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4 Attorneys for Petitioner,
5 MILTON OMAR HERNANDEZ MENDEZ

6 UNITED STATES DISTRICT COURT
7 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

8 MILTON OMAR HERNANDEZ-MENDEZ,
A# 

CASE NO: '26CV0006 TWR SBC

9 Petitioner,

**PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

10 v.

11 KRISTI NOEM, Secretary, Department of
12 Homeland Security; TODD LYONS, Acting
Director, U.S. Immigration and Customs
13 Enforcement; PAM BONDI, Attorney General
of the United States; PATRICK DIVVER,
14 Director, San Diego ICE Field Office; FRED
LAWRENCE, Warden, Otay Mesa Detention
15 Center,

16 Respondents.

17 **I. INTRODUCTION**

18 1. Petitioner Milton Omar Hernandez-Mendez is a noncitizen detained at the Otay Mesa
19 immigration detention facility in San Diego, California.

20 2. Petitioner is charged as having entered the United States without inspection. 8 U.S.C. §
21 1182(a)(6)(A)(i). Relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), DHS has deemed
22 Petitioner categorically ineligible for a bond and bond redetermination hearing before an immigration
23 judge, relying on the statute at 8 U.S.C. § 1225(b)(2)(A).
24

25 3. Section 1225(b)(2)(A) does not apply to individuals charged with entry without inspection
26 who are placed in removal proceedings; such individuals are detained, if at all, under 8 U.S.C. §
27 1226(a), and eligible for release on bond.
28

1 4. Courts across the country, including within the Ninth Circuit, have rejected the extension of §
2 1225(b)(2) to PINI respondents. See, e.g., *Rodriguez v. Bostock*, No. 3:25-cv-05240, 2025 WL 2782499
3 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal.
4 Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025);
5 *Vasquez Garcia v. Noem*, No. 3:25-cv-02180 (S.D. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-
6 02190 (C.D. Cal. Aug. 26, 2025).

7 5. *Matter of Yajure Hurtado* is contrary to the INA's text and structure and violates due process
8 as applied to Petitioner.

9 6. As such, Petitioner seeks declaratory and injunctive relief requiring a prompt bond
10 redetermination hearing before an immigration judge, or conditional release, and affirm that the
11 immigration judge has jurisdiction.
12

13 II. JURISDICTION AND VENUE

14 7. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331
15 (federal question); 28 U.S.C. §§ 2201–2202 (declaratory judgment); and Article I, Section 9 of the
16 United States Constitution (Suspension Clause).
17

18 8. Venue properly lies in the Southern District of California under 28 U.S.C. § 1391, because this
19 is a civil action in which Respondents are agencies of the United States, Petitioner is detained in this
20 District, and a substantial part of the events or omissions giving rise to this action occurred in the
21 District.
22

23 III. PARTIES

24 9. Petitioner is in pending removal proceedings and is currently detained at Otay Mesa
25 Immigration Detention Center.
26

27 10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is
28 responsible for the implementation and enforcement of the Immigration and Nationality Act and

1 oversees ICE, which is responsible for Petitioner's detention. Respondent Noem has ultimate custodial
2 authority over Petitioner. She is sued in her official capacity.

3 11. Respondent Todd Lyons is the Acting Director of ICE and has authority over the operations
4 of ICE. In that capacity and through his agents, Respondent Lyons has broad authority over the
5 operation and enforcement of the immigration laws. Respondent Lyons is sued in his official capacity.
6

7 12. Respondent Pam Bondi is the Attorney General of the United States. She is responsible for
8 the Department of Justice and is sued in her official capacity.
9

10 13. Respondent Patrick Divver is the Director of the San Diego Field Office of ICE's
11 Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the
12 ICE facilities in the San Diego Field Office. He is Petitioner's immediate custodian and is responsible
13 for his detention. He is sued in his official capacity.
14

15 14. Respondent Fred Lawrence is the Warden of the Otay Mesa Immigration Detention Center,
16 where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official
17 capacity.
18

19 IV. LEGAL BACKGROUND

20 15. There are three basic forms of detention for noncitizens in removal proceedings set forth in
21 the Immigration and Nationality Act (INA).

22 16. The first form of detention as set forth in 8 U.S.C. § 1226 authorizes the detention of
23 noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8
24 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their
25 detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged
26 with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

27 17. For the second form of detention, the INA provides for mandatory detention of noncitizens
28 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking
admission referred to under § 1225(b)(2).

1 18. The Act also provides for a third form of detention, the detention of noncitizens who have
2 been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. §
3 1231(a)–(b).

4 19. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

5 20. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
6 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div.
7 C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most
8 recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

9 21. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in
10 general, people who entered the country without inspection were not considered detained under § 1225
11 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens;
12 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
13 10312, 10323 (Mar. 6, 1997).

14 22. Thus, in the decades that followed, most people who entered without inspection - unless they
15 were subject to some other detention authority - received bond hearings. That practice was consistent
16 with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were
17 entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see
18 also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention
19 authority previously found at § 1252(a)).

20 23. On September 5, 2025, the Board of Immigration Appeals issued a precedent decision in
21 *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that noncitizens who entered the
22 United States without inspection were ineligible for bond redetermination hearings because they were
23 seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

24 24. This legal theory that noncitizens who entered the United States without admission or parole
25 are ineligible for bond hearings has been universally rejected by the district courts. *Rodriguez v.*
26 *Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda*
27 *v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman*
28 *v. Andrews*, No. 1:25-CV-01015- KES-SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025);
Vasquez Garcia v. Noem, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No.

1 5:25-cv- 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-
2 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM
3 (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D.
4 Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025);
5 *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025);
6 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025);
7 *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) *Rodriguez v.*
8 *Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

9 25. The Board’s interpretation defies the INA. The plain text of the statutory provisions
10 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

11 26. Section 1226(a) applies by default to all persons “pending a decision on whether the
12 [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a,
13 which decide the inadmissibility or deportability of a noncitizen.

14 27. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
15 those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to
16 such people makes clear that, by default, such people are afforded a bond hearing under subsection (a).
17 Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible
18 to the United States, including those who are present without admission or parole.

19 28. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
20 entered the United States. The statute’s entire framework is premised on inspections at the border of
21 people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).

22 29. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like
23 Petitioner who are alleged to have entered the United States without admission or parole.

24 **V. FACTUAL BACKGROUND**

25 30. On December 01, 2025, while working for his employer moving company and assisting a
26 U.S. Marine and family move at Camp Pendleton Marine Base, inside the United States, Petitioner was
27 arrested by immigration authorities and placed in § 240 proceedings.

28 31. Petitioner entered the United States without inspection or admission. 8 U.S.C. §

1 1182(a)(6)(A)(i).

2 32. Petitioner is married to a U.S. Citizen and they have a 4 months old U.S. Citizen child
3 together. He is employed by a moving company and he lives with his wife and 3 children and his wife's
4 parents, that they give home care to. They reside in a home in Palmdale wherein Petitioner and wife are
5 both on the mortgage.

6 33. He is currently detained at the Otay Mesa Detention Center and is in pending removal
7 proceedings.

8 34. On December 22, 2025, Petitioner sought a bond redetermination hearing. The
9 Immigration Judge declined bond jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
10 2025) but stated on the record that if jurisdiction existed, she would grant bond under specific
11 conditions.

12 35. Those conditions include a \$2,000 bond, electronic monitoring at DHS discretion,
13 compliance with law, maintenance of a valid work permit and driver's license, and residence with
14 family in Palmdale, California.

15 36. Petitioner is next scheduled for a hearing before an immigration judge in the removal case on
16 January 29, 2026.

17 **VI. CLAIMS FOR RELIEF**

18 **CLAIM ONE**

19 **Violation of 8 U.S.C. § 1226(a)**

20 ***Unlawful Denial of Bond Hearing***

21 37. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the
22 proceeding paragraphs as if fully set forth herein.
23

24 38. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
25 residing in the United States who are subject to the grounds of inadmissibility because they previously
26 entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a),
27 unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
28

1 39. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination
2 hearing before an immigration judge violates the Immigration and Nationality Act.

3 **CLAIM TWO**

4 **Violation of the Administrative Procedure Act**

5 ***Unlawful Denial of Bond***

6 40. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the
7 proceeding paragraphs as if fully set forth herein.

8 41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
9 residing in the United States who are subject to the grounds of inadmissibility because they previously
10 entered the country without being admitted or paroled. Such noncitizens are detained under § 1226(a),
11 unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
12

13 42. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination
14 hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as
15 such, it violates the APA. See 5 U.S.C. § 706(2).
16

17 **CLAIM THREE**

18 **Violation of Procedural Due Process**

19 43. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the
20 proceeding paragraphs as if fully set forth herein.

21 44. The government may not deprive a person of life, liberty, or property without due process of
22 law. U.S. Const. amend. V. “Freedom from imprisonment – from government custody, detention, or
23 other forms of physical restraint – lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*
24 *Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).
25

26 45. Petitioner has a fundamental interest in liberty and being free from official restraint.

27 46. The government’s detention of Petitioner without a bond redetermination hearing to
28 determine whether he is a flight risk or danger to others violates his right to due process.

VII. PRAYER FOR RELIEF

1
2 WHEREFORE, Petitioner respectfully requests that this Court:

- 3 1. Assume jurisdiction over this matter;
- 4 2. Declare that the refusal to allow Petitioner a bond redetermination hearing before an
5 immigration judge violates the INA, APA, and Due Process;
- 6 3. Issue a writ of habeas corpus requiring that Respondents release him or provide the bond
7 hearing to which he is entitled within 7 days;
- 8 4. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28
9 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
- 10 5. Order further relief as this Court deems just and appropriate.

11
12 Dated: December 26, 2025

13 Respectfully Submitted,

14 /s/Brad Thornton

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21 Attorneys for Petitioner,
22 MILTON OMAR HERNANDEZ MENDEZ
23
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VERIFICATION

I, Brad Thornton, Esq., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that:

1. I am counsel of record for Petitioner Milton Omar Hernandez-Mendez.
2. Petitioner is currently detained at the Otay Mesa Detention Center and is not reasonably accessible to execute a verification at this time due to detention restrictions and time sensitivity.
3. Pursuant to 28 U.S.C. § 2242, I am authorized to verify this Petition on Petitioner's behalf.
4. The factual allegations in this Petition are based on my personal knowledge, review of official records, pleadings, and communications with Petitioner and his family, and are true and correct to the best of my knowledge and belief.

Executed on 12/26/2025, at Chatsworth, California.

/s/ Brad Thornton

Brad Thornton, Esq.
Attorney for Petitioner

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7 Attorneys for Petitioner,
8 MILTON OMAR HERNANDEZ MENDEZ

9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 MILTON OMAR HERNANDEZ-MENDEZ,
12 A# 

CASE NO:

**EXHIBITS A-B IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF HABEAS CORPUS
(28 U.S.C. § 2241)**

13 Petitioner,
14 v.

15 KRISTI NOEM, Secretary, Department of
16 Homeland Security; TODD LYONS, Acting
17 Director, U.S. Immigration and Customs
18 Enforcement; PAM BONDI, Attorney General
19 of the United States; PATRICK DIVVER,
20 Director, San Diego ICE Field Office; FRED
21 LAWRENCE, Warden, Otay Mesa Detention
22 Center,

23 Respondents.

24 **EXHIBIT INDEX**

25 **Exhibit Description**

26 **A** DHS Notice of Custody Determination

27 **B** Notice to Appear
28

EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: HERNANDEZ-MENDEZ, MILTON OMAR A-File Number: [REDACTED]
Date: 12/02/2025
Event ID: [REDACTED] Subject ID: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- Detained by the Department of Homeland Security.
- Released (check all that apply):
 - Under bond in the amount of \$ _____
 - On your own recognizance.
 - Under other conditions. [Additional document(s) will be provided.]

JOHNSON, L. 7079 [Signature] 12/02/2025 12:34 AM
Name and Signature of Authorized Officer Date and Time of Custody Determination
SDDO ICE ENFORCEMENT AND REMOVAL OPERATIONS 880 FRONT STREET #2242 SAN DIEGO, CA US 92101
Title Office Location/Address

You may request a review of this custody determination by an immigration judge.

- I acknowledge receipt of this notification, and
- I do request an immigration judge review of this custody determination.
- I do not request an immigration judge review of this custody determination.

[Signature] 12/02/2025
Signature of Alien Date

The contents of this notice were read to HERNANDEZ-MENDEZ, MILTON OMAR in the SPANISH language.
(Name of Alien) (Name of Language)

CHAN, K 7699 [Signature] Lion Bridge
Name and Signature of Officer Name or Number of Interpreter (if applicable)
Deportation Officer
Title

EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [Redacted]
Event: [Redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [Redacted]

File No: [Redacted]

In the Matter of:

Respondent: MILTON OMAR HERNANDEZ-MENDEZ

currently residing at:

[Redacted] San Diego, CALIFORNIA 92154
(Number, street, city, state and ZIP code)

[Redacted]
(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR;
3. You entered the United States at or near HIDALGO, TX, on or about February 15, 2018;
4. You were not then admitted or paroled after inspection by an Immigration Officer. Or at that time you arrived at a time or place other than as designated by the Attorney General.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

7488 CALZADA DE LA FUENTE, SAN DIEGO, CALIFORNIA 92154. OTAY MESA DETENTION CENTER
(Complete Address of Immigration Court, including Room Number, if any)

ON December 15, 2025 at 8:00 am to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

L. JOHNSON
L. JOHNSON - SDDO
(Signature and Title of Issuing Officer)

Date: December 2, 2025

SAN DIEGO, CA
(City and State)