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

11 **FELIPE HERIBERTO ARTICA CALIX**

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 CV1698 RBM DEB

Agency File No. 

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

1 **INTRODUCTION**

2 1. Petitioner Felipe Heriberto Artica Calix is a national of Honduras who entered the  
3 United States without inspection on or about May 20, 2022, and is currently in DHS custody at  
4 the Otay Mesa Detention Center.

5 2. Petitioner now faces unlawful detention because the Department of Homeland Security  
6 (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new  
7 interpretation of the Immigration and Nationality Act (INA), previously formalized in *Matter of*  
8 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which DHS has invoked to classify certain  
9 noncitizens who entered without inspection as “applicants for admission” subject to detention  
10 without bond under INA § 235(b)(2)(A).

11 3. Relying on *Matter of Yajure-Hurtado*, the Immigration Judge denied bond on February  
12 13, 2026, concluding that Petitioner is subject to mandatory detention and that the Court lacks  
13 custody jurisdiction, thereby depriving Petitioner of any opportunity for an individualized  
14 custody determination under INA § 236(a).

15 4. Petitioner was never encountered by immigration authorities at or near the border and  
16 was not subjected to inspection, expedited removal, or any form of initial processing under INA  
17 § 235 at the time of entry. Instead, he lived in the United States for over three years before being  
18 arrested by ICE in the interior of the country on January 29, 2026.

19 5. Multiple recent decisions within this District have rejected DHS’s reliance on INA §  
20 235(b) to detain noncitizens apprehended in the interior of the United States long after entry.

21 6. The government’s newly adopted interpretation bars noncitizens like Petitioner from  
22 seeking release on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8  
23 C.F.R. §§ 1003.19(a), 1236.1(d).

24 7. Because DHS has classified Petitioner as subject to detention under 8 U.S.C. §  
25 1225(b), the Immigration Court has been deemed to lack jurisdiction to conduct a custody  
26 redetermination hearing. See 8 C.F.R. § 1003.19(h)(2)(i)(B). As no administrative remedy exists  
27 to review this custody classification, exhaustion would be futile. Courts routinely excuse  
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1 exhaustion where administrative remedies are unavailable or futile. See *Singh v. Napolitano*, 649  
2 F.3d 899, 900 (9th Cir. 2011).

3 8. Petitioner’s continued detention on this basis violates the plain text of the INA,  
4 decades of longstanding agency practice, and the constitutional guarantees of Due Process.

5 9. This habeas petition challenges the government’s misclassification of Petitioner’s  
6 custody as subject to mandatory detention under INA § 235 (8 U.S.C. § 1225). INA § 235(b)  
7 governs front-end, border-processing detention authority and does not permit the government to  
8 invoke such authority for the first time years after entry against a noncitizen apprehended in the  
9 interior and placed in removal proceedings under INA § 240. Where DHS has taken a noncitizen  
10 into custody under these circumstances, detention—if lawful at all—must proceed under INA §  
11 236(a), which provides for eligibility for an individualized bond hearing before an Immigration  
12 Judge.

13 10. Petitioner remains detained without access to any individualized custody  
14 determination under INA § 236(a). He does not challenge the initiation of removal proceedings  
15 or the merits of removability. Rather, this petition challenges the legal basis of his detention—  
16 specifically DHS’s unlawful application of INA § 235(b) to deny bond eligibility where  
17 detention authority lies under INA § 236(a). Judicial intervention is therefore necessary.

18 11. On February 18, 2026, the United States District Court for the Central District of  
19 California granted petitioners’ motion to enforce judgment and vacated *Matter of Yajure-*  
20 *Hurtado*. See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb.  
21 18, 2026).

22 12. The government subsequently appealed that ruling to the United States Court of  
23 Appeals for the Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-  
24 1044 (9th Cir.).

25 13. On March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution  
26 of the government’s emergency motion for a stay pending appeal. That temporary stay does not  
27 resolve the merits of the statutory question presented here and does not authorize DHS to expand

1 INA § 235 beyond its statutory limits or to apply it retroactively to individuals apprehended in  
2 the interior years after entry.

3 14. Even assuming *arguendo* that *Matter of Yajure-Hurtado* remains operative during the  
4 pendency of appellate review, it does not authorize the detention of individuals like Petitioner,  
5 who were never subjected to § 235 processing at the time of entry and whose detention arises  
6 solely from a later interior arrest.

7 15. Petitioner respectfully seeks a writ of habeas corpus ordering his release, or, in the  
8 alternative, an order directing DHS to provide a prompt, individualized custody hearing before a  
9 neutral decisionmaker pursuant to INA § 236(a).

10 **JURISDICTION AND VENUE**

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

14 17. 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 18. 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 19. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is  
24 detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

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1 **PARTIES**

2 20. Petitioner, Felipe Heriberto Artica Calix, is a national of Honduras who entered the  
3 United States without inspection on or about May 20, 2022, and is currently in DHS custody at  
4 the Otay Mesa Detention Center.

5 21. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention  
6 Center.

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

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

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

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

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

17 27. All Respondents are named in their official capacities.

18 **LEGAL FRAMEWORK**

19 28. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
20 establishes multiple detention authorities that apply at different stages of the immigration  
21 process. For decades, courts, Congress, and the immigration agencies have consistently  
22 distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which  
23 governs inspection and detention of applicants for admission during initial processing at or near  
24 the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of  
25 noncitizens who have been released from initial processing and placed in removal proceedings.  
26 The Supreme Court examined the structure and interaction of these provisions in *Jennings v.*  
27 *Rodriguez*, 583 U.S. 281 (2018).

1           29. Section 1225 provides that, for purposes of initial inspection, “an alien who arrives in  
2 the United States or is present in this country but has not been admitted, is treated as an applicant  
3 for admission.” 8 U.S.C. § 1225(a)(1). As the Supreme Court explained in *Jennings*, decisions  
4 regarding admissibility “generally begin at the Nation’s borders and ports of entry,” where the  
5 government conducts initial inspection and screening to determine whether a noncitizen may be  
6 admitted. 583 U.S. at 287. Section 1225(b) governs this front-end inspection process, authorizing  
7 either expedited removal under § 1225(b)(1)—which includes a credible fear screening  
8 mechanism for individuals expressing an intent to seek asylum—or detention pending a decision  
9 on admission under § 1225(b)(2). *Id.* at 297; see also *Department of Homeland Security v.*  
10 *Thuraissigiam*, 591 U.S. 103 (2020).

11           30. By contrast, INA § 236(a) governs the detention of noncitizens who have been  
12 released from initial inspection and are “pending a decision on whether [they are] to be removed  
13 from the United States.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303. Unlike § 1225, which  
14 applies during the initial admission process, § 1226(a) authorizes discretionary detention or  
15 release on bond or conditional parole once removal proceedings have commenced, except as  
16 provided in § 1226(c), which applies only to a narrowly defined category of noncitizens with  
17 specified criminal or security-related convictions. *Jennings*, 583 U.S. at 303, 306. Longstanding  
18 regulations confirm that individuals detained under § 1226(a) are eligible for custody  
19 redetermination hearings before an Immigration Judge. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1),  
20 1236.1(d)(1). Congress has further described § 1226(a) as a “restatement” of prior interior-arrest  
21 detention authority under former INA § 242(a), confirming its application after release from  
22 initial inspection. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

23           31. For decades, noncitizens who entered without inspection, and were placed in removal  
24 proceedings under INA § 240 were consistently treated as subject to the discretionary detention  
25 framework of § 1226(a) if later taken into custody in the interior of the United States.

26           32. In 2025, DHS and the Board of Immigration Appeals began advancing a broader  
27 interpretation of INA § 1225(b), asserting in certain proceedings that noncitizens who entered  
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1 without inspection could be treated as subject to detention under § 1225(b)(2) regardless of  
2 release from custody, initiation of § 240 proceedings, or the passage of time. This interpretation  
3 departed from longstanding agency practice and expanded § 1225(b) beyond its traditional role  
4 as a front-end inspection and admission provision.

5 33. As part of this shift, DHS issued interim guidance in July 2025 asserting that  
6 noncitizens who entered without inspection could be treated as subject to mandatory detention  
7 under INA § 235(b)(2)(A), even if they had been released from custody and apprehended later in  
8 the interior of the United States. The Board of Immigration Appeals later adopted aspects of this  
9 interpretation in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). These authorities  
10 address the classification of custody in certain cases involving noncitizens apprehended after  
11 entry, but they do not purport to authorize the re-imposition of INA § 235(b) detention after DHS  
12 has released a noncitizen from custody, initiated removal proceedings under INA § 240, and  
13 allowed the individual to live at liberty for a prolonged period.

14 34. Separately, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General  
15 addressed detention authority for certain asylum seekers who remained in continuous custody  
16 during expedited removal proceedings. *Matter of M-S-* presumes uninterrupted detention under  
17 INA § 235(b) and does not address circumstances in which DHS has released a noncitizen from  
18 custody, initiated § 240 proceedings without a credible fear determination, and later seeks to re-  
19 classify detention authority following re-arrest in the interior of the United States.

20 35. The statutory framework governing immigration detention distinguishes between  
21 individuals encountered at or near the border during initial inspection and those apprehended  
22 later in the interior of the United States after entry. This distinction has long guided the  
23 application of detention authority under the INA and remains central to determining whether  
24 detention is governed by INA § 235 or INA § 236(a).

### 25 **FACTS**

26 36. Petitioner, Felipe Heriberto Artica Calix, is a national of Honduras who entered the  
27 United States without inspection on or about May 20, 2022.

1 37. Petitioner was not encountered by immigration authorities at or near the border at the  
2 time of entry and was not subjected to inspection, expedited removal, or any form of initial  
3 processing under INA § 235.

4 38. Following his entry, Petitioner resided continuously in the United States for over  
5 three years prior to his arrest.

6 39. On January 29, 2026, Petitioner was arrested by officers of U.S. Immigration and  
7 Customs Enforcement (“ICE”) in the interior of the United States.

8 40. Following his arrest, the Department of Homeland Security issued a Notice to Appear  
9 placing Petitioner in removal proceedings under INA § 240.

10 41. Petitioner was thereafter detained and ultimately transferred to the Otay Mesa  
11 Detention Center, where he remains in custody.

12 42. On February 13, 2026, Petitioner appeared before Immigration Judge Thanos  
13 Kanellakos of the Hyattsville Immigration Court for a custody redetermination hearing.

14 43. At that hearing, the Immigration Judge denied bond, concluding that Petitioner is  
15 subject to mandatory detention and that the Court lacks jurisdiction to conduct a custody  
16 redetermination pursuant to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). (*Exh. 1*).

17 44. As a result of that ruling, Petitioner has been categorically denied any opportunity to  
18 seek release through an individualized custody determination under INA § 236(a).

19 45. On September 5, 2025, the Board of Immigration Appeals issued its precedential  
20 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which DHS has interpreted  
21 to permit the detention of certain noncitizens who entered without inspection under INA § 235  
22 regardless of the passage of time since entry.

23 46. On November 25, 2025, the United States District Court for the Central District of  
24 California granted class certification in *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873  
25 (C.D. Cal.).

1 47. On December 18, 2025, that court vacated DHS’s July 8, 2025 Interim Guidance  
2 under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-  
3 01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

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

7 49. The government subsequently appealed that ruling to the United States Court of  
8 Appeals for the Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-  
9 1044 (9th Cir.).

10 50. On March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution  
11 of the government’s emergency motion for a stay pending appeal.

12 51. Notwithstanding these developments, Petitioner remains detained without having  
13 received an individualized custody hearing.

14 52. Absent relief from this Court, Petitioner faces continued and potentially prolonged  
15 detention despite having been apprehended in the interior of the United States more than three  
16 years after entry and despite the absence of any statutory basis for mandatory detention under  
17 INA § 235. Without judicial intervention, Petitioner will remain subject to detention without any  
18 meaningful opportunity for an individualized custody determination under INA § 236(a).

19 **CLAIM FOR RELIEF**

20 **COUNT 1**

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

22 53. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
23 paragraphs.

24 54. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
25 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does  
26 not extend to individuals who entered and remained in the country beyond the two-year  
27 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)

1 (authorizing expedited removal only for those “who have not been physically present in the  
2 United States continuously for the 2-year period immediately prior to the date of the  
3 determination of inadmissibility”). Petitioner has been physically present in the United States for  
4 more than three years and is therefore not lawfully detained under INA § 235(b); to the extent he  
5 remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which  
6 authorizes release on bond or conditional parole.

7 55. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully  
8 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to  
9 applicants for admission encountered at or near the border—not to individuals who, like  
10 Petitioner, entered the United States more than two years before his arrest and were later  
11 apprehended in the interior and were never subjected to inspection or processing under INA §  
12 235 at or near the border. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of*  
13 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an  
14 applicant for admission rather than a respondent subject to detention under INA § 236(a) (8  
15 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text and longstanding  
16 agency practice.

## 17 **COUNT 2**

### 18 **Violation of the Due Process Clause of the Fifth Amendment**

19 56. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
20 herein.

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

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

26 59. Civil immigration detention is constitutionally permissible only when reasonably  
27 related to legitimate governmental objectives, such as preventing flight risk or protecting the

1 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,  
2 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
3 punitive and violates the Due Process Clause.

4 60. By classifying Petitioner’s custody as governed by INA § 235(b) pursuant to the  
5 Board’s interpretation in *Matter of Yajure-Hurtado*—which categorically eliminates Immigration  
6 Judge jurisdiction to conduct custody redeterminations for individuals DHS classifies under §  
7 1225(b)—Respondents have deprived Petitioner of any meaningful opportunity for an  
8 individualized custody determination. This deprivation violates the liberty interests protected by  
9 INA § 236(a) and the Due Process Clause of the Fifth Amendment.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner respectfully requests that this Court:

- 12 A) Assume jurisdiction over this matter;
- 13 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
14 District while these proceedings are pending;
- 15 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring  
16 Respondents to explain the legal basis for Petitioner’s continued detention;
- 17 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent  
18 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 19 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his  
20 continued detention violates the Immigration and Nationality Act and the Due Process Clause of  
21 the Fifth Amendment.
- 22 F) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from  
23 custody, or, in the alternative, ordering Respondents to provide Petitioner with a prompt,  
24 constitutionally adequate bond hearing before an Immigration Judge pursuant to INA § 236(a), at  
25 which the government bears the burden of justifying continued detention by clear and convincing  
26 evidence that Petitioner poses a flight risk or a danger to the community.
- 27 G) Grant such other and further relief as the Court deems just and proper.

1 Respectfully submitted,

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

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Counsel for Petitioner

Dated: March 18, 2026

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am counsel for Petitioner in this action. The factual allegations contained in the Petition are based on my review of official immigration records, including the Notice to Appear and the Immigration Judge’s custody order, as well as my direct communications with Petitioner and his immigration counsel.

I have personally met with Petitioner at the Otay Mesa Detention Center and discussed the facts of his case with him. I have also reviewed the relevant immigration documents and communicated with Petitioner’s immigration attorney regarding his procedural history and detention.

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.

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

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Counsel for Petitioner

Dated: March 18, 2026