

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**

JESUS HERRERA-MENDEZ

Petitioner

v.

Christopher LAROSE, Senior Warden, Otay

Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S.

Department of Homeland Security;

Todd LYONS, Acting Director, U.S.


Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the

United States

Respondents

Case No.: '26CV2110 JO MMP

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner Jesus Herrera-Mendez respectfully submits this Petition for a Writ of Habeas
3 Corpus challenging his unlawful detention by the Department of Homeland Security (“DHS”).
4 Petitioner is a native and citizen of Mexico who entered the United States without inspection on
5 or about October 1, 2023. Petitioner was not encountered by immigration authorities at or near
6 the time of his entry and was not placed in any inspection or expedited removal process.
7 Following his entry, Petitioner resided and worked in the United States without incident. On
8 February 2, 2026, Petitioner was arrested by Immigration and Customs Enforcement (“ICE”)
9 officers in the interior of the United States in San Bernardino, California, while on his way to
10 work, and was subsequently transferred to the Otay Mesa Detention Center, where he remains
11 detained.

12 2. At no point following his entry was Petitioner encountered by immigration authorities
13 or subjected to inspection-stage detention under INA § 235. Petitioner was not placed in
14 expedited removal proceedings, was not subjected to a credible fear interview, and was not
15 processed under any inspection framework. Instead, Petitioner lived at liberty in the United
16 States for more than two years following his undetected entry.

17 3. Following Petitioner’s interior arrest in February 2026, DHS has treated Petitioner as
18 subject to detention under INA § 235(b), a classification that deprives him of access to a custody
19 redetermination hearing before an Immigration Judge. As a result, Petitioner has been denied
20 access to an individualized, constitutionally adequate bond hearing before a neutral
21 decisionmaker.

22 4. The detention authority set forth in INA § 235(b) governs the inspection and admission
23 process at or near the border. Because Petitioner was never apprehended at or near the border
24 and was never placed in inspection-stage detention, the statutory predicate for detention under
25 INA § 235 does not exist. Any detention following an interior arrest must therefore proceed, if at
26 all, under INA § 236(a), which provides eligibility for an individualized bond hearing consistent
27 with due process.

1 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to
2 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts
3 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
4 removal proceedings.

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

7 **PARTIES**

8 11. Petitioner, Jesus Herrera-Mendez, is a native and citizen of Mexico currently
9 detained at the Otay Mesa Detention Center in San Diego, California

10 12. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
11 Center.

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

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

16 15. Respondent Todd Blanche is the Acting Attorney General of the United States and
17 the head of the U.S. Department of Justice (DOJ).

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

19 **LEGAL FRAMEWORK**

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

1 18. Section 1225 provides that, for purposes of initial inspection at the border, “an alien
2 who arrives in the United States or is present in this country but has not been admitted, is treated
3 as an applicant for admission.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The
4 Court explained that decisions concerning who may enter or remain in the United States
5 “generally begin at the Nation’s borders and ports of entry, where the Government must
6 determine whether an alien seeking to enter the country is admissible.” *Id.* Section 1225(b)
7 governs this inspection and admission process, applying primarily to individuals encountered at
8 or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which
9 includes a credible-fear process for those expressing an intent to seek asylum—or to detention
10 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of Homeland Sec.*
11 *v. Thuraissigiam*, 591 U.S. 103 (2020).

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

24 20. For decades, detention under INA § 235(b) has been understood to apply in
25 connection with the inspection and admission process at or near the border, not to individuals
26 apprehended in the interior of the United States who were never subjected to that process.
27
28

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. Where a noncitizen is not
16 apprehended at or near the border and is not placed in the inspection process, the statutory
17 predicate for § 235 custody does not exist.

18 **FACTS**

19 25. Petitioner, Jesus Herrera-Mendez, is a native and citizen of Mexico who entered the
20 United States without inspection on or about October 1, 2023.

21 26. Petitioner was not encountered by immigration authorities at or near the time of his
22 entry and was not placed in any inspection or expedited removal process.

23 27. At no point following his entry was Petitioner subjected to inspection-stage detention
24 under INA § 235, a credible fear interview, or any other inspection framework.

25 28. Following his entry, Petitioner resided and worked in the United States without
26 incident.

1 29. On February 2, 2026, Petitioner was arrested by officers of U.S. Immigration and
2 Customs Enforcement (“ICE”) in San Bernardino, California, while he was on his way to work.

3 30. Following his arrest, Petitioner was transferred to the Otay Mesa Detention Center in
4 San Diego, California, where he remains detained.

5 31. Petitioner has not received an individualized, constitutionally adequate custody
6 hearing at which the government bears the burden of justifying continued detention.

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

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

14 34. On December 18, 2025, the Central District of California vacated DHS’s July 8, 2025
15 Interim Guidance under the Administrative Procedure Act.

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

19 36. On February 18, 2026, the United States District Court for the Central District of
20 California expressly vacated *Matter of Yajure-Hurtado* under the Administrative Procedure Act,
21 setting aside that decision.

22 37. The government subsequently appealed the February 18, 2026 order to the United
23 States Court of Appeals for the Ninth Circuit. On March 6, 2026, the Ninth Circuit issued an
24 administrative stay pending resolution of the government’s emergency motion for a stay pending
25 appeal.

26 38. Petitioner remains detained at the Otay Mesa Detention Center without having
27 received a constitutionally adequate bond hearing.

1 39. Absent relief from this Court, Petitioner will remain detained without a meaningful
2 opportunity to obtain a constitutionally adequate bond hearing at which the government bears the
3 burden of justifying continued detention.

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

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

7 40. Petitioner incorporates by reference the allegations of fact set forth in the preceding
8 paragraphs.

9 41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
10 noncitizens residing in the United States who are subject to grounds of inadmissibility. It applies
11 in the context of the inspection and admission process at or near the border. Petitioner entered
12 the United States on or about October 1, 2023, without inspection and was not encountered by
13 immigration authorities at or near the time of his entry. Petitioner was not placed in any
14 inspection or expedited removal process and resided at liberty in the United States for more than
15 two years prior to his arrest on February 2, 2026, in the interior of the United States. He is
16 therefore not lawfully detained under INA § 235(b); to the extent he remains in custody,
17 detention must proceed under INA § 236(a), 8 U.S.C. § 1226(a), which authorizes release on
18 bond or conditional parole.

19 42. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to
20 Petitioner for the additional and independent reason that he was never apprehended at or near the
21 border and was never placed in inspection-stage detention under INA § 235. Because Petitioner
22 was not subjected to the inspection and admission process, the statutory predicate for detention
23 under INA § 235(b) was never triggered. Any detention following his later interior arrest must
24 therefore proceed, if at all, under INA § 236(a), which governs pre-final-order detention and
25 provides eligibility for an individualized custody redetermination hearing before an Immigration
26 Judge.

27 **COUNT 2**

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

2 43. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
3 herein.

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

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

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

14 47. By continuing to detain Petitioner under INA § 235(b) despite the absence of any
15 inspection or admission process under that provision, and by denying him a meaningful
16 opportunity for an individualized custody determination before a neutral decisionmaker,
17 Respondents have violated the Due Process Clause of the Fifth Amendment.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner respectfully requests that this Court:

- 20 A) Assume jurisdiction over this matter;
- 21 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
22 District while these proceedings are pending;
- 23 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
24 Respondents to explain the legal basis for Petitioner’s continued detention;
- 25 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, because
26 Petitioner was never apprehended at or near the border and was never placed in inspection or
27

1 admission proceedings under that provision, any continued detention must proceed under INA §
2 236(a);

3 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
4 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
5 the Fifth Amendment.

6 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
7 custody, or, in the alternative, order a constitutionally adequate bond hearing consistent with due
8 process, at which the Department of Homeland Security bears the burden of proving, by clear
9 and convincing evidence, that Petitioner's continued detention is necessary to prevent flight or
10 danger to the community;

11 G) Grant such other and further relief as the Court deems just and proper.

12 Respectfully submitted,

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

14 Alex Monsalve Law Firm, PC

15 240 Woodlawn Ave, Suite 9

16 Chula Vista, CA 91910

17 Phone: (619) 777-6796

18 Email: info@alexmonsalvelawfirm.com

19 Counsel for Petitioner

20 Dated: April 3, 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 multiple in-person interviews at the Otay Mesa Detention Center.

Based on those 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

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: April 3, 2026