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

11 **CLAUDIO HERNANDEZ-HERNANDEZ**

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.: '26 CV0635 CAB SBC

Agency File No: 

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

INTRODUCTION

1
2 1. Petitioner Claudio Hernandez-Hernandez respectfully submits this Petition for a Writ
3 of Habeas Corpus challenging his unlawful detention by the Department of Homeland Security
4 (“DHS”). Petitioner is a national of Mexico who was paroled into the United States [REDACTED]

5 [REDACTED] According to DHS’s own Notice to Appear (“NTA”),
6 Petitioner was paroled on June 24, 2024, with an expiration date of October 25, 2025. DHS
7 executed that parole and released Petitioner into the interior of the United States.

8 2. Following the expiration of parole, DHS re-detained Petitioner in the interior of the
9 United States and issued a Notice to Appear placing him in removal proceedings under INA §
10 240.

11 3. Petitioner is currently detained at the Otay Mesa Detention Center.

12 4. Although the NTA acknowledges both the grant and expiration of parole, DHS
13 nonetheless designated Petitioner as an “Arriving Alien.”

14 5. Based on DHS’s continued designation of Petitioner as an “Arriving Alien,” DHS is
15 treating Petitioner as subject to mandatory detention under INA § 235(b) and, on that basis, as
16 categorically ineligible for a custody redetermination hearing under INA § 236(a). In practical
17 terms, DHS’s custody posture—evidenced by its reliance on the “Arriving Alien” designation to
18 foreclose bond jurisdiction—denies Petitioner any meaningful opportunity to obtain an
19 individualized custody determination before an Immigration Judge.

20 6. DHS’s custody classification is legally erroneous. While parole does not constitute an
21 admission, once parole expired and DHS proceeded under INA § 240, Petitioner was no longer
22 in any ongoing inspection or admission process. At that point, any subsequent detention
23 authority could arise, if at all, only under INA § 236(a), which governs pre-final-order detention
24 of individuals present in the United States and provides for discretionary release and an
25 individualized custody determination before an Immigration Judge.

26 7. By continuing to rely on the “Arriving Alien” designation to treat Petitioner as subject
27 to mandatory detention under INA § 235(b) after parole was executed and allowed to expire,

1 DHS has deprived Petitioner of the statutory and constitutional protections afforded under INA §
2 236(a), including the opportunity for an individualized custody determination based on flight risk
3 or danger to the community. As a result, Petitioner remains unlawfully detained without the
4 process required by law.

5 **JURISDICTION AND VENUE**

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

9 9. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises
10 under the Constitution and laws of the United States, including the Immigration and Nationality
11 Act and the Due Process Clause of the Fifth Amendment, as applied to Petitioner's detention and
12 bond eligibility.

13 10. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
14 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence
15 proceedings, adjudicate cases, or execute removal orders," not independent challenges to custody
16 classification or unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal
17 orders in the courts of appeals, but does not foreclose habeas review of detention claims that are
18 collateral to and independent of removal proceedings. Moreover, Petitioner has no available
19 administrative mechanism to challenge DHS's custody classification, because DHS has
20 classified Petitioner as subject to detention under INA § 235(b), a classification that renders him
21 categorically ineligible for a custody redetermination hearing before an Immigration Judge.

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

24 **PARTIES**

25 12. Petitioner, Claudio Hernandez-Hernandez, is a national of Mexico who is currently
26 detained at the Otay Mesa Detention Center in San Diego, California.

1 13. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
2 Center.

3 14. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
4 Security (DHS).

5 15. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
6 Enforcement (ICE).

7 16. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.
8 Immigration and Customs Enforcement.

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

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

13 19. All Respondents are named in their official capacities.

14 **LEGAL FRAMEWORK**

15 20. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,
16 provides multiple detention authorities. For decades, courts, Congress, and agencies have
17 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §
18 1225), which governs applicants for admission encountered at or near the border, and INA § 236
19 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the
20 United States and placed in removal proceedings. The Supreme Court analyzed the interplay
21 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

22 21. Section 1225 provides that, for purposes of initial inspection at the border, “an alien
23 who arrives in the United States or is present in this country but has not been admitted, is treated
24 as an applicant for admission.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The
25 Court explained that decisions concerning who may enter or remain in the United States
26 “generally begin at the Nation’s borders and ports of entry, where the Government must
27 determine whether an alien seeking to enter the country is admissible.” *Id.* Section 1225(b)

1 governs this inspection and admission process, applying primarily to individuals encountered at
2 or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which
3 includes a credible-fear process for those expressing an intent to seek asylum—or to detention
4 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of Homeland Sec.*
5 *v. Thuraissigiam*, 591 U.S. 103 (2020).

6 22. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
7 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
8 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
9 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
10 conditional parole, except as provided in subsection (c), which applies only to a narrow category
11 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
12 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
13 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
14 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
15 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
16 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
17 Rep. No. 104-469, pt. 1, at 229 (1996).

18 23. Historically, custody following a noncitizen’s entry into the United States has been
19 governed by INA § 236(a), not INA § 235(b), once the initial inspection and admission process
20 has concluded. For decades, individuals who were physically present in the United States and
21 later apprehended in the interior—regardless of the manner of entry—were treated as subject to §
22 236(a)’s discretionary detention framework pending removal proceedings. This longstanding
23 understanding reflects the statutory distinction between entry-related inspection under § 235 and
24 post-entry custody during removal proceedings under § 236.

25 **FACTS**

26 24. Petitioner Claudio Hernandez-Hernandez is a native and citizen of Mexico and is
27 currently detained at the Otay Mesa Detention Center in San Diego, California.

1 25. Petitioner was last paroled into the United States pursuant to a grant of parole as a
2 [REDACTED] Petitioner was paroled on June 24, 2024, with
3 an expiration date of October 25, 2025. (*Exhibit 1*).

4 26. Prior to his parole, Petitioner had resided in the United States for many years and had
5 pursued lawful permanent residence through family-based immigration. Petitioner entered the
6 United States without inspection in 1999, departed in 2000, and later reentered without
7 inspection. He subsequently obtained approval of a family-based immigrant visa petition (Form
8 I-130) and a provisional unlawful presence waiver (Form I-601A). In April 2024, Petitioner
9 departed to Ciudad Juárez, Mexico, to attend his immigrant visa interview. At that interview,
10 consular officials determined that Petitioner was subject to the permanent bar under INA §
11 212(a)(9)(C) and advised that additional waivers would be required.

12 27. On November 14, 2025, Petitioner was arrested by DHS in the interior of the United
13 States after dropping his child off at school.

14 28. Following Petitioner's arrest, DHS issued a Notice to Appear, placing him in removal
15 proceedings under INA § 240. DHS's own Notice to Appear confirms that Petitioner was paroled
16 on June 24, 2024, with an expiration date of October 25, 2025. (*Exhibit 2*).

17 29. The Notice to Appear designates Petitioner as an "Arriving Alien." (*Exhibit 2*).

18 30. On December 12, 2025, the Notice to Appear, which initially charged Petitioner as
19 inadmissible under INA § 212(a)(6), was amended as DHS lodged charges under INA § 212(a)
20 (7) and withdrew the charge under INA § 212(a)(6). (*Exhibit 3*).

21 31. By continuing to designate Petitioner as an "Arriving Alien" after parole was
22 executed and allowed to expire, DHS is treating Petitioner as subject to mandatory detention
23 under INA § 235(b) and, on that basis, as categorically ineligible for a custody redetermination
24 hearing under INA § 236(a). As a result, DHS's custody classification forecloses any opportunity
25 for an individualized custody determination notwithstanding the absence of any statutory bar to
26 discretionary detention under § 236(a).

1 32. Petitioner is married to a United States citizen and is the father of an eleven-year-old
2 United States citizen child.

3 33. Absent relief from this Court, Petitioner will continue to be detained without any
4 opportunity for an individualized custody determination, notwithstanding the absence of any
5 statutory bar to discretionary detention under INA § 236(a).

6 **CLAIM FOR RELIEF**

7 **COUNT 1**

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

9 34. Petitioner incorporates by reference the allegations of fact set forth in the preceding
10 paragraphs.

11 35. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
12 Petitioner. Section 235 governs initial, entry-related inspection and custody of individuals
13 seeking admission at a port of entry. Here, however, DHS conceded parole in the Notice to
14 Appear, executed that parole by releasing Petitioner into the interior of the United States, and
15 allowed the parole to expire before re-detaining Petitioner. Once parole expired and DHS
16 proceeded under INA § 240, the entry-based detention framework of INA § 235 was exhausted
17 and no longer provided lawful custody authority.

18 36. Any subsequent detention of Petitioner following the expiration of parole and DHS's
19 decision to proceed under INA § 240 must therefore proceed, if at all, under INA § 236(a) (8
20 U.S.C. § 1226(a)), which governs pre-final-order detention and authorizes release on bond or
21 conditional parole. By continuing to detain Petitioner under INA § 235(b) based solely on an
22 "Arriving Alien" designation, DHS has acted contrary to the statutory text and structure of the
23 INA and unlawfully denied Petitioner access to the custody framework mandated by Congress.

24 **COUNT 2**

25 **Violation of the Due Process Clause of the Fifth Amendment**

26 37. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
27 herein.

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

3 39. Freedom from physical restraint lies at the core of the liberty protected by the Due
4 Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

5 40. Civil immigration detention is constitutionally permissible only when it bears a
6 reasonable relation to a legitimate governmental objective and is accompanied by adequate
7 procedural safeguards, including access to an individualized custody determination before a
8 neutral decisionmaker.

9 41. By continuing to detain Petitioner based solely on an unlawful custody classification
10 under INA § 235(b), and by denying him any opportunity for an individualized custody
11 determination under INA § 236(a), Respondents have deprived Petitioner of liberty without due
12 process of law, in violation 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 declaring that Petitioner is not lawfully detained under INA §
26 235(b) and ordering Respondents to provide Petitioner with a prompt custody redetermination
27 hearing under INA § 236(a) before an Immigration Judge with jurisdiction, at which the

1 Government bears the burden of justifying continued detention by clear and convincing
2 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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11 Counsel for Petitioner

12 Dated: February 2, 2026

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification because I am Petitioner’s attorney in this action. I have personally spoken with Petitioner regarding the facts and events described in the Petition, and the factual allegations contained in the Petition are based on Petitioner’s own statements to me. Based on my communications with Petitioner, and to the best of my knowledge, information, and belief, the factual statements in the Petition accurately reflect Petitioner’s account of events. Executed on this 2nd day of February, 2026, in San Diego, California.

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