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

11 **LUIS HUMBERTO SARMIENTO CALLE**

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.: '25CV3794 LL 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 Luis Humberto Sarmiento Calle respectfully submits this Petition for a Writ
3 of Habeas Corpus challenging his continued detention by the Department of Homeland Security
4 (“DHS”). Petitioner is an Ecuadorian national who entered the United States without inspection
5 in or about 2001 and has resided continuously in the United States since that time. He was
6 apprehended in the interior of the United States, long after his entry, and is currently detained at
7 the Otay Mesa 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 *Matter of Yajure-Hurtado* remains binding agency precedent and Petitioner
24 has not received an individualized custody determination under INA § 236(a), 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, Luis Humberto Sarmiento Calle, is an Ecuadorian national detained at the
18 Otay Mesa 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, §
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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 Luis Humberto Sarmiento Calle is a Ecuadorian national who entered the
14 United States without inspection in or about 2001 and has resided continuously in the United
15 States since that time.

16 27. On or about November 6, 2025, Petitioner was arrested by U.S. Immigration and
17 Customs Enforcement (“ICE”) officers in the Bronx, New York, in the interior of the United
18 States.

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

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

1 30. 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 31. On November 25, 2025, the United States District Court for the Central District of
5 California issued an order granting class certification in *Lazaro Maldonado Bautista et al. v.*
6 *Santacruz et al.*, No. 5:25-cv-01873 (C.D. Cal.). The court certified a class of noncitizens
7 detained by DHS who are classified as subject to detention without bond based on DHS's
8 application of INA § 235(b) and related agency policy.

9 32. On December 15, 2025, Petitioner, through his immigration attorney, requested an
10 individualized custody redetermination hearing before the Immigration Court. Immigration
11 Judge Robinson denied the request, stating that the Court lacked jurisdiction to conduct a
12 custody redetermination pursuant to *Matter of Yajure-Hurtado*. The Immigration Judge further
13 stated on the record that, alternatively, if the Court had jurisdiction, it found—based on the
14 evidence admitted into the record—that Petitioner did not present a danger to the community and
15 that, to address any concerns regarding risk of flight, the Court would have set bond in the
16 amount of \$1,500 (*Exhibit 1*).

17 33. On December 18, 2025, a federal district court vacated DHS's July 8, 2025 Interim
18 Guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.
19 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The court's decision addressed DHS's
20 Interim Guidance only and did not vacate, overrule, or otherwise disturb *Matter of Yajure-*
21 *Hurtado* or any binding Board of Immigration Appeals precedent.

22 34. Prior to the entry of final judgment in *Maldonado-Bautista*, Respondents expressly
23 maintained—in other federal habeas proceedings challenging detention under INA § 235(b)—
24 that district court rulings rejecting such detention were interlocutory, non-final, and afforded no
25 relief. See Respondents' Return to Habeas Petition at 2–4, *Perez Martinez v. LaRose*, No. 25-cv-
26 3492-DMS-AHG (S.D. Cal. filed Dec. 15, 2025). DHS continued to rely on its interpretation of §
27 235(b) pending the entry of final judgment.

1 35. Following the entry of final judgment in *Maldonado-Bautista v. Santacruz*,
2 Respondents acknowledged the vacatur of DHS’s July 8, 2025 Interim Guidance in subsequent
3 habeas proceedings but expressly stated that they “reserve the right to supplement” their
4 response in the event of a stay of enforcement of the *Maldonado-Bautista* final judgment,
5 appellate relief, or a change in DHS policy. See Respondents’ Return to Petition for Writ of
6 Habeas Corpus, *Cabrera-Ruiz v. LaRose et al.*, No. 3:25-cv-03582-AGS-JLB (S.D. Cal. filed
7 Dec. 23, 2025).

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

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

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

16 **CLAIM FOR RELIEF**

17 **COUNT 1**

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

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

21 40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
22 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does
23 not extend to individuals who entered and remained in the country beyond the two-year
24 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)
25 (authorizing expedited removal only for those “who have not been physically present in the
26 United States continuously for the 2-year period immediately prior to the date of the
27 determination of inadmissibility”). Petitioner entered the United States in or about 2001 and has
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1 resided continuously in the United States since that time. He is therefore not lawfully detained
2 under INA § 235(b); to the extent he remains in custody, detention must proceed under INA §
3 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

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

13 **COUNT 2**

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 A) Assume jurisdiction over this matter;
- 9 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
10 District while these proceedings are pending;
- 11 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
12 Respondents to explain the legal basis for Petitioner’s continued detention;
- 13 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
14 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 15 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
16 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
17 the Fifth Amendment.
- 18 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
19 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
20 decisionmaker at which the Government must justify his continued detention by clear and
21 convincing evidence;
- 22 G) Grant such other and further relief as the Court deems just and proper.

23 Respectfully submitted,

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

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Counsel for Petitioner

Dated: December 28, 2025

EXHIBIT 1

Bond Order of the Immigration Judge



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

Respondent Name:

SARMIENTO CALLE, LUIS HUMBERTO

A-Number:



To:

Savannah I. Monterrey, Esq.
8 Dominion Drive, Suite 209
San Antonio, TX 78257

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

The Court continues to lack jurisdiction to redetermine Respondent's custody status. See Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). Although the United States District Court for the Central District of California recently granted class certification in Maldonado Bautista v. Noem, No. 5:25 CV-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), Maldonado Bautista is not a final judgement and remains pending with the District Court. As such, the Court denies Respondent's request for custody redetermination.

Alternatively, if the court had jurisdiction, the court finds - based on the evidence admitted in the record - that respondent does not present a danger to the community. To address any concerns regarding risk of flight, the court would set bond in the amount of \$1,500.

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

Other:



Immigration Judge: ROBINSON, EUGENE 12/15/2025

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

Appeal Due: 01/14/2026

Certificate of Service

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

Respondent Name : SARMIENTO CALLE, LUIS HUMBERTO | A-Number 

Riders:

Date: 12/15/2025 By: GARCIA III, ROBERTO, Court Staff