agencies have
24 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §
25 1225), which governs applicants for admission encountered at or near the border, and INA § 236
26 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the
27

1 United States and placed in removal proceedings. The Supreme Court analyzed the interplay
2 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

3 22. Section 1225 provides that, for purposes of initial inspection at the border, “an alien
4 who arrives in the United States or is present in this country but has not been admitted, is treated
5 as an applicant for admission.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8
6 U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in
7 the United States “generally begin at the Nation’s borders and ports of entry, where the
8 Government must determine whether an alien seeking to enter the country is admissible.” *Id.*
9 Section 1225(b) governs this inspection and admission process, applying primarily to individuals
10 encountered at or near the border, subjecting them either to expedited removal under § 1225(b)
11 (1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to
12 detention pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of*
13 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

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

26 24. For decades, individuals who entered without inspection but resided in the United
27 States and were later arrested in the interior were consistently treated as subject to § 1226(a)’s

1 discretionary detention framework. This included those who could not lawfully be placed in
2 expedited removal because they had been continuously present in the United States for more than
3 two years, as required by § 1225(b)(1)(A)(iii)(II).

4 25. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—
5 asserting that all noncitizens who entered without inspection must be treated as detained under §
6 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled
7 expectations regarding custody jurisdiction.

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

13 27. That same interpretation was recently formalized in *Matter of Yajure-Hurtado*, a
14 precedential decision eliminating Immigration Judge jurisdiction to redetermine custody for such
15 individuals.

16 28. In January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a)—not § 1225(b)—
17 governs custody for noncitizens apprehended in the interior. Through the Laken Riley Act of
18 2025, Congress expanded mandatory detention only to a narrow subset of noncitizens
19 inadmissible under § 1182(a)(6)–(7) who satisfy specific criminal-conduct criteria, confirming
20 that § 1226(a) remains the general detention framework. If all such individuals were already
21 mandatorily detained under § 1225(b)(2), Congress’s amendment would have been superfluous.

22 **FACTS**

23 29. Petitioner is a Mexican national who entered the United States without inspection on
24 or around 2006 and has remained continuously physically present in the United States since that
25 time.

26 30. Petitioner has significant ties to his community, including long-term residence and
27 close family members who are U.S. citizens, such as his two U.S.-born children, ages 8 and 11.

1 31. Petitioner appears to be *prima facie* eligible for cancellation of removal.

2 32. On November 12, 2025, ICE officers arrested Petitioner in the state of Virginia.

3 33. Petitioner was served with a Notice to Appear on November 12, 2025, and his
4 removal case was docketed on November 13, 2025. He was subsequently transferred to the Otay
5 Mesa Detention Center, where he is currently detained, with his proceedings now pending before
6 the Otay Mesa Immigration Court.

7 34. On September 5, 2025, the Board of Immigration Appeals issued its precedential
8 decision in *Matter of Yajure-Hurtado*. The Board held that all noncitizens who entered without
9 inspection are “applicants for admission” under INA § 235, regardless of how long ago they
10 entered or their family and community ties.

11 35. The decision eliminated Immigration Judge jurisdiction to conduct custody
12 redeterminations for such individuals.

13 36. Absent relief from this Court, Petitioner faces the prospect of unjustifiable and
14 unreasonable prolonged immigration custody without ever receiving an individualized hearing to
15 justify his detention, in violation of the INA and the Due Process Clause.

16 **Additional Legal Basis for Relief: Petitioner Is a Member of the Bond Eligible**

17 **Class Certified in *Maldonado Bautista v. Santacruz***

18 37. Petitioner is a member of the Bond Eligible Class certified in *Maldonado Bautista v.*
19 *Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.). The class includes noncitizens who: (1)
20 entered the United States without inspection; (2) were not apprehended at or near the border; (3)
21 are not subject to mandatory criminal detention under 8 U.S.C. § 1226(c); and (4) are detained
22 by DHS during the pendency of removal proceedings. Petitioner satisfies each of these criteria
23 and is therefore a class member.

24 38. On November 7, 2025, the United States District Court for the Central District of
25 California issued a declaratory judgment holding that class members are detained under 8 U.S.C.
26 § 1226(a) and may not be denied Immigration Judge custody redeterminations based on 8 U.S.C.
27 § 1225(b). The judgment further prohibits DHS and EOIR from relying on *Matter of Yajure-*

1 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), or similar reasoning, to deny Immigration Judge
2 jurisdiction over bond hearings for class members.

3 39. Despite this binding judgment, Respondents continue to treat Petitioner as if he were
4 detained under § 1225(b), thereby depriving him of a custody redetermination under § 1226(a).
5 Respondents' ongoing reliance on *Yajure-Hurtado* and refusal to provide a bond hearing violate
6 both the INA and the district court's declaratory judgment. Their conduct exceeds lawful
7 detention authority and independently warrants habeas relief.

8 **CLAIM FOR RELIEF**

9 **COUNT 1**

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

11 40. Petitioner incorporates by reference the allegations of fact set forth in the preceding
12 paragraphs.

13 41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
14 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does
15 not extend to individuals who entered and remained in the country beyond the two-year
16 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)
17 (authorizing expedited removal only for those “who have not been physically present in the
18 United States continuously for the 2-year period immediately prior to the date of the
19 determination of inadmissibility”). Petitioner has lived in the United States since 2006 and is not
20 lawfully detained under INA § 235(b); to the extent he remains in custody, detention must
21 proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or
22 conditional parole.

23 42. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully
24 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to
25 “applicants for admission” encountered at or near the border—not to individuals who, like
26 Petitioner, entered the United States and were later arrested in the interior. See *Jennings v.*
27 *Rodriguez*, 583 U.S. 281, 297 (2018); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,

1 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under
2 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,
3 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

4 **COUNT 2**

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

6 43. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
7 herein.

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

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

13 46. Civil immigration detention is constitutionally permissible only when reasonably
14 related to legitimate governmental objectives, such as preventing flight risk or protecting the
15 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,
16 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become
17 punitive and violates the Due Process Clause.

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

24 **COUNT 3**

25 **Claim for Relief Under the Declaratory Judgment in *Maldonado Bautista v. Santacruz***

26 48. The declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-
27 SSS-BFM (C.D. Cal.), has the full force and effect of a final judgment under 28 U.S.C. §

1 2201(a). That judgment conclusively establishes that Bond Eligible Class members—including
2 Petitioner—are detained under 8 U.S.C. § 1226(a) and are entitled to custody redetermination
3 before an Immigration Judge.

4 49. Respondents' continued treatment of Petitioner as a purported § 1225(b) detainee
5 violates the declaratory judgment and exceeds lawful detention authority. Respondents may not
6 rely on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), or similar reasoning, to deny
7 Petitioner access to a custody redetermination under § 1226(a). Their refusal to provide
8 Petitioner with a bond hearing is contrary to law and warrants habeas relief.

9 50. Accordingly, Petitioner requests that the Court enforce the declaratory judgment,
10 declare that he is detained under § 1226(a), and order his immediate release or, in the alternative,
11 require Respondents to provide a constitutionally adequate custody redetermination within seven
12 days.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner respectfully requests that this Court:

- 15 A) Assume jurisdiction over this matter;
- 16 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
17 District while these proceedings are pending;
- 18 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
19 Respondents to explain the legal basis for Petitioner's continued detention;
- 20 D) Declare that Petitioner is not lawfully detained under 8 U.S.C. § 1225(b), and that, to the
21 extent Petitioner remains in custody, such detention must proceed under 8 U.S.C. § 1226(a).
- 22 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
23 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
24 the Fifth Amendment.
- 25 F) Enforce the declaratory judgment in *Maldonado Bautista v. Santacruz* and require
26 Respondents to classify Petitioner under 8 U.S.C. § 1226(a).
- 27

1 G) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
2 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
3 decision maker at which the Government must justify his continued detention by clear and
4 convincing evidence;

5 H) Grant such other and further relief as the Court deems just and proper.

6 Respectfully submitted,

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

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13 Counsel for Petitioner

14 Dated: December 14, 2025

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification because I am Petitioner's attorney in this action. I have personally spoken with Petitioner regarding the facts and events described in the Petition, and the factual allegations contained in the Petition are based on Petitioner's own statements to me.

Based on my communications with Petitioner, and to the best of my knowledge, information, and belief, the factual statements in the Petition accurately reflect Petitioner's account of events.

Executed on this 14th day of December, 2025, in San Diego, California.

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