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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8
9 **DAVID OROZCO MENDOZA**

10 Petitioner

11 v.

12 **Christopher LAROSE**, Senior Warden, Otay

Mesa Detention Center;

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

14 Homeland Security;

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

16 Immigration and Customs Enforcement;

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

18 Diego Field Office, U.S. Immigration and

19 Customs Enforcement.

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

21 Office for Immigration Review (EOIR),

22 U.S. Department of Justice.

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

24 Department of Justice.

25 Respondents

Case No.: '25CV3663 AGS BLM

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner, David Orozco Mendoza, is a Mexican national who last entered the United
3 States without inspection on or around 2022 and is currently in the custody of the Department of
4 Homeland Security at the Otay Mesa Detention Center.

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

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

1 4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release
2 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§
3 1003.19(a), 1236.1(d).

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

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

12 7. This habeas petition challenges the government’s misclassification of Petitioner’s
13 custody as subject to mandatory detention under INA § 235 (8 U.S.C. § 1225).

14 8. Petitioner seeks a writ of habeas corpus ordering his immediate release from custody
15 because DHS lacks statutory authority to detain him under INA § 235(b). In the alternative,
16 Petitioner seeks an order directing Respondents to provide him with an individualized bond
17 hearing pursuant to INA § 236(a) before an Immigration Judge.

18 **JURISDICTION AND VENUE**

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

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

25 11. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
26 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence
27 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to

1 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts
2 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
3 removal proceedings.

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

6 **PARTIES**

7 13. Petitioner, David Orozco Mendoza, is a Mexican national detained at the Otay Mesa
8 Detention Center, in San Diego, California.

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

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

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

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

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

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

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

22 **LEGAL FRAMEWORK**

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

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 last entered the United States without inspection
27 on or around 2022.

1 30. Petitioner has established ties to his community in the United States.

2 31. Petitioner's wife is a U.S. citizen who filed a Form I-130 on his behalf, which was
3 approved on January 14, 2025.

4 32. Petitioner is the father of three U.S.-born children.

5 33. On December 12, 2025, officers with U.S. Immigration and Customs Enforcement
6 arrested Petitioner during an interview at the USCIS San Diego Field Office pursuant to a
7 previously issued Form I-200, Warrant for Arrest of Alien.

8 34. Petitioner was subsequently served with a Notice to Appear (Form I-862) and later
9 transferred to the Otay Mesa Detention Center, where he is currently detained with removal
10 proceedings pending before the Otay Mesa Immigration Court.

11 35. On December 25, 2025, prior to Petitioner's custody redetermination hearing,
12 Immigration Judge Samantha Begovich, sitting at the Otay Mesa Immigration Court, informed
13 Petitioner's immigration counsel that she agreed with DHS's position that, based on Petitioner's
14 manner of last entry and the controlling precedential decision in *Matter of Yajure-Hurtado*, 29
15 I&N Dec. 216 (BIA 2025), she would deny the bond request. The Immigration Judge therefore
16 permitted counsel to withdraw the request for bond. See *Exhibit 1*.

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

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

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

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

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

7 39. Petitioner incorporates by reference the allegations of fact set forth in the preceding
8 paragraphs.

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

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

1 **COUNT 2**

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

3 42. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
4 herein.

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

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

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

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner respectfully requests that this Court:

- 23 A) Assume jurisdiction over this matter;
- 24 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
25 District while these proceedings are pending;
- 26 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
27 Respondents to explain the legal basis for Petitioner’s continued detention;

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

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

6 F) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from
7 custody, or, in the alternative, order Respondents to provide Petitioner with an individualized
8 bond hearing before a neutral Immigration Judge pursuant to INA § 236(a), consistent with
9 *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006);

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

11 Respectfully submitted,

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

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18 Counsel for Petitioner

19 Dated: December 18, 2025

EXHIBIT 1

Order of the Immigration Judge



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
OROZCO, DAVID

To
Acosta Jr., Mario



A-Number



Riders
In Custody Redetermination Proceedings

Date
12/15/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

- Denied, because

- Granted. It is ordered that Respondent be
 - released from custody on his own recognizance
 - released from custody under bond of \$
 - other

- Other
No jurisdiction

AB

Immigration Judge: Samantha Begovich 12/15/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 01/15/2026

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Respondent Name , OROZCO, DAVID | A-Number 

Riders.

Date 12/15/2025 By: Samantha Begovich, Immigration Judge