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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANA BARBA HINOJOSA

Petitioner

v.

Christopher LAROSE, Senior Warden, Otay Mesa Detention Center;

Kristi NOEM, Secretary, U.S. Department of Homeland Security;

Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

Patrick DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement.

Sirce OWEN,Acting Director of the Executive Office for Immigration Review (EOIR), U.S. Department of Justice.

Pamela BONDI, Attorney General, U.S. Department of Justice.

Respondents

Case No.: **'25CV3701 AGS KSC**

Agency File No: [redacted]

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

INTRODUCTION

1. Petitioner Ana Barba Hinojosa respectfully submits this Petition for Writ of Habeas Corpus challenging her continued detention by the Department of Homeland Security ("DHS"). Petitioner is a Mexican national who has lived in the United States since 1985 and was apprehended in the interior of the United States decades after her entry. She is currently detained at the Otay Mesa Detention Center.

2. Petitioner is detained based on DHS's application of an interpretation of the Immigration and Nationality Act ("INA"), articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), under which DHS has treated certain noncitizens apprehended in the interior long after entry as "applicants for admission" subject to detention under INA § 235(b)(2)(A). As applied in this case, that custody classification deprives Petitioner of eligibility for an individualized bond hearing under INA § 236(a).

3. Numerous federal courts within this District have rejected DHS's reliance on INA § 235(b) to detain individuals apprehended in the interior long after entry and have concluded that such custody, if lawful at all, must proceed under INA § 236(a), which provides for bond eligibility. These decisions reflect a consistent interpretation of the statutory framework governing detention following interior arrests.

4. Petitioner remains detained without access to an individualized bond hearing under INA § 236(a). She does not challenge the initiation of removal proceedings or the merits of removability. Rather, this petition challenges the legal basis of her detention—specifically, DHS's classification of her custody under INA § 235(b) rather than INA § 236(a).

5. Because no administrative mechanism exists to compel DHS to reclassify custody or to guarantee timely bond review, and because continued detention risks irreparable harm, judicial intervention is necessary. Petitioner therefore seeks a writ of habeas corpus ordering her release or, in the alternative, an order directing DHS to provide a prompt, individualized custody hearing before a neutral decisionmaker pursuant to INA § 236(a)..

JURISDICTION AND VENUE

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

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

8. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence proceedings, adjudicate cases, or execute removal orders," not independent challenges to unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts of appeals, but does not foreclose habeas review of detention claims, which are collateral to the removal proceedings.

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

PARTIES

10. Petitioner, Ana Barba Hinojosa, is a Mexican national detained at the Otay Mesa Detention Center, in San Diego, California.

11. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

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

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

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

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

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

17. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

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

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

20. By contrast, § 1226(a) governs the detention of individuals who entered years ago and were later apprehended in the interior, "pending a decision on whether [they are] to be removed from the United States." *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §

1226(a) authorizes the Attorney General to detain or release such individuals on bond or conditional parole, except as provided in subsection (c), which applies only to a narrow category of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Congress further described § 1226(a) as merely a "restatement" of prior detention authority under former INA § 242(a), confirming its application to interior arrests pending removal. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

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

22. Only in 2025 did DHS and the BIA begin advancing, in certain proceedings, a contrary interpretation—asserting that noncitizens who entered without inspection must be treated as subject to detention under § 1225(b)(2). This interpretation represented a departure from decades of agency practice and contradicted settled expectations regarding custody jurisdiction.

23. On July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE"), in coordination with the Department of Justice, issued Interim Guidance Regarding Detention Authority for Applicants for Admission. The guidance asserted that noncitizens who entered without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of when or where they were apprehended, including individuals who had resided in the United States for many years.

24. The Board of Immigration Appeals had later adopted a similar statutory interpretation in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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

FACTS

26. Petitioner is a Mexican national who has lived in the United States for nearly forty years, having entered the country as a minor at approximately eleven years of age without inspection at a non-designated location around 1985.

27. Petitioner has deep and longstanding ties to her community in the United States.

28. Petitioner is the mother of three children who were born in the United States and are United States citizens.

29. On or about November 12, 2025, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE") officers at her residence in the interior of the United States.

30. Petitioner was thereafter transferred to the Otay Mesa Detention Center and is currently detained pending removal proceedings before the Otay Mesa Immigration Court.

31. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the Board concluded that noncitizens who entered the United States without inspection are "applicants for admission" subject to detention under INA § 235, regardless of the length of time since entry or the presence of family and community ties.

32. Following *Matter of Yajure-Hurtado*, as DHS applies that decision, Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals whom DHS classifies as subject to detention under INA § 235.

33. On November 25, 2025, the United States District Court for the Central District of California issued an order granting class certification in *Lazaro Maldonado Bautista et al. v. Santacruz et al.*, No. 5:25-cv-01873 (C.D. Cal.). The court certified a class of noncitizens detained by DHS who are classified as subject to detention without bond based on DHS's application of INA § 235(b) and related agency policy.

34. On December 12, 2025, prior to any custody redetermination hearing, Immigration Judge Samantha Begovich, sitting at the Otay Mesa Immigration Court, advised Petitioner's immigration counsel that, based on Petitioner's manner of entry and the precedential decision in *Matter of Yajure-Hurtado*, she would deny a request for bond. In light of that position, counsel withdrew the request for bond.

35. On December 18, 2025, a federal district court vacated DHS's July 8, 2025 Interim Guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

36. Prior to the entry of final judgment in *Maldonado-Bautista*, Respondents expressly maintained—in sworn Returns filed in related habeas proceedings—that the district court's rulings rejecting detention under INA § 235(b) were interlocutory, non-final, and afforded no relief. See Respondents' Return to Habeas Petition at 2–4, *Perez Martinez v. LaRose*, No. 25-cv-3492-DMS-AHG (S.D. Cal. filed Dec. 15, 2025). DHS continued to rely on its interpretation of § 235(b) pending the entry of final judgment.

37. Petitioner remains detained at the Otay Mesa Detention Center without having received an individualized custody hearing.

38. Absent relief from this Court, Petitioner faces continued and potentially prolonged immigration detention despite having been apprehended in the interior of the United States decades after her entry..

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

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

40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. It does not extend to individuals who entered and remained in the country beyond the two-year limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (authorizing expedited removal only for those "who have not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"). Petitioner has lived in the United States since 1985 and is therefore not lawfully detained under INA § 235(b); to the extent she remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

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

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

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

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

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

45. Civil immigration detention is constitutionally permissible only when it bears a reasonable relation to a legitimate governmental objective, such as ensuring appearance at proceedings or protecting the community. Detention that lacks adequate procedural safeguards or is imposed without an individualized determination violates due process. See *Zadvydas,* 533 U.S. at 690.

46. By continuing to detain Petitioner based on an unlawful classification of her custody as governed by INA § 235(b), and by thereby depriving her of any meaningful opportunity for an individualized custody determination before a neutral decisionmaker—at which the Government must justify continued detention—Respondents have violated Petitioner's rights under the Due Process Clause of the Fifth Amendment..

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

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

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

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

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

F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must justify her continued detention by clear and convincing evidence;

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

Respectfully submitted,

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