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

**AARON ALFREDO AGELVIS-CUBEROS**

Petitioner

v.

**Jeremy Casey**, Warden at Imperial Regional  
Detention Center;

**Kristi NOEM**, Secretary, U.S. Department of  
Homeland Security;

**Todd LYONS**, Acting Director, U.S.  
Immigration and Customs Enforcement;

**Patrick DIVVER**, Field Office Director, San  
Diego Field Office, U.S. Immigration and  
Customs Enforcement.

**Sirce OWEN**, Acting Director of the Executive  
Office for Immigration Review (EOIR),  
U.S. Department of Justice.

**Pamela BONDI**, Attorney General, U.S.  
Department of Justice.

Respondents

Case No.: '26CV0710 BJC DDL

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner Aaron Alfredo Agelvis-Cuberos respectfully submits this Petition for a Writ  
3 of Habeas Corpus challenging his continued detention by the Department of Homeland Security  
4 (“DHS”). Petitioner is a citizen of Venezuela who was arrested by U.S. Border Patrol on  
5 September 30, 2022, and released into the United States on parole, as reflected in DHS records,  
6 including the issuance of a Form I-94. Following his release, Petitioner lived in the United States  
7 at liberty for approximately three years.

8 2. Petitioner has filed an Application for Asylum and for Withholding of Removal (Form  
9 I-589), which remains pending. Petitioner has also filed an Application for Temporary Protected  
10 Status (Form I-821), which is pending. On October 15, 2025, long after DHS had executed  
11 parole and released Petitioner into the interior of the United States, Petitioner was taken into ICE  
12 custody.

13 3. Petitioner is currently detained based on DHS’s application of an interpretation of the  
14 Immigration and Nationality Act (“INA”), articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec.  
15 216 (BIA 2025), under which DHS has treated certain noncitizens—despite having been  
16 inspected, paroled, and released into the interior of the United States—as “applicants for  
17 admission” subject to detention under INA § 235(b)(2)(A) following a later interior  
18 apprehension. As applied here, that custody classification deprives Petitioner of eligibility for an  
19 individualized custody determination under INA § 236(a).

20 4. On December 8, 2025, an Immigration Judge sitting at the Imperial Immigration Court  
21 denied Petitioner’s request for bond, concluding that the court lacked jurisdiction pursuant to  
22 *Matter of Yajure-Hurtado* (*Exhibit 1*). As a result of that ruling, Petitioner remains detained  
23 without access to any individualized custody determination, notwithstanding his prior parole and  
24 release into the interior of the United States.

25 5. Petitioner does not challenge the initiation of removal proceedings or the merits of  
26 removability. Rather, this petition challenges the legal basis of his detention—specifically,  
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1 DHS's continued detention of Petitioner under INA § 235(b) after parole was executed and  
2 exhausted, and the resulting denial of access to a custody determination under INA § 236(a).

3 6. Because *Matter of Yajure-Hurtado* remains binding agency precedent and Petitioner  
4 has not received an individualized custody determination under INA § 236(a), judicial  
5 intervention is necessary. Petitioner therefore seeks a writ of habeas corpus declaring that his  
6 detention is governed by INA § 236(a) and ordering the Department of Homeland Security to  
7 provide a prompt, individualized custody redetermination hearing before a neutral decisionmaker  
8 with jurisdiction, consistent with the Immigration and Nationality Act and the Due Process  
9 Clause of the Fifth Amendment.

10 **JURISDICTION AND VENUE**

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

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

17 9. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section  
18 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence  
19 proceedings, adjudicate cases, or execute removal orders," not independent challenges to  
20 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts  
21 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the  
22 removal proceedings.

23 10. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is  
24 detained at the Imperial Regional Detention Center, which lies within the jurisdiction of this  
25 Court.

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1 **PARTIES**

2 11. Petitioner, Aaron Alfredo Agelvis-Cuberos, is a citizen of Venezuela detained at the  
3 Imperial Regional Detention Center in Calexico, California.

4 12. Respondent Jeremy Casey is the Warden at Imperial Regional Detention Center,  
5 located in the city of Calexico, California;

6 13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
7 Security (DHS).

8 14. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs  
9 Enforcement (ICE).

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

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

14 17. Respondent Pamela Bondi is the Attorney General of the United States and the head  
15 of the U.S. Department of Justice (DOJ).

16 18. All Respondents are named in their official capacities.

17 **LEGAL FRAMEWORK**

18 19. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
19 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
20 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
21 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
22 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
23 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
24 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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

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

21 22. For decades, individuals who entered without inspection, as well as other noncitizens  
22 physically present in the United States, and who were later arrested in the interior, were  
23 consistently treated as subject to § 1226(a)’s discretionary detention framework. This included  
24 individuals who could not lawfully be placed in expedited removal because they had been  
25 continuously present in the United States for more than two years, as required by § 1225(b)(1)  
26 (A)(iii)(II).

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

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

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

14 26. In January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not § 1225(b), governs  
15 custody for noncitizens apprehended in the interior. Through the Laken Riley Act of 2025,  
16 Congress amended § 1226(c) to add subparagraph (E), extending mandatory detention only to a  
17 narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–(7) and (ii) also meet  
18 specific criminal-conduct criteria. By creating this limited carve-out, Congress confirmed that §  
19 1226(a) remains the general detention framework for interior arrests, and that mandatory  
20 detention applies only to the narrow class defined in new § 1226(c)(E). If, as DHS and the BIA  
21 now contend, all such individuals were already subject to mandatory detention under § 1225(b)  
22 (2), Congress’s amendment would have been superfluous.

23 **FACTS**

24 27. Petitioner, Aaron Alfredo Agelvis-Cuberos, is a citizen of Venezuela who was  
25 arrested by U.S. Border Patrol on September 30, 2022, and released into the United States on  
26 parole, as reflected in DHS records, including the issuance of a Form I-94.

1 28. Following his release, Petitioner was placed in removal proceedings under INA § 240  
2 and released into the community.

3 29. After his release, Petitioner complied with all conditions imposed by the Department  
4 of Homeland Security (“DHS”), including appearing as required in his immigration proceedings  
5 and complying with DHS supervision. At no time prior to his re-detention did DHS allege that  
6 Petitioner had violated the terms of his release.

7 30. On October 15, 2025, approximately three years after his release into the United  
8 States on parole, Petitioner was taken into ICE custody without any allegation that he had  
9 violated the terms of his release or failed to comply with immigration requirements.

10 31. Petitioner was thereafter transferred to the Imperial Regional Detention Center and is  
11 currently detained pending removal proceedings before the Imperial Immigration Court pursuant  
12 to a Notice to Appear dated November 5, 2025.

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

18 33. Following *Matter of Yajure-Hurtado*, as DHS applies that decision, Immigration  
19 Judges have asserted that they lack jurisdiction to conduct custody redetermination hearings for  
20 individuals whom DHS classifies as subject to detention under INA § 235.

21 34. On December 8, 2025, Immigration Judge Anne Kristina Perry, sitting at the Imperial  
22 Immigration Court, denied Petitioner’s request for a custody redetermination hearing. In the  
23 written custody order, Judge Perry concluded that Petitioner was an “applicant for admission”  
24 subject to detention under *Matter of Yajure-Hurtado* and that Immigration Judge jurisdiction to  
25 conduct a bond hearing was therefore foreclosed (*Exhibit 1*).

26 35. On November 25, 2025, the United States District Court for the Central District of  
27 California granted class certification in *Lazaro Maldonado Bautista et al. v. Santacruz et al.*, No.

1 5:25-cv-01873 (C.D. Cal.), certifying a class of noncitizens detained by DHS who are classified  
2 as subject to detention without bond based on DHS's application of INA § 235(b) and related  
3 agency policy.

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

9 37. Prior to the entry of final judgment in *Maldonado-Bautista*, DHS maintained in other  
10 federal habeas proceedings that district court rulings rejecting detention under INA § 235(b)  
11 were interlocutory, non-final, and afforded no relief, and continued to rely on its interpretation of  
12 INA § 235(b) as the basis for ongoing detention.

13 38. Following the entry of final judgment in *Maldonado-Bautista*, DHS acknowledged  
14 the vacatur of its July 8, 2025 Interim Guidance, while expressly reserving the right to alter or  
15 supplement its position in the event of appellate relief or a change in policy. Notwithstanding  
16 those representations, Immigration Judges and attorneys from the Office of the Principal Legal  
17 Advisor ("OPLA") have continued to assert that bond jurisdiction is foreclosed under *Matter of*  
18 *Yajure-Hurtado*.

19 39. On January 13, 2026, the Chief Immigration Judge, Teresa L. Riley, issued  
20 nationwide guidance to Assistant Chief Immigration Judges instructing that *Maldonado-Bautista*  
21 is not a nationwide injunction and does not vacate, stay, or enjoin *Matter of Yajure-Hurtado*, and  
22 that *Matter of Yajure-Hurtado* therefore remains binding precedent on Immigration Judges and  
23 other agency adjudicators.

24 40. As a result of DHS's continued reliance on *Matter of Yajure-Hurtado* and the agency  
25 guidance described above, Immigration Judges within the Southern District of California have  
26 continued to deny custody redetermination hearings for noncitizens who were previously  
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1 released into the community and who fully complied with immigration supervision, including  
2 Petitioner.

3 41. Petitioner remains detained at the Imperial Regional Detention Center without having  
4 received an individualized custody hearing under INA § 236(a).

5 42. Absent relief from this Court, Petitioner faces continued and potentially prolonged  
6 immigration detention despite having been released into the community, having complied with  
7 all court and ICE requirements, and having been re-arrested solely based on DHS's retroactive  
8 reclassification of his custody status.

9 43. Without judicial intervention, Petitioner will remain subject to detention without any  
10 meaningful opportunity for an individualized custody determination, in violation of the  
11 Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

12 **CLAIM FOR RELIEF**

13 **COUNT 1**

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

15 44. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
16 paragraphs.

17 45. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
18 noncitizens residing in the United States who are subject to grounds of inadmissibility. That  
19 provision governs the inspection and admission process at the border and does not extend to  
20 individuals who, like Petitioner, were released from custody on parole, placed in removal  
21 proceedings under INA § 240, and permitted to reside in the community. Petitioner was arrested  
22 by U.S. Border Patrol in September 2022, released into the United States on parole, and lived at  
23 liberty for approximately three years before his re-detention in October 2025. He is therefore not  
24 lawfully detained under INA § 235(b). To the extent he remains in custody, detention must  
25 proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or  
26 conditional parole.

1 46. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully  
2 mandates his continued detention in violation of the INA. Section 235(b)(2) applies to  
3 “applicants for admission” in the context of the inspection and admission process—not to  
4 individuals who, like Petitioner, were paroled into the United States, released into the  
5 community, and later apprehended in the interior of the United States. See *Jennings v.*  
6 *Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,  
7 113 (2020). By treating Petitioner as an applicant for admission rather than as a noncitizen  
8 subject to detention under INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted  
9 contrary to the statutory text and structure of the INA.

10 **COUNT 2**

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

12 47. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
13 herein.

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

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

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- A) Assume jurisdiction over this matter;
- B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this District while these proceedings are pending;
- C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring Respondents to explain the legal basis for Petitioner’s continued detention;
- D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent Petitioner remains in custody, such detention must proceed under INA § 236(a).
- E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his continued detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.
- F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must justify his continued detention by clear and convincing evidence;
- G) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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

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Counsel for Petitioner

Dated: February 4, 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. I did not personally communicate directly with Petitioner prior to the filing of this Petition because Petitioner is detained approximately 115 miles from my office, making an in-person meeting impracticable prior to filing.

The factual allegations contained in this Petition are based on my review of official immigration records, including the Notice to Appear, the Form I-213, and the Immigration Judge’s written custody order denying bond, as well as information provided to me by Petitioner’s immigration counsel, with whom I communicated directly regarding Petitioner’s procedural history and custody posture.

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.

I declare under penalty of perjury that the foregoing is true and correct.

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