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12 UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **SERGIO ESCOBAR-MENDOZA,**  
15  
16 Petitioner,

17 vs.

18 **CHRISTOPHER J. LAROSE,**  
19 WARDEN OF OTAY MESA  
20 DETENTION CENTER,

21 **GREGORY J. ARCHAMBEAULT, IN**  
22 HIS OFFICIAL CAPACITY AS SAN  
23 DIEGO FIELD OFFICE DIRECTOR,  
24 ICE ENFORCEMENT AND REMOVAL  
25 OPERATIONS;

26 **KRISTI NOEM, SECRETARY OF**  
27 THE U.S. DEPARTMENT OF  
28 HOMELAND SECURITY; AND

**PAM BONDI, ATTORNEY GENERAL**  
OF THE UNITED STATES,

IN THEIR OFFICIAL CAPACITIES,

Respondents

PETITION FOR WRIT OF HABEAS  
CORPUS

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

Case No. '26CV78 JES DEB

## INTRODUCTION

1  
2 1. This habeas petition challenges the continued civil detention of Sergio  
3 Escobar-Mendoza, a longtime resident of the United States who has been  
4 incarcerated for more than six months without a constitutionally adequate custody  
5 determination. Although immigration detention is permitted only as a narrow  
6 regulatory measure to prevent flight or danger, Mr. Escobar-Mendoza remains  
7 confined based not on any individualized finding, but on a categorical legal theory  
8 that has stripped him of the process Congress and the Constitution require. His  
9 detention has become arbitrary, prolonged, and divorced from any legitimate civil  
10 purpose.

11 2. Mr. Escobar-Mendoza was arrested during an interior enforcement action,  
12 served with a Notice to Appear, and placed into removal proceedings before the  
13 immigration court. An immigration judge initially conducted an individualized  
14 custody hearing and ordered his release on bond, expressly determining that  
15 detention was unnecessary. That adjudicated liberty interest was later nullified—  
16 not because of any new facts, changed circumstances, or individualized  
17 assessment—but solely through the government’s post-remand invocation of a  
18 legal reclassification that foreclosed further custody review. As a result, Mr.  
19 Escobar-Mendoza is now detained without any operative finding that he poses a  
20 danger or a risk of flight.

21 3. This manner of detention violates both the Immigration and Nationality Act  
22 and the Fifth Amendment’s Due Process Clause. The INA authorizes civil  
23 confinement in removal proceedings only under a discretionary framework that  
24 requires individualized consideration. And due process demands more than  
25 categorical detention by legal abstraction: it requires a meaningful opportunity to  
26 be heard before liberty is withdrawn, particularly where a neutral adjudicator has  
27 already found detention unwarranted. Here, the government has continued to  
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1 incarcerate Mr. Escobar-Mendoza without replacing the prior bond determination  
2 with any constitutionally sufficient process.

3 4. The constitutional injury is compounded by the length and conditions of  
4 confinement. Mr. Escobar-Mendoza has now been detained for over six months,  
5 despite strong community ties, steady employment history, the absence of any  
6 criminal record, and serious medical conditions that have worsened in custody. His  
7 detention persists automatically, with no endpoint and no mechanism for  
8 individualized reassessment, transforming what is supposed to be civil regulation  
9 into punitive incarceration.

10 5. Absent judicial intervention, Mr. Escobar-Mendoza will remain confined not  
11 because the government has shown detention to be necessary, but because it has  
12 refused to provide the process the law requires. The writ of habeas corpus exists  
13 precisely to correct such unlawful restraints on liberty. This Court should grant  
14 immediate relief by ordering Mr. Escobar-Mendoza's release or, at minimum,  
15 requiring a prompt, constitutionally adequate custody hearing under the correct  
16 legal framework.

#### 17 **JURISDICTION & VENUE**

18 6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in  
19 custody under the authority of the United States and seeks a writ of habeas corpus.  
20 This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises  
21 under the Constitution, laws, and treaties of the United States, and under 5 U.S.C.  
22 §§ 701–706 because Petitioner challenges agency action that is arbitrary,  
23 capricious, and not in accordance with law.

24 7. This Court has authority to grant declaratory and injunctive relief pursuant to  
25 28 U.S.C. §§ 2201–2202.

26 8. Neither 8 U.S.C. §§ 1252(b)(9) nor 1252(g) bar this Court's review.  
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1 9. Section 1252(b)(9) is a “zipper clause” that channels review of final orders  
2 of removal to the courts of appeals; it does not apply where, as here, no final  
3 removal order exists and the petitioner challenges only the statutory authority  
4 under which he is detained. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525  
5 U.S. 471, 482–83 (1999). As the Supreme Court explained in *Jennings v.*  
6 *Rodriguez*, 583 U.S. 281 (2018), detention claims that raise “questions of law”—  
7 including whether statutory provisions require detention without a bond hearing—  
8 do not “arise from” removal proceedings and therefore fall outside § 1252(b)(9).  
9 *Id.* at 292–95. The Ninth Circuit has repeatedly held that §§ 1252(a)(5) and (b)(9)  
10 do not preclude district-court review of claims that are “independent of or  
11 collateral to the removal process,” including challenges to unlawful or prolonged  
12 immigration detention. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031–32 (9th Cir. 2016);  
13 *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012). Every recent decision  
14 in this district addressing the exact § 1225/§ 1226 misclassification issue has  
15 rejected the government’s § 1252(b)(9) argument for this same reason. See, e.g.,  
16 *Monica Adriana Ruiz Yarleque v. Noem*, No. 5:25-cv-02836-MEMF-SP, 2025 WL  
17 3043936, at 5–7 (*C.D. Cal. Oct. 31, 2025*); *Garcia v. Noem*, No. 5:25-cv-02771-  
18 ODW (PDX), 2025 WL 2986672, at 3–4 (*C.D. Cal. Oct. 22, 2025*); *Arrazola-*  
19 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMX), 2025 WL 2379285, at 1–2  
20 (*C.D. Cal. Aug. 15, 2025*); *E.C. v. Noem*, No. 5:25-cv-02612-ODW (PDX), at 3  
21 (*C.D. Cal. Oct. 28, 2025*); *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884–  
22 85 (*C.D. Cal. 2025*).

23 10. Section 1252(g) likewise poses no bar. The Supreme Court has held that §  
24 1252(g) applies only to three discrete discretionary actions—commencing  
25 proceedings, adjudicating cases, and executing removal orders—and does not  
26 cover legal challenges to the scope of DHS’s detention authority. *Reno*, 525 U.S. at  
27 482; *Jennings*, 583 U.S. at 294–96. Petitioner challenges none of those actions. His  
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1 claim is a “purely legal question” that does not implicate any exercise of  
2 prosecutorial discretion, and district courts retain jurisdiction over such claims.  
3 *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *Ibarra-Perez v.*  
4 *United States*, No. 24-631, 2025 WL 2461663, at \*6 (9th Cir. Aug. 27, 2025).  
5 Consistent with this binding authority, courts in this district have repeatedly held  
6 that § 1252(g) does not bar review of claims alleging detention under the wrong  
7 statutory provision. *Ruiz Yarleque*, 2025 WL 3043936, at 5–6; *Garcia*, 2025 WL  
8 2986672, at 3; *Arrazola-Gonzalez*, 2025 WL 2379285, at 1; *E.C.*, at 3.

9 Accordingly, this Court has jurisdiction to hear and resolve this petition.

10 11. Venue is proper in the Southern District of California under 28 U.S.C. §  
11 1391(e) because Petitioner is detained at the Otay Mesa Detention Center, located  
12 within this judicial district, and because a substantial part of the events or  
13 omissions giving rise to this action occurred in this district.

#### 14 **PARTIES**

15 12. Petitioner SERGIO ESCOBAR-MENDOZA is a 55-year-old noncitizen  
16 currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the  
17 Otay Mesa Detention Center in San Diego, California. He challenges his ongoing  
18 civil immigration detention as unlawful and unconstitutional because, although an  
19 Immigration Judge initially set bond after an individualized custody assessment,  
20 DHS’s appeal and subsequent proceedings erroneously resulted in the cancellation  
21 of that bond under Matter of Yajure Hurtado, leaving Petitioner detained without  
22 any meaningful individualized custody determination.

23 13. Respondent CHRISTOPHER LAROSE is the Warden of the Otay Mesa  
24 Detention Center and is sued in his official capacity as the immediate custodian of  
25 Petitioner.

26 14. Respondent GREGORY J. ARCHAMBEAULT is the San Diego Field  
27 Office Director for ICE Enforcement and Removal Operations (“ERO”) and is  
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1 sued in his official capacity. He exercises authority over the detention and removal  
2 of noncitizens in the Los Angeles region, including Petitioner.

3 15. Respondent KRISTI NOEM is the Secretary of the U.S. Department of  
4 Homeland Security (“DHS”), the federal agency responsible for immigration  
5 enforcement and detention. She is sued in her official capacity.

6 16. Respondent PAM BONDI is the Attorney General of the United States and  
7 the head of the U.S. Department of Justice, which oversees the Executive Office  
8 for Immigration Review (“EOIR”) and immigration judges. She is sued in her  
9 official capacity.

10 **FACTUAL BACKGROUND**

11 17. Petitioner Sergio Escobar-Mendoza is a 55 year-old native and citizen of  
12 Guatemala who has lived continuously in the United States since approximately  
13 2017. Since his arrival, he has remained in the interior of the country and has not  
14 departed the United States.

15 18. On June 19, 2025, Mr. Escobar-Mendoza was arrested by immigration  
16 authorities during an interior enforcement sweep at a Home Depot in Hollywood,  
17 California. He was not apprehended at or near the border, was not encountered  
18 during any inspection or admission process, and was not seeking entry into the  
19 United States at the time of his arrest.

20 19. Following this interior arrest, DHS placed Mr. Escobar-Mendoza into  
21 removal proceedings and detained him at the Otay Mesa Detention Center in San  
22 Diego, California, where he remains confined.

23 20. On July 11, 2025, after full consideration of the evidence, an Immigration  
24 Judge at the Otay Mesa Immigration Court granted Mr. Escobar-Mendoza release  
25 on bond, setting bond in the amount of \$2,500 and ordering that he be released  
26 from custody, with alternatives to detention to be imposed at DHS’s discretion.

1 21.DHS appealed the Immigration Judge’s bond decision to the Board of  
2 Immigration Appeals. In a decision dated September 22, 2025, the Board  
3 remanded the case for further factual findings concerning the manner of Mr.  
4 Escobar-Mendoza’s entry and the statutory authority governing his detention.

5 22.On remand, the Immigration Judge denied bond solely on jurisdictional  
6 grounds, concluding that, under *Matter of Yajure Hurtado*, the court lacked  
7 authority to consider release because DHS classified Mr. Escobar-Mendoza as an  
8 “applicant for admission” subject to mandatory detention under 8 U.S.C. §  
9 1225(b)(2). The Immigration Judge did not conduct any individualized assessment  
10 of danger, flight risk, medical vulnerability, or conditions of release.

11 23.As a result of DHS’s legal position, Mr. Escobar-Mendoza has been  
12 categorically denied any individualized custody determination, notwithstanding the  
13 Immigration Judge’s prior determination that release on bond was appropriate.

14 24.Mr. Escobar-Mendoza has no criminal history. His detention is purely civil  
15 and rests solely on DHS’s asserted statutory authority, not on any allegation that he  
16 poses a danger to the community or a risk of flight.

17 25.Since arriving in the United States, Mr. Escobar-Mendoza has worked  
18 continuously in construction and manual labor, supporting himself and  
19 contributing to his community. Multiple community members submitted letters  
20 attesting to his consistent employment, reliability, and positive role in the lives of  
21 others, describing him as hardworking, dependable, and deeply integrated into his  
22 local community.

23 26.Mr. Escobar-Mendoza has extensive community ties in Los Angeles, where  
24 he has lived for years. Friends, neighbors, and family members describe him as  
25 someone who regularly assists others, provides housing and support during times  
26 of hardship, and plays a stabilizing role in the lives of those around him. His lawful  
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1 permanent resident son has offered to serve as a sponsor, pledging to house and  
2 financially support him and to ensure his appearance at all court proceedings.

3 27.Mr. Escobar-Mendoza also suffers from serious chronic medical conditions,  
4 including Type 2 diabetes and hypertension, requiring ongoing medical care and  
5 medication management. Prior to his detention, he was under active medical  
6 supervision for these conditions. While detained, he has experienced physical  
7 deterioration, including fatigue, weakness, loss of teeth, and swelling in his hands,  
8 increasing the risks associated with continued confinement.

9 28.Mr. Escobar-Mendoza has now been detained continuously since June 19,  
10 2025—over six months—without a constitutionally adequate custody hearing.. His  
11 detention continues automatically and indefinitely, based solely on DHS’s asserted  
12 statutory interpretation, with no meaningful opportunity to demonstrate that he  
13 poses no danger and no risk of flight.

14 29.Absent judicial intervention, Mr. Escobar-Mendoza will remain detained  
15 despite his prolonged residence in the United States, his strong community and  
16 family support, his lack of any criminal history, his serious medical needs, and the  
17 Immigration Judge’s prior determination that release on bond was warranted.

## 18 **LEGAL FRAMEWORK**

### 19 **I. Petitioner’s Custody Is Governed by 8 U.S.C. § 1226(a), Not §** 20 **1225(b)(2)**

21 30. Federal immigration detention prior to a final order of removal is governed  
22 by two distinct statutory provisions—8 U.S.C. §§ 1225 and 1226—which operate  
23 in separate and mutually exclusive spheres. Section 1225 is a border-processing  
24 statute that governs inspection and detention of individuals who are arriving at the  
25 United States or otherwise actively seeking admission. Section 1226, by contrast,  
26 governs the arrest and detention of noncitizens already present in the United States  
27 pending removal proceedings. As the Supreme Court has explained, § 1226  
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1 “generally governs the process of arresting and detaining aliens who are already in  
2 the country,” while § 1225 applies to “aliens seeking admission.” *Jennings v.*  
3 *Rodriguez*, 583 U.S. 281, 289, 303 (2018).

4 31. Section 1226(a) establishes the default detention framework for noncitizens  
5 already present in the United States. It authorizes DHS to arrest and detain a  
6 noncitizen “pending a decision on whether the alien is to be removed,” but  
7 expressly permits release on bond or conditional parole, except where the narrow  
8 mandatory-detention provisions of § 1226(c) apply. 8 U.S.C. § 1226(a).

9 Implementing regulations guarantee access to an individualized bond hearing  
10 before an immigration judge and allow for custody redetermination. By contrast, §  
11 1225(b)(2)(A) mandates detention only where an “examining immigration officer  
12 determines that an alien seeking admission is not clearly and beyond a doubt  
13 entitled to be admitted,” and applies only to individuals who are, in fact, “seeking  
14 admission.” 8 U.S.C. § 1225(b)(2)(A).

15 32. The present-tense statutory phrase “seeking admission” is the limiting  
16 principle of § 1225(b)(2). Section 1225 governs the inspection and detention of  
17 “applicants for admission,” defined as noncitizens who are arriving at the United  
18 States or otherwise actively seeking entry or readmission through inspection. 8  
19 U.S.C. § 1225(a)(1), (a)(3). Where an examining officer determines that such an  
20 applicant is not clearly entitled to admission, § 1225(b)(2)(A) mandates detention  
21 pending removal proceedings, subject only to narrow parole authority. *See*  
22 *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). By contrast, courts have rejected  
23 attempts to apply § 1225(b)(2) to noncitizens who entered the United States years  
24 earlier and were later apprehended in the interior, holding that such individuals are  
25 not “seeking admission” within the meaning of the statute. *See Morales-Vichi v.*  
26 *Noem*, No. 25-CV-3754-GPC-KSC, 2025 WL 3764699, at \*2 (S.D. Cal. Dec. 30,  
27 2025). Reading § 1225(b)(2) to reach long-term residents arrested during interior  
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1 enforcement actions would expand the statute beyond its text, collapse Congress’s  
2 deliberate distinction between §§ 1225 and 1226, and render § 1226 largely  
3 superfluous. *See Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (citation  
4 omitted)

5 33. Congress’s 2025 enactment of the Laken Riley Act confirms that § 1226(a)  
6 is the default detention authority for inadmissible noncitizens present in the United  
7 States. By adding § 1226(c)(1)(E), Congress required mandatory detention only for  
8 certain inadmissible noncitizens who are arrested or charged with specified crimes.  
9 8 U.S.C. § 1226(c)(1)(E). That carve-out necessarily presupposes that inadmissible  
10 noncitizens who do not meet those criteria—including those charged solely under  
11 INA § 212(a)(6)(A)(i)—remain governed by § 1226(a)’s discretionary bond  
12 framework. Any reading of § 1225(b)(2) that sweeps all interior arrestees into  
13 mandatory detention would render § 1226(c)(1)(E) superfluous, a result courts  
14 have repeatedly rejected.

15 34. Consistent with these principles, district courts have rejected the  
16 government’s expansive § 1225 theory with near-total unanimity and have held  
17 that noncitizens arrested in the interior are detained under § 1226(a), not § 1225(b).  
18 *See, e.g., Chavez Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9  
19 (S.D. Cal. Nov. 25, 2025); *Yohan Diaz-Villatoro v. LaRose*, 2025 WL 3251377, at  
20 \*3–4 (S.D. Cal. Nov. 21, 2025); *Aparicio Sanchez v. Noem*, 2025 WL 3214987, at  
21 \*3–4 (S.D. Cal. Nov. 18, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431  
22 (S.D. Cal. Sept. 3, 2025); *Lopez Benitez v. Francis*, 2025 WL 2267803 (S.D.N.Y.  
23 Aug. 8, 2025); *Martinez v. Hyde*, 2025 WL 2084238, at \*9 (D. Mass. July 24,  
24 2025); *Gomes v. Hyde*, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025); *Lopez-*  
25 *Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*  
26 *Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*,  
27 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, 2025 WL 2403827

1 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D.  
2 Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn.  
3 Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14,  
4 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025);  
5 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, slip op. at \*13  
6 (C.D. Cal. July 28, 2025); *Oliveros v. Kaiser*, 2025 WL 2677125, at \*4 (N.D. Cal.  
7 Sept. 18, 2025). No court has adopted the government’s position that §  
8 1225(b)(2)(A) mandates detention for long-time residents arrested in the interior.

9 35. Petitioner’s custody history places him squarely within § 1226(a). Mr.  
10 Escobar-Mendoza entered the United States years ago and lived continuously in  
11 the community, working in construction and maintaining deep community ties. He  
12 was not encountered at a port of entry, during inspection, or while attempting to  
13 enter the United States. Instead, he was arrested during a large-scale interior  
14 enforcement sweep. An immigration judge thereafter exercised § 1226(a) authority  
15 and set bond—an act that itself reflects the proper statutory classification of  
16 Petitioner’s detention.

17 36. DHS’s subsequent appeal, remand, and invocation of *Matter of Yajure*  
18 *Hurtado* do not alter the governing statutory framework. Courts addressing this  
19 precise procedural posture—where a noncitizen arrested in the interior was granted  
20 bond under § 1226(a), and DHS later invoked *Hurtado* on remand to deny  
21 jurisdiction—have uniformly rejected the government’s attempt to retroactively  
22 reclassify custody under § 1225(b)(2). See *Vega v. LaRose*, No. 3:25-CV-2725-  
23 CAB-MSB, 2025 WL 3247778, at \*7–10 (S.D. Cal. Nov. 20, 2025) (holding that  
24 reliance on *Hurtado* could not nullify an immigration judge’s § 1226(a) bond  
25 determination after an interior arrest); *Torres v. Bondi*, No. 25-CV-02457-BAS-  
26 MSB, 2025 WL 3214773, at \*6–9 (S.D. Cal. Nov. 18, 2025) (rejecting DHS’s  
27 effort to treat an interior arrestee as subject to § 1225(b)(2) following remand);  
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1 *Bautista-Santiago v. Noem*, No. 25-CV-03209-DMS-DDL, 2025 WL 3295930, at  
2 \*3–6 (S.D. Cal. Nov. 26, 2025) (same); *Garcia-Magadan v. Noem*, No. 3:25-CV-  
3 2889-JES-KSC, 2025 WL 3090089, at \*5–8 (S.D. Cal. Nov. 5, 2025). As these  
4 courts explain, *Hurtado* cannot expand § 1225(b)(2) beyond its statutory limits or  
5 erase Congress’s distinction between border detention and post-entry custody  
6 governed by § 1226(a).

7 37. In short, because Petitioner was arrested in the interior, placed into § 240  
8 removal proceedings, and initially detained pursuant to an immigration judge’s  
9 exercise of § 1226(a) authority, his detention is governed—if at all—by § 1226(a),  
10 not § 1225(b)(2). He is therefore entitled to the individualized bond process that §  
11 1226(a) and the Constitution require.

## 12 **II. Continued Detention Violates the Due Process Clause**

### 13 **a. Detention Under § 1226(a) Without Operative Individualized** 14 **Findings Violates Due Process**

15 34. The Fifth Amendment’s Due Process Clause protects all “persons” within  
16 the United States—including noncitizens—from deprivation of liberty without due  
17 process of law. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from  
18 physical restraint lies “at the core of the liberty protected by the Due Process  
19 Clause,” and civil immigration detention is constitutionally permissible only  
20 insofar as it serves the narrow, nonpunitive purposes of preventing flight or  
21 protecting the community. *Id.* at 690; *Landon v. Plasencia*, 459 U.S. 21, 32–34  
22 (1982).

23 35. As explained above, Petitioner’s custody is governed by 8 U.S.C. § 1226(a),  
24 not § 1225(b). The constitutional consequence of that classification is critical:  
25 detention under § 1226(a) is lawful only so long as it is supported by an  
26 individualized custody determination assessing whether confinement is necessary  
27 to mitigate flight risk or danger. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

1 Absent such individualized justification, detention becomes arbitrary and violates  
2 due process.

3 36. Here, Petitioner was initially afforded the individualized process § 1226(a)  
4 contemplates. Following his interior arrest, an immigration judge conducted a  
5 custody hearing and affirmatively set bond, reflecting a determination that  
6 Petitioner was neither a danger to the community nor a flight risk. DHS appealed  
7 that determination, and on remand, Petitioner’s bond was canceled not based on  
8 any new evidence, changed circumstances, or individualized findings, but solely  
9 through DHS’s invocation of *Matter of Yajure Hurtado* and a categorical legal  
10 reclassification.

11 37. That sequence left Petitioner detained under § 1226(a) without any operative  
12 individualized custody findings supporting his continued confinement. Courts in  
13 this District addressing this precise scenario—where a noncitizen lived in the  
14 community for years after entry without inspection, was arrested in the interior,  
15 received an individualized bond determination under § 1226(a), and then had that  
16 bond nullified on remand solely through DHS’s reliance on *Hurtado*—have  
17 uniformly held that such detention violates due process.

18 38. In *Torres v. Bondi*, the court granted habeas relief where DHS relied on  
19 *Hurtado* to vacate an immigration judge’s § 1226(a) bond order following an  
20 interior arrest, holding that a categorical reclassification under § 1225(b)(2) could  
21 not substitute for an individualized custody determination justifying detention. No.  
22 25-CV-02457-BAS-MSB, 2025 WL 3214773, at \*6–9 (S.D. Cal. Nov. 18, 2025).

23 39. Similarly, in *Bautista-Santiago v. Noem*, the court ordered release where the  
24 petitioner—who had lived in the United States for decades—was granted bond by  
25 an immigration judge, and DHS appealed and nullified that bond based solely on  
26 *Hurtado*, without identifying any change in flight risk or danger. No. 25-CV-  
27 03209-DMS-DDL, 2025 WL 3295930, at \*3–6 (S.D. Cal. Nov. 26, 2025).

1 40. In *Vega v. LaRose*, the court enjoined DHS from rescinding bond where the  
2 immigration judge had found no danger or flight risk, explaining that post-remand  
3 detention based solely on *Hurtado* amounted to detention “based on legal theory  
4 alone,” divorced from any individualized assessment. No. 3:25-CV-2725-CAB-  
5 MSB, 2025 WL 3247778, at \*7–10 (S.D. Cal. Nov. 20, 2025).

6 41. And in *Garcia-Magadan v. Noem*, the court held that DHS violated due  
7 process by nullifying an immigration judge’s § 1226(a) bond determination  
8 through post-hoc application of *Hurtado*, leaving the petitioner detained without  
9 any individualized findings supporting continued confinement. No. 3:25-CV-2889-  
10 JES-KSC, 2025 WL 3090089, at \*5–8 (S.D. Cal. Nov. 5, 2025).

11 42. As these decisions make clear, due process does not permit the government  
12 to detain a noncitizen under § 1226(a) based solely on a categorical legal  
13 reclassification, divorced from any contemporaneous assessment of flight risk or  
14 danger, after an immigration judge has already made an individualized custody  
15 determination. Absent new evidence or changed circumstances undermining that  
16 prior determination, nullifying bond without replacing it with operative  
17 individualized findings leaves detention wholly unsupported. Where, as here, the  
18 government has identified no changed facts, no new conduct, and no individualized  
19 basis for continued confinement, detention lacks constitutional justification.

20 **b. Petitioner Has Already Been Found Not to Be a Flight Risk or**  
21 **Danger**

22 38. The Due Process Clause permits civil immigration detention only to serve  
23 the government’s narrow, nonpunitive regulatory interests in preventing flight or  
24 protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As the  
25 Supreme Court has repeatedly emphasized, “[i]n our society liberty is the norm,  
26 and detention prior to trial or without trial is the carefully limited exception.”  
27  
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1 *United States v. Salerno*, 481 U.S. 739, 755 (1987). Detention that does not  
2 advance those limited purposes violates due process.

3 39. Congress incorporated those constitutional limits into the discretionary  
4 detention framework of 8 U.S.C. § 1226(a). Under that provision, DHS makes an  
5 initial custody determination and “may allow the alien’s release on bond,” subject  
6 to individualized assessment. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th  
7 Cir. 2008) (citing 8 C.F.R. § 236.1(d)); see also *Hernandez v. Sessions*, 872 F.3d  
8 976, 982 (9th Cir. 2017) (describing § 1226(a)’s discretionary custody regime).  
9 Detention under § 1226(a) is therefore justified only where necessary to mitigate  
10 flight risk or danger.

11 40. Here, an immigration judge has already made the individualized  
12 determination § 1226(a) requires. Following Petitioner’s interior arrest, the  
13 immigration judge conducted a custody hearing and affirmatively set bond,  
14 necessarily concluding that Petitioner did not pose a danger to the community and  
15 was not a flight risk warranting continued detention. Nothing in the record suggests  
16 that those findings were tentative, conditional, or incomplete.

17 41. Since that bond determination, DHS has identified no new facts, no  
18 intervening conduct, and no changed circumstances bearing on Petitioner’s risk of  
19 flight or dangerousness. Petitioner’s continued detention therefore does not serve  
20 the regulatory purposes that alone justify civil confinement. See *Zadvydas*, 533  
21 U.S. at 690 (civil detention must remain reasonably related to its regulatory goals).

22 42. Courts addressing materially identical fact patterns have rejected continued  
23 detention where, as here, an immigration judge has already found detention  
24 unnecessary under § 1226(a) and the government relies solely on a legal  
25 reclassification to justify confinement. See *Torres v. Bondi*, No. 25-CV-02457-  
26 BAS-MSB, 2025 WL 3214773, at \*6–9 (S.D. Cal. Nov. 18, 2025); *Bautista-*  
27 *Santiago v. Noem*, No. 25-CV-03209-DMS-DDL, 2025 WL 3295930, at \*3–6

1 (S.D. Cal. Nov. 26, 2025); *Vega v. LaRose*, No. 3:25-CV-2725-CAB-MSB, 2025  
2 WL 3247778, at \*7–10 (S.D. Cal. Nov. 20, 2025); *Garcia-Magadan v. Noem*, No.  
3 3:25-CV-2889-JES-KSC, 2025 WL 3090089, at \*5–8 (S.D. Cal. Nov. 5, 2025).  
4 Those courts emphasized that detention may not continue absent an operative  
5 individualized assessment supporting confinement.

6 43. More broadly, the Supreme Court has “usually held that the Constitution  
7 requires some kind of a hearing before the State deprives a person of liberty.”  
8 *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Where, as  
9 here, detention continues without any individualized determination that Petitioner  
10 poses a danger or flight risk, Petitioner is deprived of liberty without the process  
11 the Constitution requires. See *Diana Lucia O.G. v. Albarran*, No. 1:26-CV-00010-  
12 TLN-DMC, 2026 WL 19105, at \*5 (E.D. Cal. Jan. 3, 2026).

13 44. Detaining Petitioner notwithstanding the immigration judge’s bond  
14 determination—and without any subsequent individualized finding that detention  
15 is necessary—reverses the constitutional presumption of liberty and transforms  
16 civil detention into punishment. The Due Process Clause does not permit such  
17 confinement. See *Salerno*, 481 U.S. at 755; *Zadvydas*, 533 U.S. at 690.

18 **c. Petitioner’s Continued Detention Has Become Unconstitutionally**  
19 **Prolonged**

20 45. The due process violation is compounded by the length of Petitioner’s  
21 detention. Freedom from physical restraint lies at the core of the Due Process  
22 Clause, and “being free from imprisonment” is “the most elemental of liberty  
23 interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). In this country, liberty is  
24 the norm and detention “is the carefully limited exception.” *United States v.*  
25 *Salerno*, 481 U.S. 739, 755 (1987).

26 46. Civil immigration detention is constitutionally permissible only so long as it  
27 remains reasonably related to its nonpunitive purposes. *Zadvydas*, 533 U.S. at 690.

1 When detention becomes prolonged and unaccompanied by meaningful  
2 individualized justification, it violates due process. *Jennings*, 583 U.S. at 305–06.

3 47. Petitioner has now been detained continuously since June 19, 2025—more  
4 than six and a half months—with no end in sight. During that period, he has  
5 received no individualized custody determination following remand, and no  
6 assessment of danger or flight risk justifying his continued confinement.

7 48. This prolonged detention is not attributable to dilatory conduct by Petitioner.  
8 To the contrary, Petitioner lived in the community for seven to eight years prior to  
9 his arrest, worked continuously in construction, and complied with all immigration  
10 proceedings. The delay here flows from DHS’s appeal of the immigration judge’s  
11 bond decision and its subsequent reliance on *Hurtado* to categorically nullify  
12 bond—precisely the type of government-driven delay that weighs heavily in favor  
13 of finding a due process violation.

14 49. Courts have consistently recognized that detention exceeding six months  
15 under § 1226(a), without individualized justification, triggers serious constitutional  
16 concerns. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1200 (9th Cir. 2022);  
17 *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Orias Bracho v. Henke*,  
18 No. 2:25-CV-02531-RFB-NJK, 2025 WL 3771395, at \*4 (D. Nev. Dec. 31, 2025).

19 **d. Under *Mathews v. Eldridge*, Immediate Individualized Process Is**  
20 **Required**

21 50. The Supreme Court’s decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976),  
22 provides the governing framework for determining what process is constitutionally  
23 due when the government seeks to deprive a person of liberty.

24 51. Whether Petitioner’s continued detention comports with due process is  
25 assessed under the balancing framework set forth in *Mathews*, which weighs (1)  
26 the private interest affected, (2) the risk of erroneous deprivation and the value of  
27 additional safeguards, and (3) the government’s interests. *Id.* See also, e.g., *Diaz v.*  
28

1 *Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022); *Kavosi v. Larose*, No. 25-CV-  
2 03288-BAS-MMP, 2025 WL 3677671, at \*2 (S.D. Cal. Dec. 18, 2025); *Naser*  
3 *Noori v. Larose, et al.*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at \*10  
4 (S.D. Cal. Oct. 1, 2025).

5 52. Each factor weighs decisively in Petitioner’s favor.

6 53. Petitioner’s Private Interest in Liberty is Profound: Petitioner’s interest in  
7 freedom from physical confinement is “the most elemental of liberty interests.”  
8 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The Supreme Court has repeatedly  
9 emphasized that “freedom from imprisonment—from government custody,  
10 detention, or other forms of physical restraint—lies at the heart of the liberty  
11 protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690  
12 (2001).

13 54. That interest is especially weighty here. Petitioner lived in the community  
14 for seven to eight years prior to his arrest, worked continuously in construction,  
15 and established strong community ties. Following his arrest, an immigration judge  
16 determined—after an individualized hearing—that he did not pose a danger to the  
17 community or a flight risk and therefore merited release on bond. His present  
18 confinement represents a stark departure from that adjudicated liberty.

19 55. Continued detention inflicts severe and irreparable harm: loss of freedom,  
20 separation from community and employment, and the physical and psychological  
21 toll of incarceration. Courts consistently recognize that prolonged civil detention  
22 “exact[s] a heavy toll” on the individual and demands heightened constitutional  
23 scrutiny. *Zadvydas*, 533 U.S. at 690; *Hernandez v. Sessions*, 872 F.3d 976, 990–94  
24 (9th Cir. 2017).

25 56. The Risk of Erroneous Deprivation Is Acute, and Additional Safeguards  
26 Have Obvious Value: The risk of erroneous deprivation is extraordinarily high  
27 where detention continues without any operative individualized assessment of  
28

1 flight risk or dangerousness. As discussed above, Petitioner’s continued  
2 confinement rests entirely on DHS’s post-remand invocation of *Matter of Yajure*  
3 *Hurtado* and a categorical legal reclassification—not on any factual finding that  
4 detention is necessary.

5 57. That posture exemplifies the precise danger Mathews guards against:  
6 deprivation of liberty based on legal abstraction rather than individualized  
7 adjudication. See *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (the Constitution  
8 “usually has held that ... some kind of a hearing” is required before the State  
9 deprives a person of liberty (emphasis in original)).

10 58. The value of additional safeguards here is obvious and substantial. An  
11 individualized custody hearing under § 1226(a)—the very process Congress  
12 prescribed—would require the government to articulate and substantiate a factual  
13 basis for detention and would permit a neutral adjudicator to assess whether  
14 confinement is actually necessary. Courts have repeatedly recognized that such  
15 hearings sharply reduce the risk of erroneous detention. See *Singh v. Holder*, 638  
16 F.3d 1196, 1203–04 (9th Cir. 2011).

17 59. Indeed, the error here is not speculative: an immigration judge has already  
18 determined that Petitioner does not warrant detention. Absent new findings,  
19 continued confinement represents the paradigmatic erroneous deprivation of  
20 liberty—incarceration unsupported by any individualized justification.

21 60. The Government’s Interest in Continuing to Detain Mendoza Without an  
22 Operative Individualized Custody Determination is Exceedingly Weak:  
23 Immigration detention is civil and “nonpunitive in purpose and effect,” justified  
24 only to prevent danger to the community or ensure appearance at future  
25 proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where those interests  
26 are not served, detention “carries little weight” under the Due Process Clause.  
27 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

1 61. Here, an immigration judge already conducted the individualized assessment  
2 Congress prescribed under § 1226(a) and determined that Mendoza was neither a  
3 danger nor a flight risk, setting bond accordingly. DHS has never identified any  
4 intervening facts, changed circumstances, or conduct by Mendoza that would  
5 undermine that determination. In the absence of any such showing, the government  
6 “has no legitimate interest in detaining individuals who have been determined not  
7 to be a danger to the community and whose appearance at future immigration  
8 proceedings can be reasonably ensured by a lesser bond or alternative conditions.”  
9 *Hernandez*, 872 F.3d at 994.

10 62. The government likewise cannot claim a cognizable interest in bypassing  
11 constitutionally required procedures. Courts have repeatedly rejected the notion  
12 that administrative convenience, enforcement priorities, or categorical legal  
13 theories can justify detention without individualized process. See *Cordero Pelico*  
14 *v. Kaiser*, No. 5:25-cv-01377, 2025 WL 2822876, at \*6 (N.D. Cal. Oct. 3, 2025)  
15 (“the government cannot claim a cognizable interest in avoiding procedures that  
16 ensure compliance with the Constitution”); *Baird v. Garland*, 81 F.4th 95, 104 (9th  
17 Cir. 2024) (“courts cannot allow constitutional violations to persist merely because  
18 a remedy would intrude on agency administration”).

19 63. Nor may DHS rely on generalized enforcement initiatives or volume-based  
20 arrest practices to override an individual’s liberty interest. Even where the  
21 government’s interest in reincarceration is significant, due process requires at least  
22 “informal procedural guarantees” before liberty may be withdrawn. *Morrissey v.*  
23 *Brewer*, 408 U.S. 471, 483 (1972). That principle applies with equal force in the  
24 civil immigration context.

25 64. By contrast, the burden of providing constitutionally adequate process is  
26 minimal. Bond hearings are the routine mechanism Congress established under §  
27 1226(a), and immigration courts conduct them every day. See *Jennings v.*

1 *Rodriguez*, 583 U.S. 281, 306 (2018). Numerous courts have recognized that the  
2 administrative cost of such hearings is “minimal” and cannot outweigh an  
3 individual’s fundamental liberty interest. See *Singh v. Andrews*, No. 1:25-cv-  
4 00412, 2025 WL 1918679, at \*8 (E.D. Cal. May 6, 2025); *Khan v. Noem*, 2025  
5 WL 3089352, at \*7 (E.D. Cal. Nov. 5, 2025); *Lopez v. Kaiser*, 2025 WL 3124116,  
6 at \*4 (N.D. Cal. Sept. 19, 2025).

7 65. Continued detention is, in fact, far more burdensome than providing a  
8 hearing. The public cost of immigration detention is “staggering,” averaging  
9 approximately \$158 per detainee per day, while bond hearings impose negligible  
10 additional expense. *Hernandez*, 872 F.3d at 996. Where detention serves no  
11 individualized regulatory purpose, the government’s asserted interest “carries little  
12 weight” in the Mathews balance. See *Vazquez v. Feeley*, 2025 WL 2676082, at  
13 \*21; *Lopez Benitez v. Francis*, 2025 WL 2371588, at \*13 (S.D.N.Y. Aug. 13,  
14 2025).

15 66. In short, the government gains nothing—legally, administratively, or  
16 substantively—from detaining Mendoza without individualized findings. Because  
17 Mendoza’s liberty interest is profound, the risk of erroneous deprivation is high,  
18 and the burden of providing process is minimal, the government’s countervailing  
19 interest is insufficient as a matter of law.

20 67. Balancing the Mathews Factors, Due Process Requires Immediate Relief:  
21 Balancing these considerations leaves no doubt. Mendoza’s private interest in  
22 liberty is at its apex; the risk of erroneous deprivation is severe and ongoing; and  
23 the government’s interest in continued detention without individualized findings is  
24 minimal. Under Mathews, due process cannot tolerate Mendoza’s continued  
25 confinement under these circumstances.

26 68. Courts in this District confronting materially identical fact patterns—where  
27 an individual lived in the community for years, received a § 1226(a) bond  
28

1 determination, and was then detained solely through post-remand reliance on  
2 *Hurtado*—have reached the same conclusion. See *Torres v. Bondi*, No. 25-CV-  
3 02457-BAS-MSB, 2025 WL 3214773, at \*6–9 (S.D. Cal. Nov. 18, 2025);  
4 *Bautista-Santiago v. Noem*, No. 25-CV-03209-DMS-DDL, 2025 WL 3295930, at  
5 \*3–6 (S.D. Cal. Nov. 26, 2025); *Vega v. LaRose*, No. 3:25-CV-2725-CAB-MSB,  
6 2025 WL 3247778, at \*7–10 (S.D. Cal. Nov. 20, 2025); *Garcia-Magadan v. Noem*,  
7 No. 3:25-CV-2889-JES-KSC, 2025 WL 3090089, at \*5–8 (S.D. Cal. Nov. 5,  
8 2025).

9 69. The appropriate remedy is immediate relief. At minimum, due process  
10 requires an individualized custody hearing under § 1226(a) at which the  
11 government bears the burden of demonstrating, by clear and convincing evidence,  
12 that continued detention is necessary. *Singh*, 638 F.3d at 1203–04; *Velasco Lopez*  
13 *v. Decker*, 978 F.3d 842, 855–56 (2d Cir. 2020). Absent such process, Mendoza’s  
14 continued detention violates the Fifth Amendment.

## 15 CLAIMS FOR RELIEF

### 16 COUNT ONE

#### 17 *(Unlawful Detention Under the Immigration and Nationality Act)*

18 70. Petitioner Mendoza re-alleges and incorporates by reference all preceding  
19 paragraphs as though fully set forth herein.

20 71. Respondents are unlawfully detaining Petitioner by treating him as if he  
21 were subject to mandatory detention under 8 U.S.C. § 1225(b), and by refusing to  
22 provide the individualized custody process guaranteed by 8 U.S.C. § 1226(a) and  
23 its implementing regulations. That position is contrary to the statutory text and  
24 structure of the INA, longstanding agency precedent, DHS’s own regulations and  
25 rulemaking, and the overwhelming weight of district-court authority in this Circuit.

26 72. The INA draws a clear distinction between limited, threshold detention  
27 authority at the border under § 1225(b) and discretionary detention authority in  
28

1 removal proceedings under § 1226(a). The Board of Immigration Appeals has  
2 squarely held that once DHS issues a Notice to Appear and places a noncitizen in §  
3 240 removal proceedings, custody is governed by § 1226(a), including eligibility  
4 for bond. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520–21 (BIA 2011)  
5 (confirming that individuals charged under § 212(a)(6)(A)(i) are entitled to bond  
6 under § 1226(a)). DHS’s own rulemaking likewise recognizes that noncitizens  
7 present without admission “will be eligible for bond and bond redetermination.” 62  
8 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

9 73. Courts in this district uniformly apply this framework. Where a noncitizen is  
10 arrested in the interior, served with an NTA, and placed in removal proceedings  
11 before the immigration court, § 1225(b) does not supply continuing detention  
12 authority. Instead, custody is governed by § 1226(a), which requires an  
13 individualized custody determination. See *Chavez Valdovinos v. Noem*, No. 25-  
14 CV-2439 TWR (KSC) slip op. at 9 (S.D. Cal. Nov. 25, 2025); *Yohan Diaz-*  
15 *Villatoro v. LaRose*, 2025 WL 3251377, at \*3–4 (S.D. Cal. Nov. 21, 2025);  
16 *Aparicio Sanchez v. Noem*, 2025 WL 3214987, at \*3–4 (S.D. Cal. Nov. 18, 2025);  
17 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025).

18 74. Petitioner’s case fits squarely within this settled authority. Mendoza was  
19 arrested in the interior of the United States during a routine enforcement sweep,  
20 served with a Notice to Appear, and placed into § 240 removal proceedings before  
21 the immigration court. An immigration judge thereafter conducted an  
22 individualized custody hearing under § 1226(a) and affirmatively set bond,  
23 reflecting a determination that Escobar-Mendoza was neither a danger to the  
24 community nor a flight risk.

25 75. On DHS’s appeal, the bond decision was remanded, and DHS subsequently  
26 invoked *Matter of Yajure Hurtado* to categorically reclassify Escobar-Mendoza as  
27 subject to § 1225(b)(2) and nullify the prior bond determination—without  
28

1 identifying any new facts, changed circumstances, or individualized basis for  
2 detention. As a result, Mr. Escobar-Mendoza is presently detained without any  
3 operative custody determination applying the standards required by § 1226(a).

4 76. That detention exceeds DHS's statutory authority. Once DHS placed Mr.  
5 Escobar-Mendoza in removal proceedings and an immigration judge exercised  
6 jurisdiction over custody under § 1226(a), § 1225(b) ceased to govern his  
7 detention. DHS cannot resurrect mandatory detention authority through post-hoc  
8 legal reclassification divorced from the statute Congress prescribed. Because §  
9 1226(a) governs Mr. Escobar-Mendoza's custody, detention is lawful only if  
10 supported by a valid individualized custody determination applying the correct  
11 statutory standard.

12 77. By asserting § 1225(b) as the basis for Mr. Escobar-Mendoza's continued  
13 detention, denying him treatment as a § 1226(a) detainee, and confining him  
14 without a valid individualized custody determination, Respondents have acted  
15 contrary to the INA and its implementing regulations, and in excess of their  
16 statutory authority. See *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018);  
17 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–1200 (9th Cir. 2022).

18 78. Respondents' actions are therefore unlawful under the Immigration and  
19 Nationality Act and "not in accordance with law" within the meaning of the  
20 Administrative Procedure Act, 5 U.S.C. § 706(2)(A). Mr. Escobar-Mendoza is  
21 entitled to immediate relief correcting his unlawful detention.

## 22 **COUNT TWO**

### 23 *(Violation of Fifth Amendment's Due Process Clause)*

24 79. Petitioner Escobar-Mendoza re-alleges and incorporates by reference all  
25 preceding paragraphs as though fully set forth herein. □ The Fifth Amendment's  
26 Due Process Clause protects all persons within the United States, including  
27 noncitizens, from deprivation of liberty without due process of law.

1 80. As set forth in the Legal Framework above, Petitioner is detained under 8  
2 U.S.C. § 1226(a), which permits civil immigration detention only with meaningful  
3 individualized process directed to the government’s regulatory interests in  
4 preventing flight and protecting the community.

5 81. Although an immigration judge previously conducted an individualized  
6 custody hearing and set bond, Respondents continue to detain Petitioner without  
7 any operative individualized custody determination, and without findings that  
8 detention is necessary based on danger or flight risk.

9 82. Petitioner’s detention has also become unconstitutionally prolonged, and  
10 under the Mathews v. Eldridge factors (as set forth above), the balance decisively  
11 requires constitutionally adequate individualized process.

12 83. By continuing to detain Petitioner without constitutionally sufficient process  
13 and individualized justification, Respondents have violated the Fifth Amendment’s  
14 Due Process Clause.

15 84. Petitioner is entitled to declaratory and injunctive relief, including  
16 immediate release or, at minimum, a prompt individualized custody hearing under  
17 § 1226(a) that comports with constitutional requirements and places the burden on  
18 the government to justify continued detention.

19 **COUNT THREE**

20 *(Administrative Procedure Act, 5 U.S.C. §§ 701–706)*

21 85. Petitioner Escobar-Mendoza re-alleges and incorporates by reference all  
22 preceding paragraphs as though fully set forth herein.

23 86. The APA requires courts to hold unlawful and set aside agency action that  
24 is “not in accordance with law,” “in excess of statutory jurisdiction, authority, or  
25 limitations,” or “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. §  
26 706(2)(A), (C).

1 87. Respondents are unlawfully detaining Petitioner pursuant to an unauthorized  
2 interpretation and application of 8 U.S.C. § 1225(b)(2)(A) to a noncitizen  
3 apprehended in the interior of the United States, notwithstanding Congress’s  
4 detention framework under 8 U.S.C. § 1226(a).

5 88. Through ICE and binding adjudicatory directives adopted by the BIA,  
6 Respondents have implemented a policy and practice of classifying interior  
7 arrestees as “applicants for admission” subject to mandatory detention under §  
8 1225(b)(2)(A), even after those individuals have been placed into § 240 removal  
9 proceedings.

10 89. This policy—memorialized most recently in *Matter of Yajure Hurtado*, 29 I.  
11 & N. Dec. 216 (BIA 2025)—constitutes final agency action and/or binding agency  
12 action applied to Petitioner within the meaning of 5 U.S.C. § 704, and it forecloses  
13 the discretionary framework Congress preserved in § 1226(a).

14 90. As applied to Petitioner, this policy nullified a prior individualized bond  
15 determination, foreclosed further custody review, and resulted in continued  
16 detention without statutory or constitutional authorization.

17 91. Respondents’ application of § 1225(b)(2)(A) to Mr. Escobar-Mendoza is  
18 contrary to the plain text, structure, and purpose of the Immigration and  
19 Nationality Act.

20 92. Section 1225 governs the inspection and detention of individuals seeking  
21 admission at the border or a port of entry, while § 1226 governs detention of  
22 individuals already present in the United States pending removal proceedings.  
23 *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

24 93. Mr. Escobar-Mendoza is not an arriving alien. He lived in the United States  
25 for approximately seven to eight years prior to his arrest, worked continuously in  
26 construction, and was apprehended during an interior enforcement sweep—not at  
27

1 the border or a port of entry. He was thereafter served with a Notice to Appear and  
2 placed into § 240 removal proceedings before the immigration court.

3 94. Consistent with this statutory framework, an immigration judge exercised  
4 jurisdiction over Mr. Escobar-Mendoza's custody under § 1226(a) and  
5 affirmatively set bond, reflecting an individualized determination that Mr. Escobar-  
6 Mendoza was neither a danger to the community nor a flight risk.

7 95. Federal district courts across the Ninth Circuit have uniformly rejected  
8 Respondents' position and held that detention of noncitizens apprehended in the  
9 interior is governed by § 1226(a), not § 1225(b). See, e.g., *Rodriguez v. Bostock*,  
10 2025 WL 2782499, at \*1 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, 2025  
11 WL 2591530, at \*4–5 (C.D. Cal. Sept. 8, 2025); *Lepe v. Andrews*, 2025 WL  
12 2716910 (E.D. Cal. Sept. 23, 2025); *Vazquez v. Feeley*, 2025 WL 2676082, at \*19–  
13 21 (D. Nev. Sept. 17, 2025).

14 96. By applying § 1225(b)(2)(A) to Mr. Escobar-Mendoza notwithstanding this  
15 settled statutory scheme, Respondents have acted in excess of statutory jurisdiction  
16 and authority, in violation of 5 U.S.C. § 706(2)(C).

17 97. Respondents' detention of Mr. Escobar-Mendoza is also arbitrary and  
18 capricious within the meaning of 5 U.S.C. § 706(2)(A).

19 98. Respondents failed to engage in reasoned decision-making when classifying  
20 Mr. Escobar-Mendoza as subject to mandatory detention. Following remand, no  
21 individualized assessment was made regarding Mr. Escobar-Mendoza's  
22 circumstances, community ties, employment history, medical conditions, flight  
23 risk, or danger to the community.

24 99. Instead, Respondents relied exclusively on a categorical legal rule that treats  
25 interior arrests as indistinguishable from border apprehensions, disregards the  
26 immigration judge's prior custody determination, and eliminates the discretionary  
27 framework Congress expressly preserved in § 1226(a).

1 100. This mechanical misclassification resulted in the denial of custody  
2 review for lack of jurisdiction, thereby insulating Respondents’ detention decision  
3 from meaningful consideration of Mr. Escobar-Mendoza’s individual  
4 circumstances and perpetuating an ongoing deprivation of liberty unsupported by  
5 law or reason.

6 101. Agency action that “entirely fails to consider an important aspect of  
7 the problem” or that “runs counter to the evidence before the agency” is arbitrary  
8 and capricious. Here, Respondents ignored facts central to detention authority  
9 under § 1226(a), including Mr. Escobar-Mendoza’s prolonged residence in the  
10 United States, steady employment history, lack of any identified danger to the  
11 community, and the prior bond determination entered by an immigration judge.

12 102. As a direct result of Respondents’ unlawful policy and practice, Mr.  
13 Escobar-Mendoza has been and remains detained without statutory authorization  
14 and without the individualized custody determination required by law.

15 103. This unlawful detention constitutes continuing agency action that this  
16 Court has authority—and an obligation—to set aside under the APA.

17 104. Mr. Escobar-Mendoza is therefore entitled to declaratory and  
18 injunctive relief, including an order vacating Respondents’ unlawful application of  
19 § 1225(b)(2)(A) to his detention and directing that he be immediately released or,  
20 at minimum, provided a prompt, constitutionally adequate bond hearing under §  
21 1226(a).

22 **PRAYER FOR RELIEF**

23 105. WHEREFORE, Petitioner Escobar-Mendoza respectfully requests that  
24 this Court grant the following relief:

- 25 a. Issue a writ of habeas corpus directing Respondents to immediately release  
26 Petitioner from custody because his continued detention is unlawful under  
27

1 the Immigration and Nationality Act, the Administrative Procedure Act, and  
2 the Due Process Clause of the Fifth Amendment.

- 3 b. In the alternative, order Respondents to provide Petitioner with a prompt,  
4 individualized, and constitutionally adequate custody hearing before a  
5 neutral decisionmaker under 8 U.S.C. § 1226(a), to be held within seven (7)  
6 days, at which the Government bears the burden of proving, by clear and  
7 convincing evidence, that continued detention is necessary to prevent flight  
8 or protect the community and that no less restrictive alternative would  
9 reasonably satisfy the Government's legitimate interests.
- 10 c. Declare that Respondents' continued detention of Petitioner without a valid  
11 individualized custody determination is not in accordance with law and  
12 exceeds their statutory authority, in violation of the Immigration and  
13 Nationality Act and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)  
14 and (C).
- 15 d. Declare that Respondents' detention of Petitioner without individualized  
16 findings regarding danger or flight risk, and without constitutionally  
17 adequate procedural safeguards, violates the Fifth Amendment's Due  
18 Process Clause.
- 19 e. Enjoin Respondents from continuing to detain Petitioner absent a lawful  
20 individualized custody determination consistent with 8 U.S.C. § 1226(a) and  
21 constitutional due process requirements.
- 22 f. Expedite briefing and adjudication of this Petition pursuant to 28 U.S.C. §  
23 1657(a) and the Court's inherent authority, given Petitioner's ongoing  
24 deprivation of liberty.
- 25 g. Award reasonable attorneys' fees and costs pursuant to the Equal Access to  
26 Justice Act, 28 U.S.C. § 2412(d), and any other applicable authority.
- 27 h. Grant such other and further relief as the Court deems just and proper.  
28

1 DATED: January 6, 2025

2  
3 Respectfully Submitted,

4  
5 

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13   
14 Natalie Renee Shepherd  
15 Of Counsel  
16 (805) 907-5309  
17 NatalieReneeShepherd@gmail.com

18 **EXHIBIT LIST**

- 19 • **Exhibit A:** Notice to Appear, issued June 27, 2025  
20 • **Exhibit B:** July 11, 2025 Immigration Judge Bond Order (granting \$2,500  
21 bond) and August 1, 2025 Immigration Judge Bond Memorandum  
22 • **Exhibit C:** Board of Immigration Appeals Remand Decision, issued  
23 September 22, 2025  
24 • **Exhibit D:** October 6, 2025 Immigration Judge Bond Order denying bond  
25 based on *Matter of Yajure Hurtado*

26 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

27 I am submitting this verification on behalf of the Petitioner because I am one of

28 PETITION FOR WRIT OF HABEAS CORPUS - 30

1 Petitioner's attorneys. I have discussed with the Petitioner the events described in  
2 the Petition. Based on those discussions, I hereby verify that the factual statements  
3 made in the attached Petition for Writ of Habeas Corpus are true and correct to the  
4 best of my knowledge.

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# Exhibit A

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DEPARTMENT OF HOMELAND SECURITY  
NOTICE TO APPEAR

DOB: 12/15/1970

Event No: [REDACTED]

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

Subject ID: [REDACTED]

FINS: [REDACTED]

File No: [REDACTED]

In the Matter of:

Respondent: SERGIO ESCOBAR-MENDOZA currently residing at:

See Continuation Page Made a Part Hereof

(Number, street, city, state and ZIP code)

(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 GUATEMALA and a citizen of GUATEMALA;
3. You entered the United States at or near unknown place, on or about unknown date;
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. OTM EOIR

(Complete Address of Immigration Court, including Room Number, if any)

on July 10, 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.

R 7468 RICHMOND - Assistant Field Office Director  
(Signature and Title of Issuing Officer)

Date: June 27, 2025

OMDC 7488 Calzada De La Fuente, San Diego CA. 92154  
(City and State)

EOIR - 4 of 53

of 3  
Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

**One-Year Asylum Application Deadline:** If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at [www.uscis.gov/i-589](http://www.uscis.gov/i-589). Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

**Failure to appear:** You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

**U.S. Citizenship Claims:** If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

**Sensitive locations:** To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

\_\_\_\_\_  
(Signature of Respondent)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on June 27, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person     by certified mail, returned receipt # \_\_\_\_\_ requested     by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

\_\_\_\_\_  
(Signature of Respondent if Personally Served)

J. 9623 SCANTLIN - Deportation Officer  
(Signature and Title of officer)

EOIR - 8 of 53

# Exhibit B



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

Respondent Name:

ESCOBAR-MENDOZA, SERGIO

To:

Ridgill, Steven  
224 Allegheny Circle  
Placentia, CA 92870

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

07/11/2025

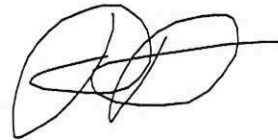
ORDER OF THE IMMIGRATION JUDGE

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 \$ 2,500.00
  - other:  
ATD can be imposed at DHS discretion.

Other:




Immigration Judge: DIXON, PAULA 07/11/2025

Appeal: Department of Homeland Security:  waived  reserved  
Respondent:  waived  reserved  
Appeal Due: 08/11/2025

**Certificate of Service**


This document was served:

Via: [ M ] Mail | [ P ] Personal Service | [ E ] Electronic Service | [ U ] Address Unavailable  
To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [ E ] Noncitizen's atty/rep. | [ E ] DHS  
Respondent Name : ESCOBAR-MENDOZA, SERGIO | A-Number 

Riders:

Date: 07/11/2025 By: Alilin, Vanessa, Court Staff

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OTAY MESA IMMIGRATION COURT  
7488 Calzada de la Fuente  
San Diego, California 92154

File No.:  ) Date: August 1, 2025  
)  
In the Matter of )  
)  
) **IN BOND PROCEEDINGS**  
)  
Sergio )  
ESCOBAR-MENDOZA, )  
)  
)  
Respondent. )

**ON BEHALF OF RESPONDENT:** **ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:**  
Steven Ridgill, Esquire Antonio Estrada, Assistant Chief Counsel  
224 Allegheny Circle P.O. Box 438150  
Placentia, California 92870 San Diego, California 92143

**BOND MEMORANDUM OF THE IMMIGRATION JUDGE**

On June 19, 2025, the Department of Homeland Security (“Department”) detained the respondent and determined that he should be held without bond. (Exh. 4, Form I-213, Record of Deportable/Inadmissible Alien, at 12.) On June 27, 2025, the Department charged the respondent as inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), as a noncitizen present in the United States without admission or parole, or who arrived in the United States at any time or place other than as designated by the Attorney General. (Exh. 4, Notice to Appear, at 4.) On July 2, 2025, the respondent sought reconsideration of the Department’s custody determination, and the Court conducted a hearing on July 11, 2025. (Exh. 1, Resp’t Mot. for Bond Redetermination Hearing; Order of the Immigration Judge, July 11, 2025.)

As this Court maintains jurisdiction over the Otay Mesa Detention Center, where the respondent was detained, it had jurisdiction to entertain the respondent’s custody redetermination request. (See Exh. 4, at 7); 8 C.F.R. § 1003.19(c). After determining that the Court had jurisdiction over the respondent’s custody status, the Court granted the respondent’s release from custody on the payment of a \$2,500 bond, along with any alternatives to detention imposed at the Department’s discretion. (Order of the Immigration Judge, July 11, 2025.) The Department reserved its right to appeal the Court’s decision, and the Court informed the Department that its appeal would be due at the Board of Immigration Appeals by August 11, 2025. (Id.) On July 14, 2025, the Department filed Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, which stayed the Court’s decision. 8 C.F.R. § 1003.19(i)(2). On July 23, 2025, the Department filed a Notice of Appeal with the Board of Immigration Appeals. This memorandum explains the Court’s decision to grant the respondent’s release from custody on bond.

At the outset of the respondent's custody hearing, the Department contested the Court's jurisdiction to consider the respondent's custody status, asserting that he is an applicant for admission and detained pursuant to section 235(b) of the INA. Counsel for the respondent disagreed, highlighting that the respondent's Notice to Appear does not indicate that the Department has alleged or charged that he is an applicant for admission, and pointing out that the respondent was detained within the interior of the United States after being present for more than two years. (Exh. 4, at 4.) The respondent noted that there is no evidence that he is an applicant for admission. The respondent argued that the Notice to Appear initiated proceedings under section 240 of the INA and not section 235 of the INA, such that the respondent has not been subject to expedited removal. (*Id.*) As such, the respondent argued that the Court did have jurisdiction over the respondent's custody status.

The Court observed that the Department's only evidence regarding the respondent's detention was the Form I-213, which indicates that on June 19, 2025, Border Patrol agents apprehended the respondent in Los Angeles County, California. (*Id.* at 12.) The space on the Form I-213 for "Date, Place, Time, and Manner of Last Entry" provides "Unknown Date Unknown Time." (*Id.* at 11.) Based on this evidence, the Court found that the respondent was not detained "while arriving in the United States" pursuant to a warrantless arrest, as envisioned in *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025). The Court would also agree with the respondent that the respondent has not been subject to expedited removal proceedings, such that the holding of *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) appears similarly inapplicable to the respondent.

Of note, the Department's evidence provides that alongside the Notice to Appear, the Department issued and served its Forms "I-200 [and] I-286" upon the respondent on June 27, 2025. (Exh. 4, at 12.) Upon issuance of the Notice to Appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest, and an immigration official may issue a Form I-286, Notice of Custody Determination. 8 C.F.R. § 1236.1(b), (g). The issuance of a Form I-200 is pursuant to section 236 of the INA. 8 C.F.R. §§ 1236.1(a) ("The issuance of a detainer under this section shall be governed by the provisions of §287.7 of 8 CFR chapter I."), 287.7(a) ("Detainers are issued pursuant to sections 236 and 287 of the Act"). Absent evidence of unreliability, information on an authenticated immigration form is presumed reliable. *Angov v. Lynch*, 788 F.3d 893, 905 (9th Cir. 2015) (discussing the presumption of reliability attaching to records prepared by government officials); *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995) (same). As such, the Court relied on the statements contained within the Form I-213 indicating that the Department issued Forms I-200 and I-286 against the respondent, pursuant to section 236 of the INA. (Exh. 4, at 12.)

As explained in *Matter of M-S-*, sections 235 and 236 of the INA each cover distinct, nonoverlapping classes of aliens. 27 I&N Dec. at 516. Section 235(b)(2)(A) of the INA provides that applicants for admission who are determined to not be clearly and beyond a doubt entitled to be admitted shall be detained for a proceeding under section 240 of the INA. The phrase "applicant for admission" is a term of art denoting a particular legal status. *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020). However, the Ninth Circuit Court of Appeals has rejected the theory that any applicant for admission should be "treated as having made a continuing application for admission



that does not terminate ‘until it [is] considered by the [Immigration Judge (IJ)].’” *Torres*, 976 F.3d at 922, *overruling Minto v. Sessions*, 854 F.3d 619, 624 (9th Cir. 2017). Thus, it appears that there is some temporal limitation to such a classification. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (stating that “*Torres* merely rejected the view that an alien remains in a perpetual state of applying for admission”). As such, the Court declines to consider someone like the respondent, who has been physically present in the United States for approximately 8 years, as an applicant for admission. (See Exh. 2, at 26-34.) To be sure, an individual “detained near the border shortly after he crossed it” is considered an applicant for admission. *Gambino-Ruiz*, 91 F.4th at 990; see *Q. Li*, 29 I&N Dec. at 69. However, these were not the circumstances in the respondent’s case. The respondent was detained in the community after years of residing in the United States. (See Exh. 4 at 12.) Based on the evidence in the Record and the arguments presented during the respondent’s hearing, the Court determined that he is detained pursuant to section 236(a) of the INA and that the Court did have jurisdiction to consider his custody status.

A respondent in a custody redetermination hearing under section 236(a) of the INA must establish to the satisfaction of the Immigration Judge that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight. See *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). The Immigration Judge may consider various factors in determining whether a respondent merits release from custody, as well as the amount of bond that is appropriate. *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006). The Immigration Judge may consider any evidence that is probative and specific. *Id.*

The Immigration Judge has broad discretion in deciding which factors to consider in custody redeterminations, and may choose to give greater weight to one factor over others, as long as the decision is reasonable. *Id.* These factors may include any or all of the following: (1) whether the respondent has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States, and whether they may entitle the respondent to reside permanently in the United States in the future; (4) employment history; (5) record of appearance in court; (6) criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) the manner of entry to the United States. *Id.* (citations omitted); see *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (noting that recency and severity of criminal offenses must be considered because criminal history alone is not always a ground for denial of bond). Dangerous respondents are properly held without bond; the Immigration Judge should only determine a bond amount upon which the respondent may be released if he is not a danger to the community. *Id.* at 38; see also *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

Ahead of the respondent’s custody redetermination hearing, the parties submitted evidence about the respondent. (Exh. 2, Resp’t Evid. in Support of Bond Redetermination Hearing, filed July 10, 2025; Exh. 4, Dept. Submission of Evid., filed July 10, 2025.) As the Court received no objections to the evidence from the parties, it admitted Exhibits 1 through 4 to the Record. The respondent provided evidence regarding: his identity; a copy of his lease at a fixed address in Los Angeles, California; two traffic infractions in 2018; medical information; letters of support from his individuals who indicated their acquaintance with the respondent for the last 5 to 7 years; and his proposed sponsor and his sponsor’s finances. (Exh. 2, at 9-41.) The respondent argued that he



has lived in the United States since 2017, and as a result, he has ties to the community. (*Id.* at 26-41.) The respondent proffered his proposed sponsor, who is a Lawful Permanent Resident and the respondent's son, and the evidence regarding his proposed sponsor's finances. (*Id.* at 37-41.) The respondent argued that the respondent poses neither a danger to the community nor a threat to national security. The respondent noted his diagnoses of Type 2 Diabetes and Hypertension, contending that his ability to receive treatment from his normal healthcare provider is another reason he seeks release from custody. (*See id.* at 22.) The respondent indicated his intention to seek asylum-related relief and cancellation of removal in his removal proceedings.

The Department did not argue that the respondent posed a danger to the community, arguing instead that he poses a flight risk and requesting that the Court deny his request for release on bond. *See Guerra*, 24 I&N Dec. at 38; *Urena*, 25 I&N Dec. at 141. Regarding the respondent's intended relief, the Department asserted that the Circumvention of Lawful Pathways and One Year Bars may apply to any asylum-related relief he wishes to seek.<sup>1</sup> The Department also asserted that cancellation of removal involves a high threshold, and that the Court has no evidence related to the purported hardship to the respondent's qualifying relative. *See* INA § 240A(b)(1)(D). Finally, the Department asserted that the respondent's unlawful presence in the United States counsels against the issuance of a bond in this matter. The respondent replied that he had only attended his initial master calendar hearing the day prior, such that he had not yet been able to compile evidence regarding his intended forms of relief. Separately, the respondent directed the Court's attention to the evidence he submitted regarding his years-long lease and ties to the community to reiterate that he does not pose a risk of flight.

The Court found that some flight risk is present in this matter, given the respondent's presence in the United States without any lawful immigration status. (*See* Exh. 4, at 12.) However, the Court found this factor was outweighed by the remainder of the evidence in the Record. The Record reflects that the respondent has a fixed address at which he can reside upon release from custody. (Exh. 2, at 11-19); *Guerra*, 24 I&N Dec. at 40. The respondent has lived in the United States since 2017, or approximately 8 years, resulting in ties to the community that he corroborated to the Court. (*See* Exh. 2, at 26-34); *Guerra*, 24 I&N Dec. at 40. The respondent's son is a Lawful Permanent Resident, and the respondent indicated his intention to seek relief from removal based on this relationship. (*See* Exh. 2, at 37-41); *Guerra*, 24 I&N Dec. at 40; *Matter of Andrade*, 19 I&N Dec. 488, 491 (BIA 1987) (“[A]n alien’s potential eligibility for relief from deportation can reflect on the likelihood of his appearance at deportation proceedings[.]”). As the respondent has yet to submit any applications for relief in his removal proceedings, the Court did not weigh the absence of evidence related to such applications against him.

The only evidence of any criminal history before the Court is the evidence the respondent provided regarding his 2018 traffic infractions for driving without a license and speeding. (Exh. 2, at 20.) The Department's evidence states the respondent “has no criminal history.” (Exh. 4, at 12.) The respondent's traffic violations did not weigh heavily in the Court's analysis. The respondent's evidence suggests that rather than avoiding responsibility for his infractions, he

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<sup>1</sup> While the Court agrees that the One Year Bar to asylum may apply to any application the respondent might file, the Court has before it no evidence to suggest that the respondent entered the United States between May 11, 2023 and May 11, 2025, such that the Circumvention of Lawful Pathways Bar appears inapplicable to this respondent. INA § 208(a)(2)(B); 8 C.F.R. § 1208.33(a)(1)(i).



presented himself at the Los Angeles County Metropolitan Courthouse to address them. (Exh. 2, at 20); *Guerra*, 24 I&N Dec. at 40. As such, the Court found that this evidence of the respondent's traffic infractions was not indicative of any danger or flight risk, and supported the notion that the respondent will remain engaged with his removal proceedings and abide by any orders of the Court. *See Guerra*, 24 I&N Dec. at 40. The Court had before it no evidence of any attempts by the respondent to flee prosecution or otherwise escape from authorities. *See id.* Neither did the Court have any evidence about the respondent's manner of entry to the United States. *See id.* To the extent the Department has charged the respondent as arriving in the United States at a time or place other than as designated by the Attorney General, the Court found that this factor and the Department's reference to the respondent's presence without lawful status were outweighed by the remainder of the *Guerra* factors. (Exh. 4, at 4); *Guerra*, 24 I&N Dec. at 40.

The Court balanced all this information and concluded that the respondent demonstrated he does not pose such a significant flight risk that he should remain detained throughout the pendency of these removal proceedings. The Court found that a reasonable amount of bond could be imposed to ensure the respondent's continued appearance and engagement in his removal proceedings. Especially in light of the total income of his proposed sponsor, the Court found that a bond of \$2,500 would be reasonable, along with alternatives to detention at the Department's discretion. *See Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); (Exh. 2, at 41).

The Court considered all the information, evidence, and arguments presented by the parties. *See Guerra*, 24 I&N Dec. at 40. The Court found that the respondent demonstrated that he neither poses a danger to the community nor such a significant flight risk that he could not be released after payment of a bond and with the imposition of other mitigating conditions. *See Guerra*, 24 I&N Dec. at 40. Accordingly, the Court granted the respondent's request for a change in his custody status, allowing his release upon payment of a \$2,500 bond.

---

Paula Dixon  
Immigration Judge



# Exhibit C

**NOT FOR PUBLICATION**

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

---

MATTER OF:

Sergio ESCOBAR-MENDOZA,



Respondent

---

**FILED**

Sep 22, 2025

ON BEHALF OF RESPONDENT: Steven Ridgill, Esquire

ON BEHALF OF DHS: Tracie A. Klein, Assistant Chief Counsel

**IN BOND PROCEEDINGS**

On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: McCloskey, Temporary Appellate Immigration Judge<sup>1</sup>

MCCLOSKEY, Temporary Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s July 11, 2025, decision granting the respondent’s request for a change in custody status and ordering him released on bond. The Immigration Judge issued a bond memorandum on August 1, 2025, setting forth the reasons for the bond decision. The respondent, a native and citizen of Guatemala, opposes the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge determined that she had jurisdiction over the respondent’s request for custody redetermination finding that he was detained pursuant to section 236 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226 (IJ Bond Memo at 2). However, the Immigration Judge did not make factual findings regarding the respondent’s manner of entry into the United States. On appeal, DHS argues that the Immigration Judge did not have jurisdiction over the respondent’s request for custody redetermination because the respondent is an “applicant for admission” and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A) (DHS’ Br. at 4-22).

We conclude that remand is required for the Immigration Judge to make factual findings regarding the respondent’s manner of entry into the United States and for her to further consider whether she has jurisdiction over the respondent’s request for custody redetermination.

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<sup>1</sup> Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).



During the pendency of the instant appeal, we held that under a plain language reading of the INA, Immigration Judges lack authority to hear bond requests or grant bond to respondents who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). We determined that the statutory text of the INA is clear and explicit in requiring mandatory detention of all respondents who are applicants for admission, without regard to how many years they have been residing in the United States without lawful status. See INA § 235(b)(1), (2), 8 U.S.C. § 1225(b)(1), (2); see also *Matter of Yajure Hurtado*, 29 I&N Dec. at 226.

In light of this intervening precedent and our limited fact-finding ability on appeal, we will remand the record to the Immigration Judge to determine in the first instance whether the respondent is an applicant for admission on account of his manner of entry into the United States and whether she has jurisdiction over the respondent's request for custody redetermination. On remand, the Immigration Judge may take any action necessary to prepare a new decision.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings and for entry of a new decision consistent with this order.

# Exhibit D



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

Respondent Name:

ESCOBAR-MENDOZA, SERGIO

To:

Ridgill, Steven  
224 Allegheny Circle  
Placentia, CA 92870

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

10/06/2025

**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 respondent illegally entered the United States on 8/17/2017 through the Rio Bravo. At this time, he was an applicant for admission. The Court has no jurisdiction over the respondent's custody status. See Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

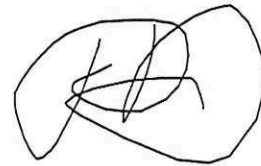
Granted. It is ordered that Respondent be:

released from custody on his own recognizance.

released from custody under bond of \$

other:

Other:



Immigration Judge: DIXON, PAULA 10/06/2025

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

Appeal Due: 11/05/2025

**Certificate of Service**

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

Respondent Name : ESCOBAR-MENDOZA, SERGIO | A-Number : 

Riders:

Date: 10/06/2025 By: Alilin, Vanessa, Court Staff

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6

7 Attorneys for Respondents  
8

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

11 SERGIO ESCOBAR-MENDOZA,

12  
13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, SENIOR  
WARDEN, OTAY MESA DETENTION  
16 CENTER; *et al.*,

17 Respondents.  
18  
19

Case No.: 3:26-cv-0078-JES-DEB

**RESPONSE TO PETITION**

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1 Petitioner appears to be a member of the Bond Eligible Class certified in *Maldonado*  
2 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL  
3 3288403 (C.D. Cal. Nov. 25, 2025). The *Bautista* court has entered final judgement as to  
4 the Bond Eligible Class. *Bautista*, ECF No. 94. Accordingly, Respondents acknowledge  
5 that Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to an order from this  
6 Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a).<sup>1</sup> No evidentiary  
7 hearing is necessary.<sup>2</sup>

8 Respondents reserve the right to supplement this response in the event of a stay of  
9 enforcement of the *Bautista* final judgment, appellate relief, or a change in DHS policy.

10 DATED: January 9, 2026

ADAM GORDON  
United States Attorney

11  
12 s/ Glen F. Dorgan  
GLEN F. DORGAN  
Assistant United States Attorney

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23 \_\_\_\_\_  
24 <sup>1</sup> To the extent the Court issues an order directing a bond hearing under 1226(a),  
25 considering heavy caseloads and staffing levels, Respondents respectfully request that such  
order provide the government 14 days from issuance to hold such bond hearing.

26 <sup>2</sup> Respondents acknowledge that, on July 11, 2025, the immigration judge issued an order  
27 releasing Petitioner under a bond of \$2,500 and subject to ATD at DHS' discretion. *See*  
28 *Petition*, Ex. "B." That order was subsequently vacated, *see id.*, Ex. "C," and, on remand,  
bond was denied, *see id.*, Ex. "D."