

1 Alejandro Monsalve  
2 CA SBN 324958  
3 Alex Monsalve Law Firm, PC  
4 240 Woodlawn Ave., Suite 9  
5 Chula Vista, CA 91910  
6 (619) 777-6796  
7 Counsel for Petitioner

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

11 **JOSE ALEJANDRO LAGOS ALBERTO**

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.: '26CV0742 CAB MMP

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner Jose Alejandro Lagos Alberto respectfully submits this Petition for a Writ of  
3 Habeas Corpus challenging his unlawful detention by the Department of Homeland Security  
4 (“DHS”). Petitioner is a national of Honduras who entered the United States as a minor on May  
5 12, 2018, and was subsequently granted parole on May 26, 2018, for a period of one year  
6 through May 25, 2019, pursuant to INA § 212(d)(5)(A), as reflected on DHS’s Form I-94  
7 (*Exhibit 1*). DHS executed that parole and released Petitioner into the interior of the United  
8 States. Prior to the execution of parole, on May 21, 2018, DHS issued a Notice to Appear  
9 classifying Petitioner as an arriving alien, which did not specify the date or time of any hearing  
10 (*Exhibit 2*).

11 2. Petitioner’s parole expired by its own terms on May 25, 2019. DHS did not issue any  
12 notice purporting to terminate parole, did not subject Petitioner to any renewed inspection or  
13 admission process, and did not re-detain him at that time. Instead, Petitioner remained at liberty  
14 in the United States for more than six years following the expiration of parole, without any  
15 subsequent inspection, border encounter, or interruption of liberty.

16 3. On September 8, 2025, DHS arrested Petitioner in the interior of the United States and  
17 transferred him into immigration custody. Petitioner is currently detained at the Otay Mesa  
18 Detention Center.

19 4. DHS now treats Petitioner as subject to detention under INA § 235(b). As applied here,  
20 that custody classification deprives Petitioner of access to a custody redetermination hearing  
21 before an Immigration Judge and rests on the legally erroneous premise that inspection-stage  
22 detention authority may be revived years after parole has been executed, expired by its own  
23 terms, and followed by long-term liberty in the interior of the United States.

24 5. This petition does not challenge the initiation of removal proceedings, the arriving-  
25 alien designation for purposes of removability, or the merits of the charges. It challenges only the  
26 legal basis of Petitioner’s current detention. Because DHS’s authority under INA § 235(b) was  
27 exhausted when DHS granted parole and released Petitioner in 2018, any present detention must

1 proceed, if at all, under INA § 236(a), which governs detention of noncitizens present in the  
2 United States pending removal proceedings and provides for discretionary detention subject to an  
3 individualized custody determination.

4 6. DHS’s custody classification is legally erroneous. Neither *Matter of M-S-* nor *Matter*  
5 *of Yajure-Hurtado* authorizes DHS to impose INA § 235(b) detention after DHS has inspected  
6 and paroled an arriving alien into the United States, executed that parole, and allowed the  
7 individual to remain at liberty in the interior for years following parole expiration. Once parole  
8 was executed and inspection concluded, INA § 235(b) detention authority was exhausted as a  
9 matter of law.

10 7. By treating Petitioner as outside the scope of INA § 236(a)—despite DHS’s execution  
11 of parole as reflected on Form I-94 and its decision to release Petitioner into the interior of the  
12 United States—Respondents have deprived Petitioner of the statutory and constitutional  
13 protections afforded by that provision, including access to an individualized custody  
14 determination before an Immigration Judge. As a result, Petitioner remains detained without the  
15 process required by law.

16 **JURISDICTION AND VENUE**

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

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

24 10. 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 custody  
27 classification or unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal

1 orders in the courts of appeals, but does not foreclose habeas review of detention claims that are  
2 collateral to and independent of removal proceedings. Moreover, Petitioner has no available  
3 administrative mechanism to challenge DHS's custody classification, because Immigration  
4 Judges lack jurisdiction to conduct custody redetermination hearings where DHS's custody  
5 classification and charging posture are treated as placing a noncitizen outside the scope of INA §  
6 236(a).

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

9 **PARTIES**

10 12. Petitioner, Jose Alejandro Lagos Alberto, is a national of Honduras who is currently  
11 detained at the Otay Mesa Detention Center in San Diego, California.

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

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

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

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

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

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

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

25 **LEGAL FRAMEWORK**

26 20. The Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1101 et seq.,  
27 provides multiple detention authorities. For decades, courts, Congress, and agencies have

1 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
2 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
3 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
4 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
5 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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

17 22. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
18 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
19 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
20 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
21 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
22 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
23 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
24 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
25 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
26 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
27  
28

1 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
2 Rep. No. 104-469, pt. 1, at 229 (1996).

3 23. Historically, custody following a noncitizen’s entry into the United States has been  
4 governed by INA § 236(a), not INA § 235(b), once the initial inspection and admission process  
5 has concluded. For decades, individuals who were physically present in the United States and  
6 later apprehended in the interior—regardless of the manner of entry—were treated as subject to §  
7 236(a)’s discretionary detention framework pending removal proceedings. This longstanding  
8 understanding reflects the statutory distinction between entry-related inspection under § 235 and  
9 post-entry custody during removal proceedings under § 236.

10 **FACTS**

11 24. Petitioner Jose Alejandro Lagos Alberto is a national of Honduras and is currently  
12 detained at the Otay Mesa Detention Center in San Diego, California.

13 25. Petitioner entered the United States as a minor on May 12, 2018. On May 26, 2018,  
14 DHS granted Petitioner parole pursuant to INA § 212(d)(5)(A) for a period of one year, through  
15 May 25, 2019, as reflected on DHS’s Form I-94 (*Exhibit 1*). DHS executed that parole and  
16 released Petitioner into the interior of the United States.

17 26. DHS issued a Notice to Appear dated May 21, 2018, which did not specify the date or  
18 time of any hearing (*Exhibit 2*).

19 27. Petitioner’s parole expired by its own terms on May 25, 2019. DHS did not issue any  
20 notice terminating parole pursuant to 8 C.F.R. § 212.5(e), did not re-detain Petitioner, and did  
21 not subject him to any renewed inspection or admission process at or after that time. Instead,  
22 Petitioner remained at liberty in the United States for more than six years following the  
23 expiration of parole, without any subsequent inspection, re-detention, or border encounter.

24 28. On September 8, 2025, DHS arrested Petitioner in the interior of the United States  
25 and transferred him into immigration custody.

26 29. Following his arrest, Petitioner was transferred to the Otay Mesa Detention Center,  
27 where he remains detained.

1 30. DHS now treats Petitioner as subject to detention under INA § 235(b), thereby  
2 denying Petitioner access to a custody redetermination hearing before an Immigration Judge.

3 31. Petitioner remains detained without access to any mechanism through which he may  
4 obtain an individualized custody determination, despite having been paroled into the United  
5 States, released into the interior, and allowed to reside at liberty for years following the  
6 expiration of parole.

7 32. Absent relief from this Court, Petitioner will continue to be detained without any  
8 meaningful opportunity to challenge the legal basis or necessity of his detention.

9 **CLAIM FOR RELIEF**

10 **COUNT 1**

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

12 33. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
13 paragraphs.

14 34. The mandatory detention provisions of INA § 235(b), 8 U.S.C. § 1225(b), do not  
15 apply to Petitioner. Section 235 governs initial, entry-related inspection and custody of  
16 individuals seeking admission at or near the border. In this case, however, DHS inspected and  
17 paroled Petitioner into the United States, issued a Form I-94 documenting parole, and executed  
18 that parole by releasing Petitioner into the interior of the United States. Once DHS completed the  
19 inspection process and executed parole, the entry-stage detention framework of INA § 235 was  
20 exhausted and no longer provided lawful detention authority.

21 35. Neither the expiration of parole by its own terms nor the issuance of subsequent  
22 charging documents can revive an inspection or admission process that has already concluded.  
23 Where, as here, DHS arrests a noncitizen in the interior of the United States after parole has been  
24 executed and long-term liberty has followed, any detention must proceed, if at all, under INA §  
25 236(a), 8 U.S.C. § 1226(a), which governs pre-final-order detention and authorizes release on  
26 bond or conditional parole.

1 36. By detaining Petitioner pursuant to a custody posture that treats him as subject to INA  
2 § 235(b)—rather than under the detention framework mandated by INA § 236(a)—DHS has  
3 acted contrary to the statutory text and structure of the INA and has unlawfully denied Petitioner  
4 access to the custody framework mandated by Congress.

5 **COUNT 2**

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

7 37. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
8 herein.

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

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

13 40. Civil immigration detention is constitutionally permissible only when it bears a  
14 reasonable relation to a legitimate governmental objective and is accompanied by  
15 constitutionally adequate procedural safeguards, including access to a prompt, individualized  
16 custody determination before a neutral decisionmaker.

17 41. By detaining Petitioner under a custody posture that forecloses any access to a  
18 constitutionally adequate custody determination—one in which the Government must justify  
19 continued detention—and by denying Petitioner any meaningful opportunity to challenge the  
20 basis for his confinement, Respondents have deprived Petitioner of liberty without due process of  
21 law, in violation of the Fifth Amendment.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner respectfully requests that this Court:

- 24 A) Assume jurisdiction over this matter;  
25 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
26 District while these proceedings are pending;

1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring  
2 Respondents to explain the legal basis for Petitioner’s continued detention;

3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that DHS lacks  
4 authority to detain Petitioner under that provision following his inspection, parole, and release  
5 into the interior of the United States;

6 E) Declare that, to the extent Petitioner remains in custody, such detention must proceed under  
7 INA § 236(a), and that DHS’s continued detention of Petitioner without access to an  
8 individualized custody determination violates the Immigration and Nationality Act and the Due  
9 Process Clause of the Fifth Amendment;

10 F) Issue a writ of habeas corpus ordering Respondents to classify Petitioner’s detention under  
11 INA § 236(a) and to provide Petitioner with a prompt, constitutionally adequate custody  
12 redetermination hearing before an Immigration Judge with jurisdiction, at which the Government  
13 bears the burden of justifying continued detention;

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

15 Respectfully submitted,

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

17 Alex Monsalve Law Firm, PC

18 240 Woodlawn Ave, Suite 9

19 Chula Vista, CA 91910

20 Phone: (619) 777-6796

21 Counsel for Petitioner

22 Dated: February 6, 2026

**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 6<sup>th</sup> day of February, 2026, in San Diego, California.

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

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner