


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

'26CV2008 JLS DEB

JOSE ABELARDO TAMAQUIZA-BASTIDA,

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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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11 SAN DIEGO DIVISION
12

13 JOSE ABELARDO TAMAQUIZA-BASTIDA,)
14)
15 Petitioner,)

16 v.)

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

28 Respondents.)

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PETITION FOR WRIT
OF HABEAS CORPUS



I. INTRODUCTION

1. Petitioner JOSE ABELARDO TAMAQUIZA-BASTIDAS,
("Petitioner") is a 37-year-old Ecuadorian national who last entered the United
States on February 3, 2019.

2. On January 14, 2026, Petitioner was detained by Respondents at the

1 Buffalo Federal Detention Center and was later transferred to the Otay Mesa
2 Detention Center on February 24, 2026.

3 3. Petitioner previously sought a custody redetermination, which was
4 granted on March 13, 2019. For the most recent detention, Petitioner has not
5 requested a custody redetermination because the Board of Immigration Appeals'
6 decision in *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025), has resulted
7 in all such requests under Petitioner's circumstances being dismissed for lack of
8 jurisdiction.
9

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

13 II. VENUE AND JURISDICTION

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

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

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

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

2 **III. PARTIES**

3 8. Petitioner is a 37-year-old Ecuadorian national who resides in
4 Rochester, New York. He is currently detained by Respondents at the Otay
5 Mesa 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 hearing.

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 have
18 been dismissed by the Immigration Court for lack of jurisdiction and any appeal
19 to 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 V. STATEMENT OF FACTS

24
25 16. Petitioner is an Ecuadorian national born on  He
26 last entered the United States on February 3, 2019.

1 17. On January 14, 2026, Petitioner was detained by Respondents at the
2 Buffalo Federal Detention Center and was later transferred to the Otay Mesa
3 Detention Center on February 24, 2026.

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

5
6 19. Petitioner's next master hearing is scheduled for April 2, 2026, at
7 1:00 p.m. before Immigration Judge Mark Sameit at 7488 Calzada de la
8 Fuente, San Diego, California.

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

12 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

13
14 21. Habeas corpus relief extends to a person "in custody under or by color
15 of the authority of the United States" if the person can show he is "in custody
16 in violation of the Constitution or laws or treaties of the United States." 28
17 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542
18 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under
19 28 U.S.C. section 2241 if they concern the continuation or execution of
20 confinement).

21
22 22. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
23 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
24 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
25 in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553
26
27
28

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

7
8 **VII. CAUSES OF ACTION**

9 **COUNT ONE**

10 **8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER**

11 23. Petitioner incorporates paragraphs 1 through 22 as if fully set out
12 herein.

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

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

24 26. As the Ninth Circuit explained in interpreting the phrase “applicant
25 for admission” under § 1225(b)(1), “*an immigrant submits an ‘application for*
26 *admission’ at a distinct point in time,*” and stretching that phrase to apply
27

1 “potentially for years or decades ... would push the statutory text beyond its
2 breaking point.” *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
3 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).

4
5 27. Because Petitioner has resided continuously in the United States
6 since February 3, 2019, his period as an “applicant for admission” has long
7 since closed.

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

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

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

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
5 32. Subsection 1003.19(i)(2) strips Petitioner of that protection by
6 allowing the prosecuting agency—after losing at the bond hearing—to veto the
7 Immigration Judge’s order with a one-page notice that requires no showing of
8 danger, flight risk, or likelihood of success on appeal.

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

18
19 34. While the government has discretion to detain individuals under 8
20 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
21 discretion is not “unlimited” and must comport with constitutional due process.
22
23 *See Zadvydas*, 533 U.S. at 698.

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, Petitioner prays that this Court grant the following relief:
27

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

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

Respectfully submitted this 30th day of March, 2026.

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