

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**

INNER AMILCAR AGUIN-CASTILLO

Case No.: 3:26-cv-02156-TWR-MMP

Petitioner

v.

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

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

I. Introduction

Petitioner challenges the legality of his continued detention following an interior arrest more than a decade after his entry into the United States, during which time he resided at liberty without incident. 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 him from custody and placing him in removal proceedings under INA § 240, 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 in or about 2011 and was briefly encountered by immigration authorities at or near the time of entry. Shortly thereafter, DHS released Petitioner from custody and placed him in removal proceedings under INA § 240.

1 Petitioner's proceedings were later administratively closed, and he thereafter resided
2 continuously at liberty in the United States for more than a decade before being arrested by
3 Immigration and Customs Enforcement on or about January 29, 2026 during a routine check-in
4 in the interior of the country. Petitioner is now detained without having received any
5 individualized custody determination.

6 His continued detention rests solely on Respondents' assertion that INA § 235(b) applies,
7 notwithstanding DHS's prior decision to release him from custody, place him in removal
8 proceedings, and permit him to reside at liberty in the United States for years. This detention—
9 without lawful statutory authority and without access to a bond hearing—constitutes an ongoing
10 deprivation of his 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 after being
16 placed in removal proceedings under INA § 240, and thereafter resided at liberty in the United
17 States for more than a decade before being 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 placed into § 240 proceedings,
20 and who was later apprehended in the interior of the United States after a prolonged period of
21 liberty. Nor do they identify any statutory provision authorizing DHS to revive § 235(b) years
22 after the conclusion of the inspection process. Instead, Respondents rely on a generalized legal
23 position divorced from the factual 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
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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 his 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 rely on generalized legal positions and references to arguments
17 advanced in other cases. That approach is insufficient in a habeas proceeding.

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

23 Here, Respondents assert that Petitioner is subject to detention under INA § 235(b), but
24 do not explain how that provision applies to an individual who was encountered by immigration
25 authorities, released from custody after being placed in removal proceedings under INA § 240,
26 and later re-detained in the interior of the United States after a prolonged period of liberty.
27 Instead, Respondents rely on a generalized statutory position while expressly acknowledging that

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

3 This approach underscores the absence of any lawful basis for detention. By failing to
4 provide a case-specific justification for custody—and instead relying on generalized assertions
5 while conceding that controlling authority dictates the outcome—Respondents do not satisfy
6 their burden to affirmatively establish that Petitioner’s detention is authorized by law.

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

8 **IV. Courts in This District Have Consistently Rejected Respondents’ Position**
9 **in Materially Indistinguishable Circumstances**

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

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

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

25 The court rejected that approach. It held that an individual who had been released into the
26 United States and later re-detained in the interior is subject to detention, if at all, under INA §
27 236(a), not § 235(b), and that detention without access to an individualized custody

1 determination under those circumstances cannot be sustained. Based on that reasoning, the court
2 granted the petition and ordered the petitioner's immediate release from custody.

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

8 The same posture is present here. Respondents assert a generalized legal position while
9 expressly acknowledging that the facts are not materially distinguishable from prior cases in
10 which courts have rejected that position, and they do not oppose the petition. Respondents
11 identify no intervening authority that would justify a departure from this settled line of decisions.

12 Moreover, courts have granted habeas relief where Respondents fail to carry their burden
13 to justify detention, regardless of the specific procedural posture. In a recent decision by this
14 Court, the petition was granted and immediate release ordered where Respondents failed to
15 establish a lawful basis for continued detention. See *Vargas Montiel v. Noem*, No. 3:26-cv-
16 01347-TWR-VET (S.D. Cal. Mar. 2026). Although that case involved Respondents' failure to
17 respond to an order to show cause, the governing principle is the same: where the government
18 fails to justify detention, release is required.

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

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

24 The Immigration and Nationality Act distinguishes between inspection-stage detention
25 under INA § 235 and post-entry detention under INA § 236(a). Section 235 governs the
26 inspection and admission process for individuals encountered at or near the border, while §
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1 236(a) governs the arrest and detention of individuals who are already present in the United
2 States and are later taken into custody pending removal proceedings.

3 This case falls squarely within § 236(a). Petitioner was encountered by immigration
4 authorities at or near the time of entry, released from custody, and placed in removal proceedings
5 under INA § 240. His proceedings were later administratively closed, and he thereafter resided at
6 liberty in the United States for more than a decade before being re-arrested in the interior of the
7 country. That posture—release followed by a prolonged period of liberty and a subsequent
8 interior arrest—is governed by § 236(a), not § 235(b).

9 Once DHS released Petitioner from custody and placed him in § 240 proceedings, the
10 inspection-stage detention framework of § 235 ceased to apply. Nothing in the statutory scheme
11 permits DHS to revive § 235(b) years later after a prolonged period of liberty in the United
12 States.

13 Respondents do not identify any statutory provision authorizing such a revival. Instead,
14 they rely on a generalized assertion that Petitioner is subject to § 235(b), without addressing
15 DHS's prior release decision, Petitioner's placement in § 240 proceedings, the administrative
16 closure of those proceedings, or the prolonged period during which Petitioner resided at liberty
17 in the United States.

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

21 Because Petitioner was released from custody, placed in removal proceedings under §
22 240, and later re-detained in the interior after a prolonged period of liberty, § 235(b) no longer
23 applies. Respondents therefore lack any lawful basis to detain Petitioner under that provision.

24 Respondents identify no statutory mechanism by which a noncitizen, once released from
25 § 235 custody and placed into § 240 proceedings, may be returned to § 235(b) mandatory
26 detention years later.

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

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

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

Petitioner was released from custody shortly after his entry and placed in removal proceedings under INA § 240. His proceedings were later administratively closed, and he thereafter resided at liberty in the United States for more than a decade. During that time, Petitioner complied with all requirements imposed by DHS and remained free from detention without incident. This prolonged period of liberty—affirmatively permitted by the government—gives rise to a substantial liberty interest that cannot be revoked absent constitutionally adequate procedures.

Respondents do not identify any changed circumstances or individualized justification warranting Petitioner's re-detention after more than ten years at liberty. Nor do they provide any opportunity for Petitioner to challenge his continued confinement before a neutral decisionmaker. Instead, Respondents rely solely on an incorrect statutory classification that has been repeatedly rejected by courts in this District, while declining to oppose relief in this case.

Detention based solely on an improper statutory framework, without lawful authority and without access to a meaningful process, constitutes an arbitrary deprivation of liberty in violation of the Fifth Amendment. Courts have consistently recognized that where detention lacks a valid

1 statutory basis and is imposed without adequate procedural safeguards, continued confinement
2 cannot be sustained.

3 Because Respondents lack lawful authority to detain Petitioner and have deprived him of
4 his liberty without due process, his continued detention violates the Fifth Amendment. The
5 appropriate remedy is immediate release.

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

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

12 This harm is particularly acute here. Petitioner was released from custody shortly after his
13 entry, placed in removal proceedings, and permitted by the government to reside at liberty in the
14 United States for more than a decade, including during a prolonged period of administrative
15 closure. That extended period of liberty—affirmatively authorized by the government—was
16 abruptly revoked through re-detention in the interior of the country without lawful authority and
17 without any individualized custody determination.

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

22 This is a present and continuing injury. Each day of continued detention compounds the
23 harm and further entrenches an unlawful restraint on Petitioner's freedom. Because Petitioner's
24 detention is unlawful and ongoing, immediate judicial intervention is required. The continuing
25 deprivation of liberty strongly supports granting the requested relief, including Petitioner's
26 immediate release.

VIII. Immediate Release Is the Appropriate Remedy

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

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

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

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

Moreover, courts have granted immediate release where Respondents fail to carry their burden to justify detention. In a recent decision before this Court, the petition was granted and immediate release ordered where Respondents failed to establish a lawful basis for continued detention. See *Vargas Montiel v. Noem*, No. 3:26-cv-01347-TWR-VET (S.D. Cal. Mar. 2026). Although that case involved Respondents' failure to respond to an order to show cause, the governing principle is the same: where the government cannot justify detention, release is required.

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

6 Under these circumstances, immediate release—not continued detention pending further
7 proceedings—is the appropriate remedy. Accordingly, the Court should grant the writ of habeas
8 corpus and order Petitioner's immediate release from custody.

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

14 **IX. Conclusion**

15 For the foregoing reasons, Respondents have failed to establish any lawful basis for
16 Petitioner's continued detention. Detention under INA § 235(b) cannot be sustained where, as
17 here, Petitioner was released from custody, placed in removal proceedings under INA § 240,
18 permitted to reside at liberty in the United States for an extended period—including years of
19 administrative closure—and later re-detained in the interior without statutory authority or
20 individualized justification.

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

24 Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas
25 Corpus and order his immediate release from custody.

26 In the alternative, should the Court decline to order immediate release, Petitioner requests
27 that the Court order a prompt custody hearing before an Immigration Judge pursuant to INA §
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1 236(a), in a constitutionally adequate proceeding at which Respondents bear the burden of
2 establishing, by clear and convincing evidence, that continued detention is necessary to prevent
3 flight or danger to the community.

4 Respectfully submitted,

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

6 Alex Monsalve Law Firm, PC

7 240 Woodlawn Ave, Suite 9

8 Chula Vista, CA 91910

9 Phone: (619) 777-6796

10 Email: info@alexmonsalvelawfirm.com

11 Counsel for Petitioner

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