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

11 **MARCO MIRELES GUTIERREZ**

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.: '26CV0586 CAB SBC

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner Marco Mireles Gutierrez is a Mexican national who has lived in the United  
3 States since 1990 and is currently in DHS custody at the Otay Mesa Detention Center.

4 2. Petitioner now faces unlawful detention because the Department of Homeland Security  
5 (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new  
6 interpretation of the Immigration and Nationality Act (INA), recently formalized in *Matter of*  
7 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which DHS now invokes to classify certain  
8 noncitizens who entered without inspection as “applicants for admission” subject to detention  
9 without bond under INA § 235(b)(2)(A).

10 3. Relying on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Immigration  
11 Judge denied bond on the ground that the court lacked custody jurisdiction, thereby depriving  
12 Petitioner of any opportunity for an individualized custody determination under INA § 236(a).

13 4. Multiple recent decisions within this District have rejected DHS’s reliance on INA §  
14 235(b) to detain noncitizens apprehended in the interior of the United States long after entry.

15 5. The newly adopted interpretation bars noncitizens like Petitioner from seeking release  
16 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§  
17 1003.19(a), 1236.1(d).

18 6. Because DHS has classified Petitioner as subject to detention under 8 U.S.C. §  
19 1225(b), the Immigration Court lacks jurisdiction to conduct a custody redetermination hearing.  
20 See 8 C.F.R. § 1003.19(h)(2)(i)(B). As no administrative remedy exists to review his custody  
21 classification or detention, exhaustion would be futile. Courts routinely excuse exhaustion where  
22 administrative remedies are unavailable or would be futile. See *Singh v. Napolitano*, 649 F.3d  
23 899, 900 (9th Cir. 2011).

24 7. Petitioner’s continued detention on this basis violates the plain text of the INA,  
25 decades of longstanding agency practice, and the constitutional guarantees of Due Process.

1 8. This habeas petition challenges the government’s misclassification of Petitioner’s  
2 custody as subject to mandatory detention under INA § 235 (8 U.S.C. § 1225).  
3 INA § 235(b) governs front-end, border-processing detention authority and does not permit the  
4 government to apply such authority to noncitizens apprehended in the interior of the United  
5 States long after entry and placed in removal proceedings under INA § 240. Where DHS has  
6 taken a noncitizen into custody under these circumstances, detention—if lawful at all—must  
7 proceed under INA § 236(a), which provides for eligibility for an individualized bond hearing  
8 before an Immigration Judge.

9 9. Petitioner remains detained without access to any individualized custody determination  
10 under INA § 236(a). He does not challenge the initiation of removal proceedings or the merits of  
11 removability. Rather, this petition challenges the legal basis of his detention, specifically DHS’s  
12 unlawful application of INA § 235(b) to deny bond eligibility in circumstances where detention  
13 authority lies under INA § 236(a). Judicial intervention is therefore necessary. Petitioner  
14 respectfully seeks a writ of habeas corpus ordering his release or, in the alternative, an order  
15 directing DHS to provide a prompt, individualized custody hearing before a neutral  
16 decisionmaker pursuant to INA § 236(a).

17 **JURISDICTION AND VENUE**

18 10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the  
19 custody of the Department of Homeland Security within this District and he challenges the  
20 legality of that custody.

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

24 12. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section  
25 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence  
26 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to  
27 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts

1 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the  
2 removal proceedings.

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

5 **PARTIES**

6 14. Petitioner, Marco Mireles Gutierrez is a Mexican national who has lived in the  
7 United States since 1990 and is currently in DHS custody at the Otay Mesa Detention Center.

8 15. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention  
9 Center.

10 16. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
11 Security (DHS).

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

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

16 19. Respondent Sirce Owen is the Acting Director of the Executive Office for  
17 Immigration Review (EOIR).

18 20. Respondent Pamela Bondi is the Attorney General of the United States and the head  
19 of the U.S. Department of Justice (DOJ).

20 21. All Respondents are named in their official capacities.

21 **LEGAL FRAMEWORK**

22 22. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
23 establishes multiple detention authorities that apply at different stages of the immigration  
24 process. For decades, courts, Congress, and the immigration agencies have consistently  
25 distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which  
26 governs inspection and detention of applicants for admission during initial processing at or near  
27 the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of

1 noncitizens who have been released from initial processing and placed in removal proceedings.  
2 The Supreme Court examined the structure and interaction of these provisions in *Jennings v.*  
3 *Rodriguez*, 583 U.S. 281 (2018).

4 23. Section 1225 provides that, for purposes of initial inspection, “an alien who arrives in  
5 the United States or is present in this country but has not been admitted, is treated as an applicant  
6 for admission.” 8 U.S.C. § 1225(a)(1). As the Supreme Court explained in *Jennings*, decisions  
7 regarding admissibility “generally begin at the Nation’s borders and ports of entry,” where the  
8 government conducts initial inspection and screening to determine whether a noncitizen may be  
9 admitted. 583 U.S. at 287. Section 1225(b) governs this front-end inspection process, authorizing  
10 either expedited removal under § 1225(b)(1)—which includes a credible fear screening  
11 mechanism for individuals expressing an intent to seek asylum—or detention pending a decision  
12 on admission under § 1225(b)(2). *Id.* at 297; see also *Department of Homeland Security v.*  
13 *Thuraissigiam*, 591 U.S. 103 (2020).

14 24. By contrast, INA § 236(a) governs the detention of noncitizens who have been  
15 released from initial inspection and are “pending a decision on whether [they are] to be removed  
16 from the United States.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303. Unlike § 1225, which  
17 applies during the initial admission process, § 1226(a) authorizes discretionary detention or  
18 release on bond or conditional parole once removal proceedings have commenced, except as  
19 provided in § 1226(c), which applies only to a narrowly defined category of noncitizens with  
20 specified criminal or security-related convictions. *Jennings*, 583 U.S. at 303, 306. Longstanding  
21 regulations confirm that individuals detained under § 1226(a) are eligible for custody  
22 redetermination hearings before an Immigration Judge. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1),  
23 1236.1(d)(1). Congress has further described § 1226(a) as a “restatement” of prior interior-arrest  
24 detention authority under former INA § 242(a), confirming its application after release from  
25 initial inspection. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

1           25. For decades, noncitizens who entered without inspection, and were placed in removal  
2 proceedings under INA § 240 were consistently treated as subject to the discretionary detention  
3 framework of § 1226(a) if later taken into custody in the interior of the United States.

4           26. In 2025, DHS and the Board of Immigration Appeals began advancing a broader  
5 interpretation of INA § 1225(b), asserting in certain proceedings that noncitizens who entered  
6 without inspection could be treated as subject to detention under § 1225(b)(2) regardless of  
7 release from custody, initiation of § 240 proceedings, or the passage of time. This interpretation  
8 departed from longstanding agency practice and expanded § 1225(b) beyond its traditional role  
9 as a front-end inspection and admission provision.

10           27. As part of this shift, DHS issued interim guidance in July 2025 asserting that  
11 noncitizens who entered without inspection could be treated as subject to mandatory detention  
12 under INA § 235(b)(2)(A), even if they had been released from custody and apprehended later in  
13 the interior of the United States. The Board of Immigration Appeals later adopted aspects of this  
14 interpretation in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). These authorities  
15 address the classification of custody in certain cases involving noncitizens apprehended after  
16 entry, but they do not purport to authorize the re-imposition of INA § 235(b) detention after DHS  
17 has released a noncitizen from custody, initiated removal proceedings under INA § 240, and  
18 allowed the individual to live at liberty for a prolonged period.

19           28. Separately, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General  
20 addressed detention authority for certain asylum seekers who remained in continuous custody  
21 during expedited removal proceedings. *Matter of M-S-* presumes uninterrupted detention under  
22 INA § 235(b) and does not address circumstances in which DHS has released a noncitizen from  
23 custody, initiated § 240 proceedings without a credible fear determination, and later seeks to re-  
24 classify detention authority following re-arrest in the interior of the United States.

25           29. In January 2025, Congress reaffirmed that INA § 1226(a), not § 1225(b), governs  
26 detention following interior arrests. Through the Laken Riley Act of 2025, Congress amended §  
27 1226(c) to add subparagraph (E), extending mandatory detention only to a narrow category of  
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1 noncitizens who are inadmissible under INA §§ 212(a)(6)–(7) and who also meet specified  
2 criminal-conduct criteria. By creating this limited carve-out, Congress confirmed that § 1226(a)  
3 remains the general detention framework after release from initial processing and initiation of  
4 removal proceedings. If, as DHS now contends in certain cases, all such individuals were already  
5 subject to mandatory detention under § 1225(b)(2), Congress’s amendment would have been  
6 unnecessary.

7 **FACTS**

8 30. Petitioner Marco Mireles Gutierrez is a national of Mexico who entered the United  
9 States without inspection in or about 1990 and has lived in the United States continuously since  
10 that time.

11 31. On January 9, 2026, Petitioner was detained by officers of U.S. Immigration and  
12 Customs Enforcement (“ICE”) in San Diego, California, while running personal errands.

13 32. On January 10, 2026, the Department of Homeland Security issued a Notice to  
14 Appear placing Petitioner in removal proceedings under INA § 240 before the Otay Mesa  
15 Immigration Court.

16 33. Petitioner was thereafter transferred to the Otay Mesa Detention Center and is  
17 currently detained pending removal proceedings before the Otay Mesa Immigration Court.

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

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

26 36. On November 25, 2025, the United States District Court for the Central District of  
27 California issued an order granting class certification in *Lazaro Maldonado Bautista et al. v.*

1 *Santacruz et al.*, No. 5:25-cv-01873 (C.D. Cal.). The court certified a class of noncitizens  
2 detained by DHS who are classified as subject to detention without bond based on DHS's  
3 application of INA § 235(b) and related agency policy.

4 37. On December 18, 2025, a federal district court vacated DHS's July 8, 2025 Interim  
5 Guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.  
6 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The court's decision addressed DHS's  
7 Interim Guidance only and did not vacate, overrule, or otherwise disturb *Matter of Yajure-*  
8 *Hurtado* or any binding Board of Immigration Appeals precedent.

9 38. Prior to the entry of final judgment in *Maldonado-Bautista*, Respondents expressly  
10 maintained—in other federal habeas proceedings challenging detention under INA § 235(b)—  
11 that district court rulings rejecting such detention were interlocutory, non-final, and afforded no  
12 relief. See Respondents' Return to Habeas Petition at 2–4, *Perez Martinez v. LaRose*, No. 25-cv-  
13 3492-DMS-AHG (S.D. Cal. filed Dec. 15, 2025). DHS continued to rely on its interpretation of §  
14 235(b) pending the entry of final judgment.

15 39. Following the entry of final judgment in *Maldonado-Bautista v. Santacruz*,  
16 Respondents in similar federal habeas proceedings acknowledged the vacatur of DHS's July 8,  
17 2025 Interim Guidance, while expressly reserving the right to supplement or alter their position  
18 in the event of a stay of enforcement, appellate relief, or a change in DHS policy. See  
19 Respondents' Return to Petition for Writ of Habeas Corpus, *Cabrera-Ruiz v. LaRose et al.*, No.  
20 3:25-cv-03582-AGS-JLB (S.D. Cal. filed Dec. 23, 2025). Notwithstanding those representations,  
21 custody redetermination hearings continue to be denied in Immigration Court based on assertions  
22 that jurisdiction is foreclosed under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In  
23 practice, attorneys from the Office of the Principal Legal Advisor (OPLA) and some  
24 Immigration Judges sitting at the Otay Mesa Immigration Court have continued to assert that the  
25 Immigration Court lacks bond jurisdiction in such cases. As a result, noncitizens remain subject  
26 to detention without access to a bond hearing absent intervention by this Court.

1 40. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide  
2 guidance stating that *Maldonado Bautista* is not a nationwide injunction and does not purport to  
3 vacate, stay, or enjoin *Yajure-Hurtado*, and that Matter of *Yajure-Hurtado* therefore remains  
4 binding precedent on agency adjudicators. The guidance further explains that declaratory  
5 judgments differ from injunctions in that they clarify legal rights without ordering specific  
6 action, and that a declaratory judgment “is not an equitable remedy” and does not, by itself,  
7 compel any party to act.

8 41. On January 28, 2026, Immigration Judge Olga Attia of the Otay Mesa Immigration  
9 Court denied bond, concluding that the Court lacked jurisdiction based on the continued  
10 applicability of *Matter of Yajure-Hurtado*. (*Exhibit 1*).

11 42. Petitioner remains detained at the Otay Mesa Detention Center without having  
12 received an individualized custody hearing.

13 43. Absent relief from this Court, Petitioner faces continued and potentially prolonged  
14 immigration detention despite having been apprehended in the interior of the United States  
15 decades after entry, and despite the absence of any statutory bar to discretionary detention under  
16 INA § 236(a). Without judicial intervention, Petitioner will remain subject to detention without  
17 any meaningful opportunity for an individualized custody determination.

18 **CLAIM FOR RELIEF**

19 **COUNT 1**

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

21 44. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
22 paragraphs.

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

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

## 15 COUNT 2

### 16 Violation of the Due Process Clause of the Fifth Amendment

17 47. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
18 herein.

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

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

24 50. Civil immigration detention is constitutionally permissible only when reasonably  
25 related to legitimate governmental objectives, such as preventing flight risk or protecting the  
26 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,

1 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
2 punitive and violates the Due Process Clause.

3 51. By classifying Petitioner’s custody as governed by INA § 235(b) pursuant to the  
4 Board’s interpretation in *Matter of Yajure-Hurtado*—which categorically eliminates Immigration  
5 Judge jurisdiction to conduct custody redeterminations for individuals DHS classifies under §  
6 1225(b)—Respondents have deprived Petitioner of any meaningful opportunity for an  
7 individualized custody determination. This deprivation violates the liberty interests protected by  
8 INA § 236(a) and the Due Process Clause of the Fifth Amendment.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner respectfully requests that this Court:

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

26 Respectfully submitted,

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Counsel for Petitioner

Dated: January 29, 2026

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

I am submitting this verification as counsel for Petitioner in this action. The factual allegations contained in the Petition are based on my review of official immigration records, including the Notice to Appear and the Immigration Judge’s written custody order, as well as information provided to me by Petitioner’s daughter, who communicated Petitioner’s responses to my inquiries.

Based on my review of those records and communications, and to the best of my knowledge, information, and belief, the factual statements in the Petition accurately reflect Petitioner’s circumstances and the procedural history of his detention.

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Counsel for Petitioner

Dated: January 29, 2026