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

**JOSE NEVAREZ ORTIZ**

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.: '25CV3704 CAB DDL

Agency File No:



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

1 **INTRODUCTION**

2 1. Petitioner Jose Nevarez Ortiz respectfully submits this Petition for Writ of Habeas  
3 Corpus challenging his continued detention by the Department of Homeland Security (“DHS”).  
4 Petitioner is a Mexican national who entered the United States without inspection in or about  
5 2010 and has resided in the United States continuously since that time. He was apprehended in  
6 the interior of the United States, long after his entry, and is currently detained at the Otay Mesa  
7 Detention Center.

8 2. Petitioner is detained based on DHS’s application of an interpretation of the  
9 Immigration and Nationality Act (“INA”), articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec.  
10 216 (BIA 2025), under which DHS has treated certain noncitizens apprehended in the interior of  
11 the United States long after entry as “applicants for admission” subject to detention under INA §  
12 235(b)(2)(A). As applied in this case, that custody classification deprives Petitioner of eligibility  
13 for an individualized bond hearing under INA § 236(a).

14 3. Numerous federal courts have rejected DHS’s reliance on INA § 235(b) to detain  
15 individuals apprehended in the interior of the United States long after entry and have concluded  
16 that such custody, if lawful at all, must proceed under INA § 236(a), which provides for  
17 eligibility for an individualized bond hearing. These decisions reflect a consistent interpretation  
18 of the statutory framework governing detention following interior arrests.

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

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

1 **JURISDICTION AND VENUE**

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

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

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

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

16 **PARTIES**

17 10. Petitioner, Jose Nevarez Ortiz, is a Mexican national detained at the Otay Mesa  
18 Detention Center in San Diego, California.

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

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

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

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

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

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

5 17. All Respondents are named in their official capacities.

6 **LEGAL FRAMEWORK**

7 18. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
8 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
9 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
10 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
11 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
12 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
13 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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

25 20. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
26 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
27 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
28

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

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

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

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

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

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

12 **FACTS**

13 26. Petitioner Jose Nevarez Ortiz is a Mexican national who entered the United States  
14 without inspection in or about 2010 and has resided continuously in the United States since that  
15 time.

16 27. Petitioner has deep and longstanding ties to his community in the United States. He is  
17 married to a lawful permanent resident, and he is the father of two children who were born in the  
18 United States and are United States citizens.

19 28. On or about August 23, 2025, Petitioner was arrested by U.S. Immigration and  
20 Customs Enforcement (“ICE”) officers in the interior of the United States, long after his entry.

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

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

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

4 32. On September 12, 2025, Petitioner sought an individualized custody redetermination  
5 hearing before the Immigration Court. Immigration Judge Mark Sameit, sitting at the Otay Mesa  
6 Immigration Court, denied bond for lack of jurisdiction, concluding that Petitioner was subject to  
7 detention under INA § 235(b) pursuant to *Matter of Yajure-Hurtado*. See *Exhibit 1*.

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

13 34. On December 18, 2025, a federal district court vacated DHS's July 8, 2025 Interim  
14 Guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.  
15 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

16 35. Prior to the entry of final judgment in *Maldonado-Bautista*, Respondents expressly  
17 maintained—in sworn Returns filed in related habeas proceedings—that district court rulings  
18 rejecting detention under INA § 235(b) were interlocutory, non-final, and afforded no relief. See  
19 Respondents' Return to Habeas Petition at 2–4, *Perez Martinez v. LaRose*, No. 25-cv-3492-  
20 DMS-AHG (S.D. Cal. filed Dec. 15, 2025). DHS continued to rely on its interpretation of §  
21 235(b) pending the entry of final judgment.

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

24 37. Absent relief from this Court, Petitioner faces continued and potentially prolonged  
25 immigration detention despite having been apprehended in the interior of the United States more  
26 than a decade after his entry.

1 38. Absent judicial intervention, Petitioner will remain subject to detention without any  
2 meaningful opportunity for an individualized custody determination, despite the absence of any  
3 statutory bar to discretionary detention under INA § 236(a).

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 in or about 2010 and has  
16 resided continuously in the United States since that time. He is therefore not lawfully detained  
17 under INA § 235(b); to the extent he remains in custody, detention must proceed under INA §  
18 236(a) (8 U.S.C. § 1226(a)), which authorizes 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 years ago and were later arrested in the interior of the  
23 United States. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v.*  
24 *Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an applicant for admission  
25 rather than as a noncitizen subject to detention under INA § 236(a) (8 U.S.C. § 1226(a)), DHS  
26 and EOIR have acted contrary to the statutory text, the structure of the INA, and the limits  
27 Congress reaffirmed in the Laken Riley Act of 2025.

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**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 his custody as governed by INA § 235(b), and by thereby depriving him 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;

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 release Petitioner immediately from  
7 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral  
8 decisionmaker at which the Government must justify his continued detention by clear and  
9 convincing evidence;

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 20, 2025

# **EXHIBIT 1**

**Custody Order of the Immigration Judge  
Denying Custody Redetermination for  
Lack of Jurisdiction**



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

Respondent Name:  
NEVAREZ ORTIZ, JOSE

To:  
Nasseri, Saman



A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

09/12/2025

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

The court lacks authority to redetermine the bond pursuant to Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

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

Other:

*Mark Sameit*

Immigration Judge: SAMEIT, MARK 09/12/2025

Appeal:	Department of Homeland Security:	<input checked="" type="checkbox"/> waived	<input type="checkbox"/> reserved
	Respondent:	<input type="checkbox"/> waived	<input checked="" type="checkbox"/> reserved


Appeal Due: 10/14/2025

**Certificate of Service**

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To: [ ] Alien | [ ] Alien c/o custodial officer | [ E ] Alien atty/rep. | [ E ] DHS

Respondent Name : NEVAREZ ORTIZ, JOSE | A-Number 

Riders:

Date: 09/12/2025 By: Rosa Rodriguez, Court Staff