

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

---

DOLORES GARCIA-FRAGA,

'26CV1739 TJW DDL

Agency No. 

*Petitioner,*

v.

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

*Respondents.*

---

**PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

Murray D. Hilts  
Law Offices of Murray D. Hilts  
3020 Meade Ave.  
San Diego, CA 92116  
(619) 688-1174 (office)  
(619) 285-1977 (fax)  
murrayhilts@murrayhiltslaw.com

Attorney for Petitioner,

DOLORES GARCIA-FRAGA,

1 MURRAY D. HILTS, ESQ. (CA Bar No. 169690)  
LAW OFFICES OF MURRAY D. HILTS  
2 3020 MEADE AVE.  
SAN DIEGO, CA 92116  
3 TEL: (619) 688-1174  
4 FAX: (619) 285-1977  
*Attorney for Petitioner*

5  
6 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
7 **SAN DIEGO DIVISION**

8  
9 DOLORES GARCIA-FRAGA, )

'26CV1739 TJW DDL

10 Petitioner, )

11 v. )

**PETITION FOR WRIT  
OF HABEAS CORPUS**

12 Kristi NOEM, in her official capacity as Secretary )  
13 of Homeland Security, Christopher J. LAROSE, )  
in his official capacity as Warden of Otay Mesa )  
14 Detention Center, Gregory J. ARCHAMBEAULT, )  
15 in his official capacity as San Diego Field Office )  
Director, ICE Enforcement Removal Operations; )  
16 Todd LYONS, in his official capacity as Acting Director )  
of ICE; and Pamela BONDI, U.S. )  
17 Attorney General; IMMIGRATION AND )  
18 CUSTOMS ENFORCEMENT; DEPARTMENT OF )  
HOMELAND SECURITY, )

19 Respondents. )  
20 )

21 **I. INTRODUCTION**

22 1. Petitioner DOLORES GARCIA-FRAGA, (“Petitioner”) is a 38-year-  
23 old Mexican national who last entered the United States in 1999.  
24

25 2. On March 12, 2026, Petitioner was detained by Respondents at the  
26 Otay Mesa Detention Center.  
27



1 California. She is currently detained by Respondents at the Otay Mesa  
2 Detention Center in San Diego, California, pending removal proceedings.

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

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

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

21 12. Respondent Kristi Noem is the Secretary of the Department of  
22 Homeland Security (“DHS”). As Secretary of DHS, Secretary Noem is  
23 responsible for the general administration and enforcement of the immigration  
24 laws of the United States. Respondent Secretary Noem is being sued in her  
25 official capacity.  
26  
27  
28


1 **IV. EXHAUSTION OF REMEDIES**

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

7  
8 14. Additionally, further agency steps will be futile. Recently, the BIA  
9 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,  
10 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals  
11 similarly situated to Petitioner ineligible for release on bond.  
12

13 15. In Petitioner's case, any request for custody redetermination will be  
14 dismissed by the Immigration Court for lack of jurisdiction and any appeal to  
15 the BIA will be dismissed. *Matter of Yajure Hurtado* currently controls in  
16 Petitioner's case and any attempt to request agency evaluation of her detention  
17 will be futile.  
18

19  
20 **V. STATEMENT OF FACTS**

21 16. Petitioner is a Mexican national born  1988. Her last  
22 entered the United States in 1999.  
23

24 17. On or about March 12, 2026, Petitioner was detained by Respondents  
25 at the Otay Mesa Detention Center.

26 18. Petitioner has remained in Respondents' custody since that time.  
27  
28

1 19. Petitioner’s next master hearing is scheduled for March 23, 2026, at  
2 8:30 a.m. before Immigration Judge Eugene H. Robinson JR. at 7488 Calzada  
3 de la Fuente, San Diego, California.  
4

5 20. Petitioner now seeks habeas relief because continuing her detention  
6 exceeds statutory authority and violates the Fifth Amendment.  
7

## 8 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

9 21. Habeas corpus relief extends to a person “in custody under or by color  
10 of the authority of the United States” if the person can show he is “in custody  
11 in violation of the Constitution or laws or treaties of the United States.” 28  
12 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542  
13 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner’s claims are proper under  
14 28 U.S.C. section 2241 if they concern the continuation or execution of  
15 confinement).  
16  
17

18 22. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v.*  
19 *Delo*, 513 U.S. 298, 319 (1995), that “[t]he court shall ... dispose of [] as law  
20 and justice require,” 28 U.S.C. § 2243. “[T]he court’s role was most extensive  
21 in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553  
22 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus  
23 properly is invoked the judicial officer must have adequate authority to make  
24 a determination in light of the relevant law and facts and to formulate and  
25 issue appropriate orders for relief, including, if necessary, an order directing  
26  
27  
28

1 the prisoner's release." *Id.* at 787.

2  
3 **VII. CAUSES OF ACTION**

4 **COUNT ONE**

5 **8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER**

6 23. Petitioner incorporates paragraphs 1 through 22 as if fully set out  
7 herein.

8  
9 24. Recently, Respondents began arguing that those in situations similar  
10 to Petitioner are detained pursuant to 8 U.S.C. § 1225(b)(2), which mandates  
11 the detention of an "applicant for admission" throughout the entirety of  
12 removal proceedings.

13 25. Respondents' newly formulated definition of "applicant for  
14 admission," which would include any noncitizen who has not been formally  
15 admitted regardless of years of residence in the United States, directly  
16 contradicts both the plain text of the statute and controlling Ninth Circuit  
17 precedent.  
18

19 26. As the Ninth Circuit explained in interpreting the phrase "applicant  
20 for admission" under § 1225(b)(1), "*an immigrant submits an 'application for*  
21 *admission' at a distinct point in time,"* and stretching that phrase to apply  
22 "*potentially for years or decades ... would push the statutory text beyond its*  
23 *breaking point."* *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.  
24 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).  
25

26  
27 27. Because Petitioner has resided continuously in the United States  
28

1 since 1999, her period as an “applicant for admission” has long since closed.

2 28. Numerous courts across the United States have considered this issue  
3 subsequent to Respondents’ new policy of treating the vast majority of  
4 immigrants in their custody as being detained pursuant to 8 U.S.C. §  
5 1225(b)(2) and the BIA’s decision supporting this interpretation in *Matter of*  
6 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).  
7

8 29. This Court, joining the general consensus with other courts across  
9 this country, has previously held those similarly situated to Petitioner are  
10 being held under 8 U.S.C. § 1226(a) and therefore are not subject to mandatory  
11 detention under 8 U.S.C. § 1225(b). *See e.g., Martinez Lopez v. Noem, et al.*, No:  
12 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).  
13  
14

15 **COUNT TWO**  
16 **(PROCEDURAL DUE PROCESS)**

17 30. Petitioner incorporates paragraphs 1 through 22 as if fully set out  
18 herein.

19 31. The Fifth Amendment forbids deprivation of liberty without notice  
20 and a meaningful opportunity to be heard before a neutral decision-maker. Due  
21 process protects “all ‘persons’ within the United States, including [non-  
22 citizens], whether their presence here is lawful, unlawful, temporary, or  
23 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).  
24

25 32. Subsection 1003.19(i)(2) strips Petitioner of that protection by  
26 allowing the prosecuting agency—after losing at the bond hearing—to veto the  
27  
28

1 Immigration Judge’s order with a one-page notice that requires no showing of  
2 danger, flight risk, or likelihood of success on appeal.

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

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

19 **PRAYER FOR RELIEF**

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

- 21 1) Assume jurisdiction over this matter;  
22  
23 2) Grant Petitioner a writ of habeas corpus directing the Respondents to  
24 immediately release him from custody, under reasonable conditions of  
25 supervision;  
26 3) Order Respondents to refrain from transferring Petitioner out of the  
27  
28

1 jurisdiction of this court during the pendency of these proceedings and while  
2 the Petitioner remains in Respondents' custody;

3 4) Order Respondents to file a response within 3 business days of the filing of  
4 this petition;

5 5) Award attorneys' fees to Petitioner; and

6 6) Grant any other and further relief which this Court deems just and proper.

7 I affirm, under penalty of perjury, that the foregoing is true and correct.  
8

9  
10 Respectfully submitted this 19th day of March, 2026.

11  
12 /s/ Murray D. Hilts

13 The Law Offices of Murray D. Hilts

14 3020 Meade Ave.

15 San Diego, CA 92116

16 CA Bar # 2169690

17 *Attorney for Petitioner*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28