

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **MARCELA ESTHER VICENTE-SAZO**

12 Petitioner

13 v.

14 **Christopher LAROSE**, Senior Warden, Otay

15 Mesa Detention Center;

16 **Markwayne MULLIN**, Secretary, U.S.

17 Department of

18 Homeland Security;

19 **Todd LYONS**, Acting Director, U.S.

20 Immigration and Customs Enforcement;

21 **Pamela BONDI**, Attorney General, U.S.

22 Department of Justice.

23 Respondents

Case No.: '26CV2029 BAS VET

Agency File No:



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

1 **INTRODUCTION**

2 1. Petitioner Marcela Esther Vicente-Sazo respectfully submits this Petition for a Writ of
3 Habeas Corpus challenging her unlawful detention by the Department of Homeland Security
4 (“DHS”). Petitioner is a native and citizen of Guatemala who entered the United States without
5 inspection on or about March 23, 2021. Shortly after her entry, Petitioner was encountered by
6 immigration authorities, processed, and released from custody. DHS thus elected to permit
7 Petitioner to reside in the United States rather than maintaining her in inspection-stage detention.
8 Petitioner thereafter lived at liberty in the United States for nearly five years.

9 2. During that period, Petitioner complied with the law and remained in the community
10 without incident. On or about January 26, 2026, Petitioner was arrested following a routine
11 traffic stop for driving without a license and was subsequently transferred to Immigration and
12 Customs Enforcement (“ICE”) custody. She is now detained despite having previously been
13 released by DHS and permitted to live in the United States for years.

14 3. Following Petitioner’s interior arrest in 2026—nearly five years after her release—
15 DHS has treated her as subject to detention under INA § 235(b), a classification that deprives her
16 of access to a custody redetermination hearing before an Immigration Judge. As a result,
17 Petitioner has been denied access to an individualized, constitutionally adequate bond hearing
18 before a neutral decisionmaker.

19 4. The detention authority set forth in INA § 235(b) governs the inspection and admission
20 process at or near the border. Once DHS elected to release Petitioner from custody in 2021 and
21 permitted her to reside at liberty in the United States for years, the statutory predicate for
22 continued detention under INA § 235 no longer existed. Any subsequent detention following an
23 interior arrest must therefore proceed, if at all, under INA § 236(a), which provides eligibility for
24 an individualized bond hearing consistent with due process.

25 5. On February 18, 2026, the United States District Court for the Central District of
26 California granted petitioners’ motion to enforce judgment and vacated *Matter of Yajure-*
27 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). See *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-

1 01873 (C.D. Cal. Feb. 18, 2026). The government subsequently appealed that ruling to the
2 United States Court of Appeals for the Ninth Circuit, and on March 6, 2026, the Ninth Circuit
3 issued an administrative stay pending resolution of the government’s emergency motion for a
4 stay pending appeal. That temporary stay does not resolve the merits of the statutory question
5 presented here and does not authorize DHS to expand INA § 235 beyond its statutory limits or to
6 apply it after a noncitizen has been released and permitted to reside in the United States.

7 Petitioner does not challenge the initiation of removal proceedings or the merits of removability.

8 6. This petition challenges only the legal basis of her detention—specifically, DHS’s
9 unlawful classification of her custody under INA § 235(b) rather than INA § 236(a). Because
10 Petitioner has been denied access to an individualized custody determination before a neutral
11 decisionmaker, judicial intervention is necessary. Petitioner therefore seeks a writ of habeas
12 corpus ordering her release or, in the alternative, an order directing DHS to provide a prompt,
13 constitutionally adequate bond hearing consistent with the Due Process Clause, at which the
14 Department of Homeland Security bears the burden of proving, by clear and convincing
15 evidence, that Petitioner’s continued detention is necessary.

16 **JURISDICTION AND VENUE**

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

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

23 9. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
24 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence
25 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to
26 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts
27

1 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
2 removal proceedings.

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

5 **PARTIES**

6 11. Petitioner, Marcela Esther Vicente-Sazo, is a native and citizen of Guatemala
7 currently detained at the Otay Mesa Detention Center in San Diego, California.

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

10 13. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
11 Security (DHS).

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

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

16 16. All Respondents are named in their official capacities.

17 **LEGAL FRAMEWORK**

18 17. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,
19 provides multiple detention authorities. For decades, courts, Congress, and agencies have
20 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §
21 1225), which governs applicants for admission encountered at or near the border, and INA § 236
22 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the
23 United States and placed in removal proceedings. The Supreme Court analyzed the interplay
24 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

25 18. Section 1225 provides that, for purposes of initial inspection at the border, “an alien
26 who arrives in the United States or is present in this country but has not been admitted, is treated
27 as an applicant for admission.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The
28

1 Court explained that decisions concerning who may enter or remain in the United States
2 “generally begin at the Nation’s borders and ports of entry, where the Government must
3 determine whether an alien seeking to enter the country is admissible.” *Id.* Section 1225(b)
4 governs this inspection and admission process, applying primarily to individuals encountered at
5 or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which
6 includes a credible-fear process for those expressing an intent to seek asylum—or to detention
7 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of Homeland Sec.*
8 *v. Thuraissigiam*, 591 U.S. 103 (2020).

9 19. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
10 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
11 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
12 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
13 conditional parole, except as provided in subsection (c), which applies only to a narrow category
14 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
15 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
16 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
17 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
18 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
19 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
20 Rep. No. 104-469, pt. 1, at 229 (1996).

21 20. For decades, individuals who entered without inspection but were released from
22 custody and later arrested in the interior of the United States were consistently treated as subject
23 to detention under INA § 236(a), not § 235(b). DHS’s decision to release an individual from
24 custody without conducting a credible fear interview reflects the termination of inspection-stage
25 detention, such that any later detention following an interior arrest must proceed under the
26 discretionary detention framework of § 236(a).

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

6 22. On July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”), in
7 coordination with the Department of Justice, issued Interim Guidance Regarding Detention
8 Authority for Applicants for Admission. The guidance asserted that noncitizens who entered
9 without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of
10 when or where they were apprehended, including individuals who had resided in the United
11 States for many years.

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

14 24. INA § 235(b) authorizes detention only in connection with the inspection and
15 admission process. That authority is event-based, not status-based. Once DHS elects to release a
16 noncitizen and forego continued inspection-stage detention, the statutory predicate for § 235
17 custody no longer exists. The statute does not authorize DHS to reassert that authority years later
18 following an interior arrest after a prolonged period of liberty.

19 **FACTS**

20 25. Petitioner, Marcela Esther Vicente-Sazo, is a native and citizen of Guatemala who
21 entered the United States without inspection on or about March 23, 2021.

22 26. Shortly after her entry, Petitioner was encountered by immigration authorities,
23 processed, and released from custody.

24 27. DHS did not place Petitioner in expedited removal proceedings under INA § 235(b)
25 (1), did not conduct a credible fear interview, and did not maintain her in inspection-stage
26 detention. Instead, DHS released Petitioner and permitted her to reside at liberty in the United
27 States.

1 28. Petitioner has resided continuously in the United States since her release in 2021.

2 29. On or about January 26, 2026, Petitioner was arrested in Florida following a traffic
3 stop for driving without a license and was thereafter transferred to the custody of U.S.
4 Immigration and Customs Enforcement (“ICE”).

5 30. Following her arrest, Petitioner was transferred to the Otay Mesa Detention Center in
6 San Diego, California, where she remains detained.

7 31. Petitioner requested a custody redetermination before an Immigration Judge.

8 32. On March 24, 2026, the Immigration Judge denied Petitioner’s request for a change
9 in custody status solely on the ground that the Court lacked jurisdiction. See *Exh. 1*.

10 33. As a result of DHS’s classification of her detention under INA § 235(b), Petitioner
11 has been denied access to an individualized, constitutionally adequate bond hearing before a
12 neutral decisionmaker.

13 34. On September 5, 2025, the Board of Immigration Appeals issued its precedential
14 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)
15 in a manner that affected custody determinations for certain noncitizens who entered without
16 inspection.

17 35. On November 25, 2025, the United States District Court for the Central District of
18 California certified a class in *Maldonado-Bautista v. Santaacruz*, No. 5:25-cv-01873 (C.D. Cal.),
19 involving challenges to detention under INA § 235(b).

20 36. On December 18, 2025, the Central District of California vacated DHS’s July 8, 2025
21 Interim Guidance under the Administrative Procedure Act.

22 37. On January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide
23 guidance stating that the *Maldonado-Bautista* decision did not vacate or enjoin *Matter of Yajure-*
24 *Hurtado*, and that *Yajure-Hurtado* remained binding precedent on Immigration Judges.

25 38. On February 18, 2026, the United States District Court for the Central District of
26 California expressly vacated *Matter of Yajure-Hurtado* under the Administrative Procedure Act,
27 setting aside that decision.

1 39. The government subsequently appealed that ruling to the United States Court of
2 Appeals for the Ninth Circuit, and on March 6, 2026, the Ninth Circuit issued an administrative
3 stay pending resolution of the government's emergency motion for a stay pending appeal.

4 40. Petitioner remains detained at the Otay Mesa Detention Center without having
5 received a constitutionally adequate bond hearing.

6 41. Absent relief from this Court, Petitioner will remain detained without a meaningful
7 opportunity to obtain a constitutionally adequate bond hearing at which the government bears the
8 burden of justifying continued detention.

9 **CLAIM FOR RELIEF**

10 **COUNT 1**

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

12 42. Petitioner incorporates by reference the allegations of fact set forth in the preceding
13 paragraphs.

14 43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
15 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does
16 not extend to individuals who have been released from custody following entry. Petitioner
17 entered the United States on or about March 23, 2021. Shortly thereafter, DHS encountered,
18 processed, and released her from custody, permitting her to reside at liberty in the United States.
19 At the time of her January 26, 2026 arrest in the interior of the United States, Petitioner had
20 resided continuously in the country for nearly five years. She is therefore not lawfully detained
21 under INA § 235(b); to the extent she remains in custody, detention must proceed under INA §
22 236(a), 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.

23 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
24 Petitioner for the additional and independent reason that DHS released her from custody shortly
25 after her entry rather than maintaining her in inspection-stage detention under INA § 235. DHS
26 permitted Petitioner to reside at liberty in the United States for nearly five years before re-
27 arresting her in the interior following a routine traffic stop. Under these circumstances, the

1 statutory predicate for detention under INA § 235 no longer exists. Any subsequent detention
2 following a later interior arrest must therefore proceed, if at all, under INA § 236(a), which
3 governs pre-final-order detention and provides eligibility for an individualized custody
4 redetermination hearing before an Immigration Judge.

5 **COUNT 2**

6 **Violation of the Due Process Clause of the Fifth Amendment**

7 45. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
8 herein.

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

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

14 48. Civil immigration detention is constitutionally permissible only when it bears a
15 reasonable relation to a legitimate governmental objective, such as ensuring appearance at
16 proceedings or protecting the community. Detention that lacks adequate procedural safeguards or
17 is imposed without an individualized determination violates due process. See *Zadvydas*, 533 U.S.
18 at 690.

19 49. Respondents have violated the Due Process Clause by continuing to detain Petitioner
20 under INA § 235(b) despite DHS’s prior release of Petitioner and her extended residence at
21 liberty in the United States, and by denying her access to a meaningful, individualized custody
22 determination before a neutral decisionmaker. The Immigration Judge denied bond solely for
23 lack of jurisdiction, thereby foreclosing any consideration of whether Petitioner poses a flight
24 risk or danger to the community. As a result, Petitioner remains detained without any
25 constitutionally adequate process to justify her continued confinement.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Petitioner respectfully requests that this Court:

- 1 A) Assume jurisdiction over this matter;
- 2 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
- 3 District while these proceedings are pending;
- 4 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
- 5 Respondents to explain the legal basis for Petitioner’s continued detention;
- 6 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, in light of
- 7 DHS’s release of Petitioner shortly after her entry in March 2021 and its election to proceed
- 8 outside of inspection-stage detention, any continued detention must proceed under INA § 236(a);
- 9 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, her
- 10 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
- 11 the Fifth Amendment;
- 12 F) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
- 13 custody, or, in the alternative, order a prompt, constitutionally adequate bond hearing before an
- 14 Immigration Judge pursuant to INA § 236(a), at which the Department of Homeland Security
- 15 bears the burden of proving, by clear and convincing evidence, that continued detention is
- 16 necessary to prevent flight or danger to the community;
- 17 G) Grant such other and further relief as the Court deems just and proper.

18 Respectfully submitted,

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

20 Alex Monsalve Law Firm, PC

21 240 Woodlawn Ave, Suite 9

22 Chula Vista, CA 91910

23 Phone: (619) 777-6796

24 Counsel for Petitioner

25 Email: info@alexmonsalvelawfirm.com

26 Dated: March 31, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in the Petition are based on information provided to me by Petitioner during a personal interview at the Otay Mesa Detention Center, as well as my review of relevant records, including the Immigration Judge’s bond decision and other available immigration documents.

Based on my review of that information, 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 her detention.

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

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner

Dated: March 31, 2026