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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GERARDO PINEDA-MENDEZ

Petitioner

v.

Christopher LAROSE, Senior Warden, Otay Mesa 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.: **'26CV1584 GPC AHG**

Agency File No: [redacted]

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

INTRODUCTION

1. Petitioner Gerardo Pineda-Mendez respectfully submits this Petition for a Writ of Habeas Corpus challenging his continued detention by the Department of Homeland Security ("DHS"). Petitioner is a Mexican national who entered the United States without inspection on or about February 12, 2022. He was arrested in the interior of the United States in National City, California, on February 17, 2026, long after his entry, and is currently detained at the Otay Mesa Detention Center.

2. Petitioner is detained based on the application of an interpretation of the Immigration and Nationality Act ("INA") articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), under which DHS and EOIR have treated certain noncitizens apprehended in the interior of the United States long after entry as ineligible for bond and effectively subject to detention under INA §235(b)(2)(A) rather than INA §236(a).

3. As applied in Petitioner's case, that interpretation has resulted in his continued detention without access to an individualized custody determination under INA §236(a), notwithstanding his apprehension in the interior of the United States nearly four years after his entry.

4. Numerous federal courts have rejected DHS's reliance on INA §235(b) to detain individuals apprehended in the interior of the United States long after entry and have concluded that such custody, if lawful at all, must proceed under INA §236(a), which provides for eligibility for an individualized bond hearing. These decisions reflect a consistent interpretation of the statutory framework governing detention following interior arrests.

5. Petitioner remains detained without any meaningful opportunity to seek release through an individualized bond hearing under INA §236(a). He does not challenge the initiation of removal proceedings or the merits of removability. Rather, this petition challenges the legal basis of his continued detention—specifically, the effective classification of his custody under INA §235(b) rather than the detention framework mandated by INA §236(a).

6. Because *Matter of Yajure-Hurtado* has been relied upon by DHS and immigration courts to treat individuals in Petitioner's circumstances as ineligible for bond, any attempt to obtain a custody redetermination before the Immigration Court would be futile. Judicial intervention is therefore necessary. Petitioner respectfully seeks a writ of habeas corpus ordering his release, or, in the alternative, an order directing Respondents to provide a prompt and constitutionally adequate bond hearing pursuant to INA §236(a) before an Immigration Judge with jurisdiction, at which the Government bears the burden of justifying continued detention by clear and convincing evidence.

JURISDICTION AND VENUE

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

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

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

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

PARTIES

11. Petitioner, Gerardo Pineda-Mendez, is a citizen and national of Mexico currently detained at the Otay Mesa Detention Center in San Diego, California.

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

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

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

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

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

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

18. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

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

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

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

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

22. For decades, individuals who entered without inspection but resided in the United States and were later arrested in the interior were consistently treated as subject to § 1226(a)'s discretionary detention framework.

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

24. On July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE"), in coordination with the Department of Justice, issued Interim Guidance Regarding Detention

Authority for Applicants for Admission. The guidance asserted that noncitizens who entered without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of when or where they were apprehended, including individuals who had resided in the United States for many years.

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

26. The legality of this interpretation has since been the subject of ongoing federal litigation. In *Maldonado-Bautista v. Santacruz*, the United States District Court for the Central District of California issued a declaratory judgment vacating DHS's July 8, 2025 interim guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

27. The district court subsequently granted a motion to enforce that judgment and vacated the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, concluding that the agency could not rely on that decision to continue applying the same detention interpretation previously rejected by the court.

28. The government appealed those rulings to the United States Court of Appeals for the Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-1044 (9th Cir.). On March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution of the government's emergency motion for a stay pending appeal. The court temporarily stayed the district court's December 18, 2025 judgment insofar as it extended beyond the Central District of California, and also temporarily stayed the district court's February 18, 2026 enforcement order vacating *Matter of Yajure-Hurtado*. The appeal remains pending.

29. As a result, immigration courts within this circuit have continued to treat *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), as binding precedent when determining custody jurisdiction. In practice, noncitizens apprehended in the interior of the United States long after entry continue to be denied bond hearings based on the assertion that detention is governed by INA § 235 rather than INA § 236(a).

FACTS

30. Petitioner Gerardo Pineda-Mendez is a citizen and national of Mexico who entered the United States without inspection on or about February 12, 2022, and resided in the United States continuously until his arrest by immigration authorities in 2026.

31. During the years following his entry, Petitioner lived in the interior of the United States and established ties within the community.

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

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

34. On November 25, 2025, the United States District Court for the Central District of California issued an order granting class certification in *Lazaro Maldonado Bautista et al. v. Santacruz* et al., No. 5:25-cv-01873 (C.D. Cal.). The court certified a class of noncitizens detained by DHS who are classified as subject to detention without bond based on DHS's application of INA § 235(b) and related agency policy.

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

36. Prior to the entry of final judgment in *Maldonado-Bautista*, Respondents expressly maintained—in other federal habeas proceedings challenging detention under INA § 235(b)—that district court rulings rejecting such detention were interlocutory, non-final, and afforded no

relief. See Respondents' Return to Habeas Petition at 2–4, *Perez Martinez v. LaRose*, No. 25-cv-3492-DMS-AHG (S.D. Cal. filed Dec. 15, 2025). DHS continued to rely on its interpretation of § 235(b) pending the entry of final judgment.

37. Following the entry of final judgment in *Maldonado-Bautista v. Santacruz,* Respondents in similar federal habeas proceedings acknowledged the vacatur of DHS's July 8, 2025 Interim Guidance, while expressly reserving the right to supplement or alter their position in the event of a stay of enforcement, appellate relief, or a change in DHS policy. See Respondents' Return to Petition for Writ of Habeas Corpus, *Cabrera-Ruiz v. LaRose* et al., No. 3:25-cv-03582-AGS-JLB (S.D. Cal. filed Dec. 23, 2025).

38. Notwithstanding those representations, custody redetermination hearings continue to be denied in Immigration Court based on assertions that jurisdiction is foreclosed under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In practice, attorneys from the Office of the Principal Legal Advisor (OPLA) and some Immigration Judges sitting at the Otay Mesa Immigration Court have continued to assert that the Immigration Court lacks bond jurisdiction in such cases. As a result, noncitizens remain subject to detention without access to a bond hearing absent intervention by this Court.

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

40. On February 18, 2026, the district court in *Maldonado-Bautista v. Santacruz* granted petitioners' motion to enforce the judgment and vacated *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026).

41. The government subsequently appealed the district court's rulings in *Maldonado-Bautista v. Santacruz* to the United States Court of Appeals for the Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-1044 (9th Cir.).

42. On March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution of the government's emergency motion for a stay pending appeal. The court temporarily stayed the district court's December 18, 2025 declaratory judgment insofar as it extended beyond the Central District of California, and also temporarily stayed the district court's February 18, 2026 order vacating *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025).

43. On or about February 17, 2026, Petitioner was arrested by officers of U.S. Immigration and Customs Enforcement ("ICE") in National City, California, in the interior of the United States, several years after his entry and far from any border or port of entry.

44. ICE officers initially stopped the vehicle in which Petitioner was traveling while attempting to locate another individual. Petitioner was merely a passenger in the vehicle and was not the individual being sought by the officers. During the encounter, officers questioned Petitioner regarding his immigration status and subsequently placed him under arrest.

45. Following his arrest, Petitioner was taken into ICE custody and transferred to the Otay Mesa Detention Center in San Diego, California, where he remains detained.

46. As a result of DHS's classification of Petitioner as subject to detention under INA § 235 based on *Matter of Yajure-Hurtado*, Petitioner remains detained without having received an individualized custody determination under INA § 236(a), and no administrative mechanism exists to correct that jurisdictional determination.

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

47. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

48. Detention under INA § 235(b)(2) is limited to the initial inspection and admission process and does not authorize DHS to detain a noncitizen who has already entered the United States and is later apprehended in the interior while in removal proceedings. Nevertheless, by denying Petitioner access to bond and treating him as ineligible for an individualized custody determination, DHS and EOIR have effectively applied INA § 235(b)(2) to Petitioner's detention. Where, as here, DHS apprehended Petitioner in the interior of the United States long after his entry and placed him in removal proceedings under INA § 240, any detention authority must arise, if at all, under INA § 236(a) (8 U.S.C. § 1226(a)), which provides for discretionary detention subject to an individualized custody determination and bond eligibility. The functional application of INA § 235(b) to Petitioner's detention therefore exceeds statutory authority.

49. The effective application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully mandates his continued detention in violation of the INA. Section 235(b)(2) applies to "applicants for admission" encountered in the course of the inspection and admission process —not to individuals who, like Petitioner, entered the United States and were later arrested in the interior of the country long after entry. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020). By denying bond jurisdiction on the premise that INA § 236(a) does not apply, DHS and EOIR have treated Petitioner as an applicant for admission rather than as a noncitizen subject to detention under INA § 236(a) (8 U.S.C. § 1226(a)), acting contrary to the statutory text and structure of the INA.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

50. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein.

51. The Fifth Amendment provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

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

53. Civil immigration detention is constitutionally permissible only when it bears a reasonable relation to a legitimate governmental objective, such as ensuring appearance at proceedings or protecting the community. Detention that lacks adequate procedural safeguards or is imposed without an individualized determination violates due process. *Id.*

54. By continuing to detain Petitioner through the effective application of INA § 235(b) —and thereby denying him any meaningful opportunity to obtain an individualized custody determination before a neutral decisionmaker under INA § 236(a), at which the Government must justify continued detention—Respondents have violated Petitioner's rights under the Due Process Clause of the Fifth Amendment.

55. This constitutional violation is particularly clear because Petitioner's continued detention results solely from a legal misclassification that foreclosed Immigration Court bond jurisdiction, rather than from any individualized determination that detention is necessary to ensure appearance at proceedings or to protect the community. As a result of that jurisdictional determination, Petitioner remains detained without having received the individualized custody hearing that due process requires.

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 through the application or effective application of INA § 235(b), and that, to the extent Petitioner remains in custody, such detention must proceed pursuant to INA § 236(a) and its attendant procedural protections;

E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release through an individualized custody determination, 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 with jurisdiction, at which the Government must justify continued detention by clear and convincing evidence;

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

Respectfully submitted,

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Counsel for Petitioner

Dated: March 12, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I, counsel for Petitioner, verify that the factual allegations contained in this Petition are based on information provided to me by Petitioner through communications regarding his detention and immigration proceedings. To the best of my knowledge, information, and belief, the factual statements contained herein accurately reflect Petitioner's circumstances and the procedural posture of his case.

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Dated: March 12, 2026