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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Silvia Perez Pena, Petitioner, v. PAM BONDI, Attorney General of the United States, in her official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; PATRICK DIVVER, ICE Field Office Director for San Diego County, in his official capacity; WARDEN OF OTAY MESA DETENTION CENTER. Respondents.	Case No. '26CV0142 DMS AHG PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner, Silvia Perez Pena, ([redacted]), has resided in California since 2002, with deep community ties. She is married to a United States

citizen and is the mother of three United States citizen children. She is the beneficiary of an approved I-130 visa petition and appeared voluntarily for a scheduled USCIS adjustment-of-status interview on November 12, 2025. Instead of adjudicating her application, ICE arrested her at the interview and transferred her to the Otay Mesa ICE Processing Center.

2. On December 31, 2025, the Immigration Judge ("IJ") held a custody redetermination hearing under INA § 236(a). DHS argued that Petitioner was detained under § 235(b)(2) and therefore ineligible for bond.

3. By contrast, the INA and its implementing regulations provide that individuals like Petitioner, long-term residents apprehended in the interior and placed in § 240 proceedings, are detained, if at all, under § 236(a), which expressly authorizes Immigration Judges to conduct custody redeterminations. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). The Ninth Circuit has confirmed that an 'application for admission' is a discrete event that occurs when a noncitizen presents themselves for entry, not a permanent status that attaches to everyone who entered without inspection. *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc).

4. The IJ found no jurisdiction under *Matter of Yajure*. However, the IJ also made a finding that Petitioner posed no danger and no flight risk. The IJ set a $2,500 bond with Alternative to Detention (ATD) as appropriate, should a higher court determine there is jurisdiction.

5. Petitioner's ability to obtain relief from a BIA appeal is futile. In July 2025, ICE issued a memorandum instructing its attorneys to coordinate with EOIR to reject bond redetermination hearings for all individuals who entered without inspection, regardless of length of residence or location of arrest.

6. That outcome effectively deprives Petitioner of liberty for years and directly conflicts with Ninth Circuit precedent, the statutory framework, and due process of law, leaving habeas as the only timely and effective remedy.

7. Despite recent federal court rulings rejecting Respondents' position, DHS and EOIR continue to maintain that all noncitizens who entered the United States without inspection are categorically ineligible for bond redetermination hearings, treating them as perpetual "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A), regardless of how long they have lived in this country or where they were apprehended. This interpretation directly contravenes the statute, binding Ninth Circuit precedent, and the Fifth Amendment's Due Process Clause. See *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025), Dkt. 29, 38; *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 2025), Dkt. 14; *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020).

8. In September 2025, the BIA formally adopted the new position in a precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that such individuals fall under § 235(b)(2) and are categorically ineligible for bond. Given that ruling, DHS is effectively guaranteed to prevail before the BIA, forcing Petitioner to seek relief in the Ninth Circuit Court of Appeals regardless of the facts of his case.

9. Following *Matter of Yajure Hurtado*, DHS and immigration judges have categorically denied bond redetermination hearings to all noncitizens who entered without inspection, regardless of their length of residence, family ties, or equities. This blanket denial demonstrates that administrative remedies are

1 foreclosed and that only judicial intervention can secure a hearing consistent with
2 § 236(a), Ninth Circuit precedent, and due process.
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4 10. Petitioner seeks the following relief:
5 (a) A writ of habeas corpus directing Respondents to release her forthwith
6 under the conditions set by the IJ's December 31, 2025, bond order or,
7 if the Court determines further process is required, to provide an
8 immediate § 236(a) bond hearing before a neutral adjudicator;
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10 (b) Declaratory and injunctive relief prohibiting Respondents from
11 categorically applying § 235(b)(2) to long-term residents in § 240
12 proceedings; and
13 (c) Set-aside relief under the Administrative Procedure Act requiring that
14 individuals like Petitioner be provided bond redetermination hearings
15
16 before the immigration judge.
17 JURISDICTION AND VENUE
18 11.This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331. The
19 Suspension Clause protects habeas review of civil immigration detention. See U.S.
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Const. art. I, § 9, cl. 2.
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22 12. Venue properly lies in the Southern District of California under 28
23 U.S.C. § 1391(e)(1)–(2). Petitioner was arrested in this District, the Immigration
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Judge conducted bond proceedings here, and the ICE Field Office Director
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26 responsible for Petitioner's custody resides in this District. Petitioner is presently
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housed at the Otay Mesa detention facility in San Diego, California. Should DHS
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transfer Petitioner outside the District prior to filing this Petition, such transfer

would not divest this Court of venue where the petition challenges systemic DHS and ICE policies and seeks relief that only those Respondents, not the immediate facility warden, can provide. See *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.8 (2004) (recognizing exceptions to the immediate-custodian rule). Because the petition challenges DHS and ICE policies governing bond eligibility, relief runs against higher-level officials and agencies located in this District, not solely the immediate custodian.

13. The Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and the APA, 5 U.S.C. § 702, to the extent necessary.

PARTIES

14. Petitioner Silvia Perez Pena is a native and citizen of Mexico who has resided continuously in California since 2002. She was arrested in this District on June 25, 2025, following his voluntary appearance for a USCIS adjustment interview, and remains detained in ICE custody

15. Respondent Pam Bondi is the Attorney General of the United States and is sued in her official capacity as the head of the Department of Justice.

16. The Attorney General is responsible for the fair administration of the laws of the United States.

17. Kristi Noem, Secretary of the U.S. Department of Homeland Security (DHS), is sued in her official capacity as the Cabinet official charged with administration and enforcement of the immigration laws, including custody and release authority. See 8 U.S.C. § 1103(a).

18. Respondent Executive Office for Immigration Review is a component agency of the Department of Justice responsible for conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory body administered by immigration judges and an appellate body known as the Board of Immigration Appeal (BIA). Immigration judges issue bond redetermination hearing decisions, which are then subject to appeal to the BIA. EOIR is sued as an agency respondent because its policies and decisions are at issue in this action.

19. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention of Petitioners.

20. Patrick Divver is the Immigration and Customs Enforcement Field Office Director for San Diego County, including the Otay Mesa detention facility and is sued in his official capacity.

LEGAL BACKGROUND

21. The Immigration and Nationality Act (INA) establishes four distinct detention regimes for noncitizens in removal proceedings. Section 236(a) (8 U.S.C. § 1226(a)) is the default, discretionary authority for individuals "*found in the United States*" and placed in § 240 proceedings; it expressly authorizes an immigration judge to conduct custody redeterminations at the outset of detention (see 8 C.F.R. §§ 1003.19(a), 1236.1(d)).

22. Section 236(c) (8 U.S.C. § 1226(c)) mandates detention for noncitizens charged with or convicted of certain criminal and terrorism-related offenses. Section 235(b)(1) & (b)(2) (8 U.S.C. § 1225) governs custody at the inspection stage, with expedited removal under subsection (b)(1) and other applicants for admission under subsection (b)(2). Finally, section 241 (8 U.S.C. § 1231) provides for post–final-order detention (not at issue here).

23. Section 236(a) governs the detention of long-term residents arrested in the interior and placed in § 240 removal proceedings. By its plain terms, it applies "*pending a decision on whether the [noncitizen] is to be removed from the United States*," and the implementing regulations vest an immigration judge with bond-hearing jurisdiction (8 C.F.R. §§ 1003.19(a), 1236.1(d)).

24. By contrast, section 235(b) applies exclusively at ports of entry. Its text and structure confirm that an "*application for admission*" is a single event occurring at entry, triggering inspection or fear-screening procedures. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and this Court en banc in *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020), held that "*applicant for admission*" is not a perpetual status but a discrete event at the border.

25. Regulatory history under IIRIRA reinforces this textual split. In its 1997 rulemaking, EOIR explained that persons who entered without inspection but are placed in § 240 proceedings remain detained under § 236(a), not § 235. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

26. Despite that clear framework, ICE's July 2025 internal guidance directed field offices to reject § 236(a) bond hearings for all individuals who entered without inspection, irrespective of their length of residence or place of arrest.

27. In September 2025, the BIA adopted this position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that those individuals are categorically ineligible for bond under § 235(b)(2).

28. Several district courts in this Circuit have enjoined that categorical policy and ordered bond hearings under § 236(a) for long-term residents arrested in the interior. See *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025); *Bautista v. Sec'y of DHS*, No. 5:25-cv-01873 (C.D. Cal. July 2025).

29. Petitioner is a long-term California resident arrested in the interior and placed in § 240 proceedings. Under the INA's text, its implementing regulations, and controlling Ninth Circuit authority, § 236(a) governs his detention and bond-hearing rights. The government's contrary, categorical reliance on § 235(b)(2) directly conflicts with this statutory and regulatory scheme and forecloses any administrative remedy, necessitating this Court's intervention.

FACTUAL AND PROCEDURAL BACKGROUND

30. Mrs. Perez Peña has resided continuously in California since 2002. She is a homemaker who files joint tax returns with her U.S. Citizen husband and is a devoted mother of three United States citizen children. Her sole misdemeanor conviction does not constitute a crime involving moral turpitude or a crime of

violence and is over a decade old. Her extended family in the United States, together with her long-term residence, demonstrate her deep and enduring ties to the community. On November 12, 2025, after voluntarily appearing for her USCIS adjustment of status interview based on an approved I-130 petition, ICE officers arrested her and served a Notice to Appear, placing her in § 240 removal proceedings. She was transferred to the Otay Mesa ICE Processing Center.

31. Although USCIS denied Respondent's adjustment application at the interview and placed her into removal proceedings, she continues to have several forms of relief. She will re-apply for adjustment of status and is eligible for relief under § 240(A) Cancellation of Removal.

32. In addition, once DHS issued the Notice to Appear, jurisdiction over Respondent's application for adjustment of status transferred exclusively to the Immigration Judge under 8 C.F.R. § 1245.2(a)(1)(i), which provides that "*in the case of any alien who has been placed in deportation proceedings or in removal proceedings ... the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.*" See also 8 C.F.R. § 1240.11(a)(1) (requiring the IJ to advise respondents of apparent eligibility for relief and afford them an opportunity to apply).

33. These pending avenues of relief underscore her strong family ties, long-term residence, and deep equities, further supporting the Immigration Judge's finding that Respondent poses no danger and no flight risk.

34. On December 22, 2025, Mrs. Perez moved for custody redetermination under INA § 236(a). At the January 2 hearing, the Immigration Judge ruled that she did not have jurisdiction under *Matter of Yajure*; however, she

1 also found she posed no danger and no flight risk; and set bond at $2,500 with
2 discretionary ATD conditions.
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4 35. Nevertheless, in September 2025 the Board of Immigration Appeals
5 issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's
6 categorical position. That precedential ruling forecloses any possibility of relief on
7 Petitioner's pending appeal. Even if the Ninth Circuit ultimately overturns *Yajure*
8 *Hurtado*, the appellate process will take years, during which Petitioner would
9 remain in detention without bond. This renders administrative remedies illusory
10 and makes habeas, injunctive, and declaratory relief from this Court the only
11 meaningful means of vindicating his statutory and constitutional rights.
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13 CAUSES OF ACTION
14 COUNT I
15 Violation of 8 U.S.C. § 1226(a):
Unlawful Continued Detention Despite Bond Grant
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17 36. Petitioner repeats, re-alleges, and incorporates by reference each and
18 every allegation in the preceding paragraphs as if fully set forth herein.
19 37. Under 8 U.S.C. § 1226(a), noncitizens apprehended in the interior and
20 placed in § 240 removal proceedings are detained, if at all, subject to discretionary
21 bond redetermination by an immigration judge. On December 31, 2025, the IJ
22 found that Petitioner posed no danger and is not a flight risk, and ordered release
23 on a $2,500 bond with ATD should a higher court find there is jurisdiction.
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25 38. The congressional intent is reflected in § 236(a), which expressly
26 authorizes custody redeterminations and release on bond "pending a decision on
27 whether the alien is to be removed from the United States," and is confirmed by §
28 240A(b)(1), which authorizes cancellation of removal for long-term residents to

prevent exceptional hardship to U.S. citizen spouses and children not to inflict that hardship through prolonged and unnecessary detention while removal proceedings drag on.

39. Respondents' continued reliance on § 235(b)(2) to for no jurisdiction, constitutes a tactical abuse of the limited procedural mechanism Congress created. This practice exceeds the statutory authority conferred by § 236(a), unlawfully denies Petitioner the release Congress authorized, and frustrates the very family-unity protections Congress embedded in both bond and cancellation-of-removal provisions.

40. Accordingly, Respondents' actions violate the Immigration and Nationality Act, and Petitioner is entitled to habeas, declaratory, and injunctive relief.

COUNT II
Violation of the Administrative Procedure Act (5 U.S.C. § 706)
Unlawful Denial of Bond Jurisdiction

41. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

42. The INA and its implementing regulations authorize Immigration Judges to redetermine custody for noncitizens apprehended in the interior and placed in § 240 proceedings. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). For decades, EOIR and DHS consistently applied § 236(a) to such individuals, affording bond hearings before an IJ, consistent with the statute's text and EOIR's 1997 rulemaking.

43. In July 2025, however, ICE abruptly abandoned this settled practice. Through an internal memorandum, ICE instructed its trial attorneys to resist § 236(a) bond hearings across the board for all who had entered without inspection, regardless of how long they had resided in the United States or where they were arrested. That directive, though aimed at DHS attorneys, had the practical effect of shifting the adjudicatory framework once EOIR began adopting the same categorical position.

44. Two months later, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals formally ratified that position, holding that all noncitizens who entered without inspection are detained under § 235(b)(2) and categorically ineligible for bond. That decision stripped Immigration Judges of jurisdiction to conduct bond hearings, even where an IJ had already found release appropriate.

45. This abrupt reversal of decades of practice was adopted without notice and comment, lacks reasoned explanation, and is contrary to the governing statute and regulations. The BIA's post hoc rationale in *Yajure Hurtado* cannot cure those defects.

46. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), this Court owes no Chevron deference to the agency's construction of § 235(b)(2), but must apply its own judgment to the statutory text. Properly construed, § 235(b)(2) does not apply to long-term residents arrested in the interior and placed in § 240 proceedings.

47. Accordingly, Respondents' categorical reclassification is unlawful, arbitrary, capricious, and not in accordance with law within the meaning of 5 U.S.C. § 706(2).

COUNT III

Violation of Procedural Due Process (Fifth Amendment)

48. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

49. The Fifth Amendment provides that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. V. Freedom from imprisonment (from government custody, detention, or other forms of physical restraint) lies at the heart of the liberty that the Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens in removal proceedings possess a fundamental interest in liberty and in being free from unnecessary official restraint.

50. Here, Petitioner was afforded an individualized custody redetermination under § 236(a). The Immigration Judge determined that she posed no danger and is not a flight risk and *if* found she has jurisdiction by a higher court, orders a bond in the amount of $2500.00 with discretionary ATD conditions.

51. Respondents' invocation of § 235(b)(2) with their categorical refusal to recognize § 236(a) jurisdiction for noncitizens who entered without inspection, deprives Petitioner of a meaningful opportunity for release.

52. This tactic amounts to an abuse of process: a procedural device intended only for temporary review has been converted into an instrument for indefinite detention, ensuring that even individuals found releasable by an IJ remain imprisoned for months or years despite a judicial finding that release is appropriate.

53. Further, Congress expressly recognized that long-term residents

develop deep family and community ties and that removal proceedings must account for the "exceptional and extremely unusual hardship" that detention and removal inflict on U.S. citizen spouses and children. 8 U.S.C. § 1229b(b)(1).

54. Respondents' categorical detention policy and a refusal to honor recent district court orders defeat that congressional intent, prolonging separation and inflicting the very harms Congress sought to prevent.

55. Such continued detention without effectual access to bond violates procedural due process. At a minimum, due process requires that individuals in civil immigration custody receive a bond hearing before a neutral adjudicator, with consideration of ability to pay, alternatives to detention, and with the government bearing the burden of proof by clear and convincing evidence.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

A. Declare that INA § 236(a), not § 235(b)(2), governs Petitioner's custody as a long-term resident arrested in the interior and placed in § 240 proceedings, and that Respondents' contrary application of § 235(b)(2) is unlawful as applied;

B. Enjoin Respondents from enforcing any categorical policy or practice that denies Immigration Judges jurisdiction to conduct bond hearings under § 236(a) for noncitizens who entered without inspection but are placed in § 240 proceedings;

C. Set aside Respondents' unlawful detention policy, including the July 2025 ICE memorandum, and enjoin enforcement of the BIA's September 2025 decision in *Matter of Yajure Hurtado* as applied to Petitioner and similarly situated long-term residents arrested in the interior;

D. Issue a writ of habeas corpus directing Respondents to release Petitioner forthwith under the terms provided for in the IJ hearing order of December 31, 2025;

E. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable authority; and

F. Grant such other and further relief as this Court deems just and proper.

Dated: January 8, 2026

Respectfully submitted,

/s/LeRoy George Siddell
LeRoy George Siddell

Attorneys for Petitioner

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EXHIBIT LIST

A. IJ's Bond Order (December 31, 2025)

B. Notice to Appear (November 13, 2025)