

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

'26CV1384 JLS DEB
BERNABE ZAMORA TORRES,

Agency No. 

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, et. al.,

Respondents.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
8 **SAN DIEGO DIVISION**

9 BERNABE ZAMORA TORRES,)
10)
11 Petitioner,)
12)
13 v.)
14)
15 Kristi NOEM, in her official capacity as Secretary)
16 of Homeland Security, Christopher J. LAROSE,)
17 in his official capacity as Warden of Otay Mesa)
18 Detention Center, Gregory J. ARCHAMBEAULT,)
19 in his official capacity as San Diego Field Office)
20 Director, ICE Enforcement Removal Operations;)
21 Todd LYONS, in his official capacity as Acting Director)
22 of ICE; and Pamela BONDI, U.S.)
23 Attorney General; IMMIGRATION AND)
24 CUSTOMS ENFORCEMENT; DEPARTMENT OF)
25 HOMELAND SECURITY,)
26 Respondents.)

'26CV1384 JLS DEB

**PETITION FOR WRIT
OF HABEAS CORPUS**



27 **I. INTRODUCTION**

28 1. Petitioner BERNABE ZAMORA TORRES, (“Petitioner”) is a 51-
year-old Mexican national who last entered the United States in 2008.

2. On August 19, 2025, Petitioner was detained by Respondents at the
Otay Mesa Detention Center after he appeared for an initial interview in

1 connection to his application to permanently adjust status. No NTA has been
2 issued in Petitioner’s case.

3 3. Petitioner has not requested a custody redetermination as the impact
4 of the Board of Immigration Appeals (“BIA”) decision in Matter of Yajure
5 Hurtado, 28 I&N Dec. 216 (BIA 2025) and the Central District of California’s
6 decision in Lazaro Maldonado Bautista, et al v. Ernesto Santacruz Jr, et al., 5:cv-
7 01873 (C.D. Cal. Nov. 20, 2025) has meant that all requests for custody
8 redetermination under Petitioner’s circumstances have been dismissed for lack
9 of jurisdiction.
10

11
12 4. Petitioner therefore seeks a writ of habeas corpus directing his
13 immediate release.

14 II. VENUE AND JURISDICTION

15 5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
16 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution
17 (Suspension Clause), as Petitioner is presently in custody under the authority
18 of the United States and challenging his detention as in violation of the
19 Constitution, laws, or treaties of the United States.
20

21 6. The federal district courts have jurisdiction under Section 2241 to
22 hear habeas claims by individuals challenging the lawfulness of their detention
23 by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).
24

25 7. Venue is proper because Petitioner is detained in the Otay Mesa
26 Detention Center, within the San Diego Division, and Respondent LaRose is his
27

1 immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).

2 **III. PARTIES**

3 8. Petitioner is a 51-year-old Mexican national who resides in San Diego,
4 California. He is currently detained by Respondents at the Otay Mesa
5 Detention Center in San Diego, California, pending removal proceedings.
6

7 9. Respondent Christopher J. LaRose is the Warden of Otay Mesa
8 Detention Center. Respondent La Rose is responsible for the operation of the
9 Detention Center where Petitioner is detained. As such, Respondent LaRose
10 has immediate physical custody of the Petitioner. He is being sued in his
11 official capacity.
12

13 10. Respondent Gregory J. Archambeault is the San Diego Field Office
14 Director (“FOD”) for ICE Enforcement and Removal Operations. Respondent
15 Archambeault is responsible for the oversight of ICE operations at the Otay
16 Mesa Detention Center. Respondent Archambeault is being sued in his official
17 capacity.
18

19 11. Respondent Todd Lyons is the Acting Director of ICE. Respondent
20 Lyons is responsible for the administration of ICE and the implementation and
21 enforcement of the immigration laws, including immigrant detention. As such,
22 Respondent Lyons is a legal custodian of Petitioner and is being sued in his
23 official capacity.
24

25 12. Respondent Kristi Noem is the Secretary of the Department of
26 Homeland Security (“DHS”). As Secretary of DHS, Secretary Noem is
27

1 responsible for the general administration and enforcement of the immigration
2 laws of the United States. Respondent Secretary Noem is being sued in her
3 official capacity.

4 IV. EXHAUSTION OF REMEDIES

5
6 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;
7 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not
8 jurisdictionally required. Moreover, exhaustion should not be required here
9 because any attempt to exhaust would be futile, as BIA appeals routinely take
10 more than six months to reach a decision.

11
12 14. Additionally, further agency steps will be futile. Recently, the BIA
13 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,
14 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals
15 similarly situated to Petitioner ineligible for release on bond.

16
17 15. In Petitioner's case, any request for custody redetermination will be
18 dismissed by the Immigration Court for lack of jurisdiction and any appeal to
19 the BIA will be dismissed. *Matter of Yajure Hurtado* and *Lazaro Maldonado*
20 *Bautista, et al v. Ernesto Santacruz Jr, et al.*, 5:cv-01873 (C.D. Cal. Nov. 20,
21 2025) currently controls in Petitioner's case and any attempt to request agency
22 evaluation of his detention will be futile.

23 24 25 V. STATEMENT OF FACTS

26 16. Petitioner is a Mexican national born on  He last
27

1 entered the United States in 2008.

2 17. On or about August 19, 2025, Petitioner was detained by
3 Respondents at the Otay Mesa Detention Center.

4 18. Petitioner has remained in Respondents' custody since that time.

5
6 19. Petitioner filed a Motion to Reopen with the Immigration Court on
7 July 2, 2025. This Motion was denied by the Immigration Judge on September
8 5, 2025. Petitioner timely appealed this denial with the BIA. The appeal remains
9 pending, and the EOIR records reflect no scheduled hearing dates.

10 20. Petitioner now seeks habeas relief because continuing his detention
11 exceeds statutory authority and violates the Fifth Amendment.
12

13
14 **VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT**

15 21. Habeas corpus relief extends to a person "in custody under or by color
16 of the authority of the United States" if the person can show he is "in custody
17 in violation of the Constitution or laws or treaties of the United States." 28
18 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542
19 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under
20 28 U.S.C. section 2241 if they concern the continuation or execution of
21 confinement).
22

23
24 22. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
25 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
26 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
27

1 in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553
2 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus
3 properly is invoked the judicial officer must have adequate authority to make
4 a determination in light of the relevant law and facts and to formulate and
5 issue appropriate orders for relief, including, if necessary, an order directing
6 the prisoner’s release.” *Id.* at 787.
7

8
9
10 **VII. CAUSES OF ACTION**

11 **COUNT ONE**

12 **8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER**

13 23. Petitioner incorporates paragraphs 1 through 22 as if fully set out
14 herein.

15 24. Recently, Respondents began arguing that those in situations similar
16 to Petitioner are detained pursuant to 8 U.S.C. § 1225(b)(2), which mandates
17 the detention of an “applicant for admission” throughout the entirety of
18 removal proceedings.

19 25. Respondents’ newly formulated definition of “applicant for
20 admission,” which would include any noncitizen who has not been formally
21 admitted regardless of years of residence in the United States, directly
22 contradicts both the plain text of the statute and controlling Ninth Circuit
23 precedent.
24

25 26. As the Ninth Circuit explained in interpreting the phrase “applicant
26 for admission” under § 1225(b)(1), “*an immigrant submits an ‘application for*
27
28

1 admission' at a distinct point in time," and stretching that phrase to apply
2 "potentially for years or decades ... would push the statutory text beyond its
3 breaking point." *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
4 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).

5
6 27. Because Petitioner has resided continuously in the United States
7 since 2008, his period as an "applicant for admission" has long since closed.

8 28. Numerous courts across the United States have considered this issue
9 subsequent to Respondents' new policy of treating the vast majority of
10 immigrants in their custody as being detained pursuant to 8 U.S.C. §
11 1225(b)(2) and the BIA's decision supporting this interpretation in *Matter of*
12 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).

13
14 29. This Court, joining the general consensus with other courts across
15 this country, has previously held those similarly situated to Petitioner are
16 being held under 8 U.S.C. § 1226(a) and therefore are not subject to mandatory
17 detention under 8 U.S.C. § 1225(b). *See e.g., Martinez Lopez v. Noem, et al.*, No:
18 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).
19
20

21
22 **COUNT TWO**
(PROCEDURAL DUE PROCESS)

23 30. Petitioner incorporates paragraphs 1 through 22 as if fully set out
24 herein.

25
26 31. The Fifth Amendment forbids deprivation of liberty without notice
27 and a meaningful opportunity to be heard before a neutral decision-maker. Due
28

1 process protects “all ‘persons’ within the United States, including [non-
2 citizens], whether their presence here is lawful, unlawful, temporary, or
3 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).

4 32. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
5 Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is
6 extreme considering the Petitioner is not subject to mandatory detention under
7 8 U.S.C. § 1226(c) and does not pose a danger to the community. Likewise, the
8 risk of erroneous deprivation of liberty is great due to the lack of a non-
9 independent adjudicator. *Marcello v. Bonds*, 39 U.S. 302, 305-306 (1955). In
10 filing Form EOIR-43, ICE is acting as both the prosecutor as well as the
11 adjudicator.
12

13
14 33. While the government has discretion to detain individuals under 8
15 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
16 discretion is not “unlimited” and must comport with constitutional due process.
17
18 *See Zadvydas*, 533 U.S. at 698.

19 34. DHS has not issued an NTA to Petitioner. There is no outstanding
20 removal order for Petitioner, or any removal order that could be reinstated.
21 Petitioner was attempting to adjust his status and DHS arrested him when he
22 appeared for an interview subsequent to that application. Petitioner has been
23 held without any independent review for months since then.
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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 5 1) Assume jurisdiction over this matter;
- 6 2) Grant Petitioner a writ of habeas corpus directing the Respondents to
7 immediately release him from custody, under reasonable conditions of
8 supervision;
- 9 3) Order Respondents to refrain from transferring Petitioner out of the
10 jurisdiction of this court during the pendency of these proceedings and while
11 the Petitioner remains in Respondents' custody;
- 12 4) Order Respondents to file a response within 3 business days of the filing of
13 this petition;
- 14 5) Award attorneys' fees to Petitioner; and
- 15 6) Grant any other and further relief which this Court deems just and proper.

16
17 I affirm, under penalty of perjury, that the foregoing is true and correct.

18
19 Respectfully submitted this 4th day of March, 2026.

20
21 /s/ Murray D. Hilts
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25 CA Bar # 2169690
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