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

11 **ANTONIO AVALOS TOVAR**

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.: '25CV3619 AGS MMP

Agency File No: A 221-421-586

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

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INTRODUCTION

1. Petitioner, Antonio Avalos Tovar, is a Mexican national who has lived in the United States for several years and is currently in DHS custody at the Otay Mesa Detention Center.

2. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new interpretation of the Immigration and Nationality Act (INA), recently formalized in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which DHS now invokes to classify certain noncitizens who entered without inspection as “applicants for admission” subject to detention without bond under INA § 235(b)(2)(A).

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

4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§ 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 misclassification of Petitioner’s
10 custody as subject to mandatory detention under INA § 235 (8 U.S.C. § 1225).

11 8. Petitioner seeks a writ of habeas corpus ordering his immediate release from custody
12 because DHS lacks statutory authority to detain him under INA § 235(b). In the alternative,
13 Petitioner seeks an order directing Respondents to immediately release him from custody upon
14 posting the \$7,500 bond previously set by the Immigration Judge on August 29, 2025 pursuant to
15 INA § 236(a).

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
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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, Antonio Avalos Tovar, is a Mexican national detained at the Otay Mesa
7 Detention 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
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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. Surprisingly, in January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not §
17 1225(b), governs custody for noncitizens apprehended in the interior. Through the Laken Riley
18 Act of 2025, Congress amended § 1226(c) to add subparagraph (E), extending mandatory
19 detention only to a narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–
20 (7) and (ii) also meet specific criminal-conduct criteria. By creating this limited carve-out,
21 Congress confirmed that § 1226(a) remains the general detention framework for interior arrests,
22 and that mandatory detention applies only to the narrow class defined in new § 1226(c)(E). If, as
23 DHS and the BIA now contend, all such individuals were already subject to mandatory detention
24 under § 1225(b)(2), Congress’s amendment would have been superfluous.

25 **FACTS**

26 29. Petitioner is a Mexican national who entered the United States without inspection and
27 has lived in the United States for several years.

1 30. Petitioner has deep and longstanding ties to his community.

2 31. On July 24, 2025, ICE officers arrested Petitioner in San Diego as he was leaving his
3 house and walking toward his car.

4 32. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he
5 is currently detained, with removal proceedings pending before the Otay Mesa Immigration
6 Court.

7 33. On August 29, 2025, Immigration Judge Mark Sameit, sitting at the Otay Mesa
8 Immigration Court, conducted a bond redetermination hearing. The Department argued that the
9 Court lacked jurisdiction, asserting that Petitioner was an “applicant for admission” detained
10 under INA § 235(b)(2). Through his custody redetermination counsel, Petitioner opposed that
11 interpretation and argued that his detention arose under INA § 236(a). After reviewing the record
12 and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the
13 interior, rather than while arriving at the border, and therefore concluded that jurisdiction
14 properly lay under § 236(a). The Court granted release on a \$7,500 bond, and the Department
15 reserved appeal. See *Exhibit 1* (Bond Order of the Immigration Judge).

16 34. In September 2025, the Board of Immigration Appeals issued its precedential
17 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). As reflected in subsequent
18 custody proceedings in Petitioner’s case, that decision was treated as intervening authority
19 bearing on Immigration Judge jurisdiction to conduct custody redeterminations for certain
20 noncitizens classified under INA § 235(b).

21 35. On September 17, 2025, the Immigration Judge issued a written Bond Memorandum
22 describing the basis for the Court’s initial exercise of jurisdiction under INA § 236(a) and
23 outlining subsequent procedural developments, including DHS’s administrative appeal and the
24 issuance of intervening Board precedent.

25 36. Because *Matter of Yajure-Hurtado* was issued by the Board of Immigration Appeals
26—the authority whose precedential decisions are binding on Immigration Judges—Petitioner
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1 lacks any meaningful administrative mechanism through which to obtain a custody
2 redetermination. Under these circumstances, exhaustion should be excused.

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

6 **CLAIM FOR RELIEF**

7 **COUNT 1**

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

9 38. Petitioner incorporates by reference the allegations of fact set forth in the preceding
10 paragraphs.

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

21 40. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully
22 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to
23 applicants for admission encountered at or near the border—not to individuals who, like
24 Petitioner, entered the United States more than two years before his arrest and were later
25 apprehended in the interior. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of*
26 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an
27 applicant for admission rather than a respondent under INA § 236(a) (8 U.S.C. § 1226(a)), DHS

1 and EOIR have acted contrary to the statutory text, agency precedent, and the limits Congress
2 reaffirmed in the Laken Riley Act of 2025.

3 **COUNT 2**

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

5 41. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
6 herein.

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

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

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

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court:

25 A) Assume jurisdiction over this matter;

26 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
27 District while these proceedings are pending;

1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
2 Respondents to explain the legal basis for Petitioner’s continued detention;

3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
4 Petitioner remains in custody, such detention must proceed under INA § 236(a).

5 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
6 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
7 the Fifth Amendment.

8 F) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
9 custody, or, in the alternative, directing Respondents to immediately release Petitioner upon
10 posting the \$7,500 bond previously set by the Immigration Judge on August 29, 2025 pursuant to
11 INA § 236(a).

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

13 Respectfully submitted,

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

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21 Dated: December 16, 2025