
3:26-cv-00107-BJC-DDL Garcia Pacheco v. LaRose et al
Benjamin J. Cheeks, presiding
David D. Leshner, referral
Date filed: 01/08/2026
Date of last filing: 01/20/2026

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/08/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/12/2026	 Order
<u>3</u>	<i>Filed & Entered:</i> 01/13/2026	 Notice of Appearance
<u>4</u>	<i>Filed & Entered:</i> 01/20/2026	 Return to Petition
<u>5</u>	<i>Filed & Entered:</i> 01/20/2026	 Notice (Other)

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

11 **EDWIN ALIRIO GARCIA PACHECO**

12 Petitioner

13 v.

14 **Christopher LAROSE**, Senior Warden, Otay

15 Mesa Detention Center;

16 **Kristi NOEM**, Secretary, U.S. Department of

17 Homeland Security;

18 **Todd LYONS**, Acting Director, U.S.

19 Immigration and Customs Enforcement;

20 **Patrick DIVVER**, Field Office Director, San

21 Diego Field Office, U.S. Immigration and

22 Customs Enforcement.

23 **Sirce OWEN**, Acting Director of the Executive

24 Office for Immigration Review (EOIR),

25 U.S. Department of Justice.

26 **Pamela BONDI**, Attorney General, U.S.

27 Department of Justice.

28 Respondents

Case No.: '26CV107 BJC DDL

Agency File No: A 

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

1 **JURISDICTION AND VENUE**

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

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

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

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

16 **PARTIES**

17 10. Petitioner, Edwin Alirio Garcia Pacheco, is a Salvadoran national detained at the
18 Otay Mesa Detention Center in San Diego, California.

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

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

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

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

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

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

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

6 **LEGAL FRAMEWORK**

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

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

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

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

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

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

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

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

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

12 **FACTS**

13 26. Petitioner, Edwin Alirio Garcia Pacheco, is a Salvadoran national who entered the
14 United States without inspection in or about December 2003 and has resided continuously in the
15 United States since that time.

16 27. On or about November 25, 2025, Petitioner was arrested by officers of U.S.
17 Immigration and Customs Enforcement (“ICE”) near Oceanside, California, while working as an
18 Uber driver in the interior of the United States.

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

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

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

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

9 32. On December 18, 2025, a federal district court vacated DHS's July 8, 2025 Interim
10 Guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.
11 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The court's decision addressed DHS's
12 Interim Guidance only and did not vacate, overrule, or otherwise disturb *Matter of Yajure-*
13 *Hurtado* or any binding Board of Immigration Appeals precedent.

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

20 34. Following the entry of final judgment in *Maldonado-Bautista v. Santacruz*,
21 Respondents in similar federal habeas proceedings acknowledged the vacatur of DHS's July 8,
22 2025 Interim Guidance, while expressly reserving the right to supplement or alter their position
23 in the event of a stay of enforcement, appellate relief, or a change in DHS policy. See
24 Respondents' Return to Petition for Writ of Habeas Corpus, *Cabrera-Ruiz v. LaRose et al.*, No.
25 3:25-cv-03582-AGS-JLB (S.D. Cal. filed Dec. 23, 2025). Notwithstanding those representations,
26 custody redetermination hearings continue to be denied in Immigration Court based on assertions
27 that jurisdiction is foreclosed under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In
28

1 practice, attorneys from the Office of the Principal Legal Advisor (OPLA) and some
2 Immigration Judges sitting at the Otay Mesa Immigration Court have continued to assert that the
3 Immigration Court lacks bond jurisdiction in such cases. As a result, noncitizens remain subject
4 to detention without access to a bond hearing absent intervention by this Court.

5 35. On January 2, 2026, Petitioner, through undersigned immigration counsel, was
6 scheduled to appear for a custody redetermination hearing before Immigration Judge Samantha
7 Begovich at the Otay Mesa Immigration Court. Prior to going on the record, the Immigration
8 Judge advised counsel that she was following *Yahure-Hurtado* and, consistent with that decision,
9 was inclined to deny all custody redetermination requests filed by individuals who entered the
10 United States without inspection. The Immigration Judge further offered counsel the opportunity
11 to withdraw the request in order to avoid a formal denial on the record. In light of this guidance,
12 and with the understanding that the request would be denied as a matter of course, Petitioner's
13 immigration counsel elected to follow the Immigration Judge's suggestion and voluntarily
14 withdrew the custody redetermination request. (*Exhibit 1*)

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

17 37. Absent relief from this Court, Petitioner faces continued and potentially prolonged
18 immigration detention despite having been apprehended in the interior of the United States more
19 than a decade after his entry, and despite the absence of any statutory bar to discretionary
20 detention under INA § 236(a). Without judicial intervention, Petitioner will remain subject to
21 detention without any meaningful opportunity for an individualized custody determination.

22 **CLAIM FOR RELIEF**

23 **COUNT 1**

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

25 38. Petitioner incorporates by reference the allegations of fact set forth in the preceding
26 paragraphs.

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

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

9 45. By continuing to detain Petitioner based on an unlawful classification of his custody
10 as governed by INA § 235(b), and by thereby depriving him of any meaningful opportunity for
11 an individualized custody determination before a neutral decisionmaker, Respondents have
12 violated Petitioner’s rights under the Due Process Clause of the Fifth Amendment.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner respectfully requests that this Court:

- 15 A) Assume jurisdiction over this matter;
- 16 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
17 District while these proceedings are pending;
- 18 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
19 Respondents to explain the legal basis for Petitioner’s continued detention;
- 20 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
21 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 22 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
23 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
24 the Fifth Amendment.
- 25 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
26 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
27

1 decisionmaker at which the Government must justify his continued detention by clear and
2 convincing evidence;

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

4 Respectfully submitted,

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

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10 Email: info@alexmonsalvelawfirm.com

11 Counsel for Petitioner

12 Dated: January 8, 2026

EXHIBIT 1

Order of the Immigration Judge



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

Respondent Name:
GARCIA PACHECO, EDWIN ALIRIO
To:
Ceballos, Gustavo
1605 W. Olympic Bl.
Ste. 1001
Los Angeles, CA 90015

A-Number:



Riders:
In Custody Redetermination Proceedings

Date:
01/02/2026

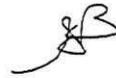
ORDER OF THE IMMIGRATION JUDGE

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 \$
 - other:

- Other:
Withdrawn.



Immigration Judge: Samantha Begovich 01/02/2026

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

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

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

Respondent Name : GARCIA PACHECO, EDWIN ALIRIO | A-Number : 

Riders:

Date: 01/02/2026 By: Samantha Begovich, Immigration Judge