

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

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

**DILCIA YOLANDA  
GUIFARRO-GUERRERO**

Case No.: 3:26-cv-02107-BAS-DEB

Petitioner

**PETITIONER'S TRAVERSE TO  
RESPONDENT'S RETURN**

v.

**CHRISTOPHER LAROSE**, Senior Warden,  
Otay Mesa Detention Center, *et al.*,

**I. Introduction**

Petitioner challenges the legality of her continued detention following an interior arrest more than two years after her entry into the United States, during which time she resided at liberty in full compliance with all requirements imposed by immigration authorities. The Petition presents a narrow threshold question: whether the Department of Homeland Security may detain an individual under INA § 235(b) years after entry, after releasing her from custody and permitting her to reside in the United States, or whether such detention must instead proceed, if at all, under INA § 236(a) with access to an individualized custody determination.

Petitioner entered the United States without inspection on or about October 11, 2023, and was encountered by immigration authorities shortly thereafter. DHS processed her and released her from custody on a Form I-220A (Order of Release on Recognizance), permitting her to reside

1 at liberty in the United States. Petitioner thereafter lived continuously at liberty for more than  
2 two years, complying with all reporting obligations, before being arrested by Immigration and  
3 Customs Enforcement on or about January 31, 2026 during a routine check-in in the interior of  
4 the country. She is now detained without having received any individualized custody  
5 determination.

6 Her continued detention rests solely on Respondents' assertion that INA § 235(b) applies,  
7 notwithstanding DHS's prior decision to release her from custody and permit her to reside at  
8 liberty in the United States for an extended period. This detention—without lawful statutory  
9 authority and without access to a bond hearing—constitutes an ongoing deprivation of her  
10 physical liberty.

11 Respondents' Return does not meaningfully defend the legality of that detention.  
12 Although Respondents assert that Petitioner is subject to mandatory detention under § 235(b),  
13 they expressly acknowledge that courts in this District have repeatedly rejected that position in  
14 materially indistinguishable circumstances, and further concede that the facts here are not  
15 materially distinguishable from those cases. On that basis, Respondents do not oppose the  
16 petition and defer to the Court on the appropriate relief.

17 That concession is dispositive. Courts in this District have consistently held that  
18 individuals who were released from custody and later apprehended in the interior of the United  
19 States after a prolonged period of liberty are subject to detention, if at all, under INA § 236(a),  
20 not § 235(b), and are therefore entitled to an individualized custody determination. Respondents  
21 identify no intervening authority that would justify a departure from that settled line of decisions.

22 Nor do Respondents provide any individualized justification for Petitioner's continued  
23 detention. They do not contend that Petitioner poses a danger to the community or a flight risk,  
24 and instead rely solely on a generalized statutory position while declining to oppose relief. In a  
25 habeas proceeding, such a response fails to satisfy Respondents' burden to affirmatively  
26 establish a lawful basis for detention.

1 Because Respondents fail to distinguish controlling precedent, fail to establish any lawful  
2 basis for detention under § 235(b), and effectively concede that this case is governed by prior  
3 decisions within this District, the Court should grant the Petition for Writ of Habeas Corpus and  
4 order Petitioner's immediate release.

5 **II. Respondents Fail to Identify Any Lawful Basis for Detention**

6 In a habeas proceeding challenging the legality of detention, Respondents bear the burden  
7 of establishing a valid statutory basis for custody. That burden requires more than conclusory  
8 assertions; it requires Respondents to demonstrate that Petitioner's detention is authorized under  
9 the governing statutory framework and supported by the facts of this case. Respondents fail to  
10 meet that burden.

11 The Return does not identify any lawful basis for detaining Petitioner under INA §  
12 235(b). Respondents state that it is their position that Petitioner is subject to mandatory detention  
13 under INA § 235(b), but provide no factual or legal explanation for how that provision applies to  
14 Petitioner. That statement does not address the dispositive facts that Petitioner was encountered  
15 by immigration authorities at or near the time of entry, was released from custody on a Form I-  
16 220A, and thereafter resided at liberty in the United States for more than two years before being  
17 re-arrested in the interior of the country.

18 Respondents do not explain how the inspection-stage detention framework of § 235(b)  
19 can apply to an individual who was released from custody and later apprehended in the interior  
20 of the United States after a prolonged period of liberty. Nor do they identify any statutory  
21 provision authorizing DHS to revive § 235(b) years after the conclusion of the inspection  
22 process. Instead, Respondents rely on a generalized legal position divorced from the factual  
23 posture of this case.

24 Indeed, Respondents expressly acknowledge that courts in this District have repeatedly  
25 rejected their position in materially indistinguishable circumstances, and further concede that the  
26 facts here are not materially distinguishable from those prior decisions. On that basis,  
27 Respondents do not oppose the petition and defer to the Court on the appropriate relief. That

1 concession confirms that Respondents cannot establish a lawful basis for detention under §  
2 235(b) in this case.

3 Nor do Respondents provide any individualized justification for Petitioner's continued  
4 detention. They do not contend that Petitioner poses a danger to the community or a flight risk,  
5 nor do they identify any changed circumstances that would justify her re-detention after a  
6 prolonged period of liberty. The absence of any individualized determination further underscores  
7 that Respondents have failed to meet their burden.

8 Because Respondents fail to identify any statutory authority that permits detention under  
9 § 235(b) in these circumstances, and fail to justify Petitioner's continued confinement through  
10 any individualized assessment, Respondents have not established a lawful basis for detention.  
11 The Court should grant the Petition for Writ of Habeas Corpus.

12 **III. Respondents' Reliance on Generalized Positions**  
13 **Does Not Satisfy Their Burden**

14 Respondents' Return does not meaningfully address the legality of Petitioner's detention  
15 in this case. Rather than articulating a developed argument grounded in the specific facts  
16 presented here, Respondents submit an abbreviated response that relies on generalized legal  
17 positions and references to arguments advanced in other cases. That approach is insufficient in a  
18 habeas proceeding.

19 A return must respond to the specific petition before the Court and demonstrate a lawful  
20 basis for detention based on the facts of the individual case. Habeas review requires an  
21 individualized determination of whether detention is authorized under the governing statutory  
22 framework, not a generalized assertion of legal positions developed elsewhere or preserved for  
23 appellate purposes.

24 Here, Respondents assert that Petitioner is subject to detention under INA § 235(b), but  
25 do not explain how that provision applies to an individual who was encountered by immigration  
26 authorities, released from custody on a Form I-220A, and later re-detained in the interior of the  
27 United States after a prolonged period of liberty. Instead, Respondents rely on a generalized

1 statutory position while expressly acknowledging that courts in this District have rejected that  
2 position in materially indistinguishable cases and declining to oppose relief.

3 Respondents' decision to submit an abbreviated response while conceding that  
4 controlling authority governs the outcome further underscores the absence of any lawful basis for  
5 detention. In a habeas proceeding, Respondents bear the burden of affirmatively establishing the  
6 legality of custody. That burden is not satisfied by preserving a generalized legal position for  
7 appeal while declining to defend the detention at issue in the present case.

8 By failing to provide a case-specific justification for custody—and instead relying on  
9 generalized assertions while conceding that controlling authority dictates the outcome—  
10 Respondents do not satisfy their burden to establish that Petitioner's detention is authorized by  
11 law.

12 Accordingly, the Return provides no basis to deny the writ.

13 **IV. Courts in This District Have Consistently Rejected Respondents' Position**  
14 **in Materially Indistinguishable Circumstances**

15 Courts in this District have consistently rejected the position advanced by Respondents in  
16 materially indistinguishable circumstances. In case after case, courts have held that noncitizens  
17 who are apprehended in the interior of the United States after a prolonged period of liberty are  
18 not subject to mandatory detention under INA § 235(b), but instead fall within the discretionary  
19 detention framework of INA § 236(a).

20 In *Penagos-Alvarez v. LaRose*, No. 3:26-cv-00865-RBM-MSB (S.D. Cal. Feb. 26, 2026),  
21 Respondents advanced the same position asserted here—that the petitioner was subject to  
22 mandatory detention under § 235(b) based solely on his presence in the United States without  
23 admission or parole. At the same time, Respondents acknowledged that courts in this District had  
24 repeatedly rejected that position and expressly conceded that the facts were materially  
25 indistinguishable from those prior decisions.

1 Rather than meaningfully defending the legality of detention, Respondents submitted an  
2 abbreviated response, relied on generalized arguments developed in other cases, and declined to  
3 substantively address the petitioner's claims. Despite asserting a general legal position,  
4 Respondents failed to provide any individualized justification for continued detention.

5 The court rejected that approach. It held that an individual who had been released into the  
6 United States and later re-detained in the interior is subject to detention, if at all, under INA §  
7 236(a), not § 235(b), and that detention without access to an individualized custody  
8 determination under those circumstances cannot be sustained. Based on that reasoning, the court  
9 granted the petition and ordered the petitioner's immediate release from custody.

10 This result is consistent with a growing and uniform line of decisions within this District  
11 reaching the same conclusion under materially indistinguishable facts. In multiple recent cases,  
12 courts have granted habeas relief and ordered immediate release—rather than merely directing a  
13 bond hearing—where Respondents failed to establish a lawful basis for detention under § 235(b)  
14 following a prolonged period of liberty in the United States.

15 The same posture is present here. Respondents assert a generalized legal position while  
16 expressly acknowledging that the facts are not materially distinguishable from prior cases in  
17 which courts have rejected that position, and they do not oppose the petition. Respondents  
18 identify no intervening authority that would justify a departure from this settled line of decisions.  
19 Where the government concedes that controlling authority governs and declines to defend the  
20 detention at issue, adherence to that authority is not merely appropriate—it is compelled.

21 Moreover, courts have granted habeas relief where Respondents fail to carry their burden  
22 to justify detention, regardless of the specific procedural posture. In a recent decision by this  
23 Court, the petition was granted and immediate release ordered where Respondents failed to  
24 establish a lawful basis for continued detention. See *Vargas Montiel v. Noem*, No. 3:26-cv-  
25 01347-TWR-VET (S.D. Cal. Mar. 2026). Although that case involved Respondents' failure to  
26 respond to an order to show cause, the governing principle is the same: where the government  
27 fails to justify detention, release is required.

1 In these circumstances, adherence to the consistent line of decisions within this District is  
2 warranted. Because Respondents' position has already been rejected in materially  
3 indistinguishable cases—and because Respondents themselves concede that this case is governed  
4 by those decisions—Petitioner's continued detention cannot be sustained.

5 **V. Petitioner's Detention Is Governed by INA § 236(a), Not INA § 235(b)**

6 The Immigration and Nationality Act distinguishes between inspection-stage detention  
7 under INA § 235 and post-entry detention under INA § 236(a). Section 235 governs the  
8 inspection and admission process for individuals encountered at or near the border, while §  
9 236(a) governs the arrest and detention of individuals who are already present in the United  
10 States and are later taken into custody pending removal proceedings.

11 This case falls squarely within § 236(a). Petitioner was encountered by immigration  
12 authorities at or near the time of entry and released from custody on a Form I-220A, permitting  
13 her to reside at liberty in the United States. She thereafter lived at liberty for more than two years  
14 before being re-arrested in the interior of the country. That posture—release followed by a  
15 prolonged period of liberty and a subsequent interior arrest—is governed by § 236(a), not §  
16 235(b).

17 Once DHS released Petitioner from custody, the inspection-stage detention framework of  
18 § 235 ceased to apply. Nothing in the statutory scheme permits DHS to revive § 235(b) years  
19 later after a prolonged period of liberty in the United States.

20 Respondents do not identify any statutory provision authorizing such a revival. Instead,  
21 they rely on a generalized assertion that Petitioner is subject to § 235(b), without addressing  
22 DHS's prior release decision or the extended period during which Petitioner resided at liberty in  
23 the United States.

24 Consistent with the uniform line of decisions in this District, detention in this posture  
25 must proceed, if at all, under § 236(a), which provides for discretionary detention and an  
26 individualized custody determination.

1 Because Petitioner was released from custody and later re-detained in the interior after a  
2 prolonged period of liberty, § 235(b) no longer applies. Respondents therefore lack any lawful  
3 basis to detain Petitioner under that provision.

4 Respondents identify no statutory mechanism by which a noncitizen, once released from  
5 § 235 custody, may be returned to § 235(b) mandatory detention years later.

6 **VI. Petitioner's Continued Detention Violates the Due Process Clause**

7 The Fifth Amendment prohibits the government from depriving any person of liberty  
8 without due process of law. Freedom from physical restraint lies at the core of the liberty interest  
9 protected by the Due Process Clause, and civil immigration detention must bear a reasonable  
10 relation to a legitimate governmental purpose and be authorized by law.

11 Here, Petitioner's detention is not merely procedurally deficient—it is unlawful. As set  
12 forth above, Respondents have failed to identify any lawful basis for detaining Petitioner under  
13 INA § 235(b), and their own Return acknowledges that this case is not materially distinguishable  
14 from others in which courts in this District have rejected that position, while declining to oppose  
15 relief. Because Petitioner's detention rests on an improper statutory framework and is  
16 unsupported by any individualized justification, it cannot be sustained.

17 Petitioner was released from custody shortly after her entry on a Form I-220A and  
18 permitted to reside at liberty in the United States. She thereafter lived at liberty for more than  
19 two years, complying with all requirements imposed by DHS, before being re-detained in the  
20 interior of the country. This period of liberty—affirmatively authorized by the government—  
21 gives rise to a substantial liberty interest that cannot be revoked absent constitutionally adequate  
22 procedures.

23 Respondents do not identify any changed circumstances or individualized justification  
24 warranting Petitioner's re-detention after a prolonged period of liberty. Nor do they provide any  
25 opportunity for Petitioner to challenge her continued confinement before a neutral  
26 decisionmaker. Instead, Respondents rely solely on an incorrect statutory classification that has  
27 been repeatedly rejected by courts in this District, while declining to oppose relief in this case.

1 Detention based solely on an improper statutory framework, without lawful authority and  
2 without access to a meaningful process, constitutes an arbitrary deprivation of liberty in violation  
3 of the Fifth Amendment. Courts have consistently recognized that where detention lacks a valid  
4 statutory basis and is imposed without adequate procedural safeguards, continued confinement  
5 cannot be sustained.

6 Because Respondents lack lawful authority to detain Petitioner and have deprived her of  
7 her liberty without due process, her continued detention violates the Fifth Amendment. The  
8 appropriate remedy is immediate release.

9 **VII. Petitioner Is Suffering Immediate and Irreparable Harm**

10 Petitioner is suffering ongoing and irreparable harm as a direct result of her continued  
11 unlawful detention. The loss of physical liberty, even for minimal periods of time, constitutes  
12 irreparable injury. Freedom from physical restraint lies at the core of the liberty protected by the  
13 Constitution, and each additional day of detention inflicts harm that cannot be remedied after the  
14 fact.

15 This harm is particularly acute here. Petitioner was released from custody shortly after  
16 her entry on a Form I-220A and permitted by the government to reside at liberty in the United  
17 States. She thereafter lived at liberty for more than two years, in compliance with all  
18 requirements imposed by DHS, before being abruptly re-detained in the interior of the country  
19 without lawful authority and without any individualized custody determination.

20 Petitioner now remains detained without access to any meaningful process to challenge  
21 her confinement. The deprivation of liberty is therefore not only ongoing, but unbounded, as  
22 there is no mechanism through which Petitioner may obtain release absent intervention by this  
23 Court.

24 This is a present and continuing injury. Each day of continued detention compounds the  
25 harm and further entrenches an unlawful restraint on Petitioner's freedom. Because Petitioner's  
26 detention is unlawful and ongoing, immediate judicial intervention is required. The continuing  
27

1 deprivation of liberty strongly supports granting the requested relief, including Petitioner's  
2 immediate release.

3 **VIII. Immediate Release Is the Appropriate Remedy**

4 Where detention lacks statutory authority and results in an ongoing deprivation of liberty,  
5 the appropriate remedy is immediate release. Habeas corpus exists to secure release from  
6 unlawful custody, not to permit its continuation while the government attempts to cure defects  
7 after the fact.

8 As set forth above, Respondents have failed to identify any lawful basis for detaining  
9 Petitioner under INA § 235(b), and their own Return acknowledges that this case is materially  
10 indistinguishable from others in which courts in this District have rejected that position, while  
11 declining to oppose relief. Because Petitioner's detention rests on an improper statutory  
12 framework and is unsupported by any individualized justification, it cannot be sustained.

13 Courts in this District have repeatedly granted habeas relief under materially  
14 indistinguishable circumstances. In such cases, where noncitizens were released from custody,  
15 permitted to reside at liberty for extended periods, and later re-detained in the interior of the  
16 United States without lawful authority, courts have ordered immediate release—not merely a  
17 bond hearing—after concluding that detention under INA § 235(b) could not be sustained.

18 This approach is consistent with the fundamental purpose of habeas corpus. Where the  
19 government fails to establish a lawful basis for detention, continued custody cannot be justified  
20 while additional process is contemplated or developed. Permitting continued detention under  
21 such circumstances would improperly prolong an unlawful deprivation of liberty.

22 Moreover, courts in this District, including decisions by this Court, have granted habeas  
23 relief where Respondents fail to carry their burden to justify detention. In a recent decision in  
24 this District, the petition was granted and immediate release ordered where Respondents failed to  
25 establish a lawful basis for continued detention. See *Vargas Montiel v. Noem*, No. 3:26-cv-  
26 01347-TWR-VET (S.D. Cal. Mar. 2026). Although that case involved Respondents' failure to

1 respond to an order to show cause, the governing principle is the same: where the government  
2 cannot justify detention, release is required.

3 Here, Respondents not only fail to establish a lawful basis for detention, but expressly  
4 decline to oppose relief and concede that this case is governed by prior decisions rejecting their  
5 position. Respondents' concession, combined with the uniform line of decisions in this District  
6 and the absence of any lawful basis for detention, leaves no legally permissible basis for  
7 continued custody.

8 Under these circumstances, immediate release—not continued detention pending further  
9 proceedings—is the appropriate remedy. Allowing continued detention for any period of time  
10 would serve only to prolong an unlawful deprivation of liberty that Respondents have failed to  
11 justify.

12 Accordingly, the Court should grant the writ of habeas corpus and order Petitioner's  
13 immediate release from custody.

14 In the alternative, should the Court decline to order immediate release, Petitioner  
15 respectfully requests that the Court order a prompt custody hearing before an Immigration Judge  
16 pursuant to INA § 236(a), in a constitutionally adequate proceeding at which Respondents bear  
17 the burden of establishing, by clear and convincing evidence, that continued detention is  
18 necessary to prevent flight or danger to the community.

19 **IX. Conclusion**

20 For the foregoing reasons, Respondents have failed to establish any lawful basis for  
21 Petitioner's continued detention. Detention under INA § 235(b) cannot be sustained where, as  
22 here, Petitioner was released from custody on a Form I-220A, permitted to reside at liberty in the  
23 United States for an extended period, and later re-detained in the interior without statutory  
24 authority or individualized justification.

1 Because Respondents lack lawful authority to detain Petitioner and have failed to carry  
2 their burden in this habeas proceeding—while expressly declining to oppose relief—continued  
3 detention cannot be justified.

4 Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas  
5 Corpus and order her immediate release from custody.

6 In the alternative, should the Court decline to order immediate release, Petitioner requests  
7 that the Court order a prompt custody hearing before an Immigration Judge pursuant to INA §  
8 236(a), in a constitutionally adequate proceeding at which Respondents bear the burden of  
9 establishing, by clear and convincing evidence, that continued detention is necessary to prevent  
10 flight or danger to the community.

11 Respectfully submitted,

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

13 Alex Monsalve Law Firm, PC

14 240 Woodlawn Ave, Suite 9

15 Chula Vista, CA 91910

16 Phone: (619) 777-6796

17 Email: [info@alexmonsalvelawfirm.com](mailto:info@alexmonsalvelawfirm.com)

18 Counsel for Petitioner

19 Dated: April 14, 2026