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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 **MARVIN ORLANDO CURRUCHICH-**
12 **BERNARDINO,**

13 **Petitioner,**

14 **v.**

15 **TODD BLANCHE, Acting Attorney**
16 **General of the United States, in her**
17 **official capacity; MARKWAYNE**
18 **MULLIN, Secretary of the U.S.**
19 **Department of Homeland Security, in her**
20 **official capacity; EXECUTIVE OFFICE**
21 **FOR IMMIGRATION REVIEW; TODD**
22 **LYONS, Acting Director of U.S.**
23 **Immigration and Customs Enforcement,**
24 **in his official capacity; PATRICK**
25 **DIVVER, ICE Field Office Director for**
26 **San Diego County, in his official capacity;**
27 **WARDEN OF IMPERIAL REGION**
28 **DETENTION FACILITY.**

Respondents.

Case No.: **'26CV2704 JO MMP**

PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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4 **INTRODUCTION**

5 1. Petitioner Marvin Orlando Curruchich-Bernardino is a 41-year-old
6 native and citizen of Guatemala. His last entry into the United States was without
7 inspection on or about July 15, 2003. Since that time, he has resided continuously in
8 California. He has lived in the United States for more than twenty-two years and has
9 deep family and community ties.

10 2. On March 25, 2025, Petitioner was arrested by U.S. Customs and
11 Border Protection agents (CBP) when he was leaving his residence in Hot Springs,
12 California. On March 27, 2026, Petitioner was served with a Notice to Appear,
13 placing him in removal proceedings under INA § 240, and he remains detained in
14 an Immigration detention center in Imperial County, California. Petitioner is
15 charged solely under INA § 212(a)(6)(A)(i) and is not subject to mandatory
16 detention under INA § 236(c) or post-order detention under INA § 241.

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18 3. After DHS denied release, Petitioner requested a custody
19 redetermination hearing pursuant to INA § 236(a). The Immigration Judge declined
20 to conduct any bond hearing and expressly ruled that the court lacked jurisdiction to
21 consider custody, citing Matter of Yajure-Hurtado, 29 I&N Dec. 21 (BIA 2025).
22 The Immigration Judge made no individualized findings regarding danger to the
23 community, risk of flight, ability to pay, or conditions of release.
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1 the legality of his detention based on a binding agency rule that purports to eliminate
2 Immigration Judge bond jurisdiction, and seeks habeas, declaratory, and injunctive
3 relief that can be granted only by senior DHS and ICE officials—not by the
4 immediate facility custodian. See *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.8 (2004).

5 9. The Court is authorized to grant declaratory relief under 28 U.S.C. §§
6 2201–2202 and injunctive relief under 5 U.S.C. § 702, in addition to habeas relief to
7 remedy ongoing unlawful detention and to prevent continued enforcement of agency
8 action that exceeds statutory authority.

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10 **PARTIES**

11 10. Petitioner Marvin Orlando Curruchich-Bernardino is a native and
12 citizen of Guatemala. He was arrested in this District on March 25, 2026.

13 11. Respondent Todd Blanche is the Acting Attorney General of the United
14 States and is sued in his official capacity as the head of the Department of Justice.
15 The Attorney General is responsible for the fair administration of the laws of the
16 United States.

17 12. Markwayne Mullin, Secretary of the U.S. Department of Homeland
18 Security (DHS), is sued in his official capacity as the Cabinet official charged with
19 administration and enforcement of the immigration laws, including custody and
20 release authority. See 8 U.S.C. § 1103(a).

21 13. Respondent Executive Office for Immigration Review is a component
22 agency of the Department of Justice responsible for conducting removal and bond
23 hearings of noncitizens. EOIR is comprised of a lower adjudicatory body
24 administered by immigration judges and an appellate body known as the Board of
25 Immigration Appeal (BIA). Immigration judges issue bond redetermination hearing
26 decisions, which are then subject to appeal to the BIA. EOIR is sued as an agency
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1 respondent because its policies and decisions are an issue in this action.

2 14. Respondent Todd Lyons is the Acting Director of U.S. Immigration
3 and Customs Enforcement (ICE) and is sued in his official capacity. ICE is
4 responsible for the detention of Petitioner.

5 15. Patrick Divver is the Immigration and Customs Enforcement Field
6 Office Director for San Diego County, including the Imperial Regional detention
7 facility and is sued in his official capacity.

8 16. The Warden of Imperial Region Detention Facility is sued in his
9 official capacity as the officer with immediate physical custody of Petitioner. The
10 Warden is responsible for Petitioner's day-to-day detention but lacks authority to
11 make custody or release determinations. He is named as a Respondent pursuant to
12 the immediate custodian rule established in *Rumsfeld v. Padilla*, 542 U.S. 42 (2004).
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14 **LEGAL BACKGROUND**

15 17. The Immigration and Nationality Act ("INA") establishes distinct
16 detention regimes that apply at different procedural stages of the removal process.
17 INA § 236(a), 8 U.S.C. § 1226(a), is the default detention authority for noncitizens
18 apprehended in the interior of the United States and placed in removal proceedings
19 under INA § 240. Section 236(a) expressly authorizes release on bond or conditional
20 parole and vests Immigration Judges with custody-redetermination jurisdiction. See
21 8 C.F.R. §§ 1003.19(a), 1236.1(d).
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23 18. By contrast, INA § 236(c) mandates detention only for noncitizens
24 charged with or convicted of specified criminal or terrorism-related offenses. INA §
25 235(b)(1) and (b)(2), 8 U.S.C. § 1225, govern detention at the inspection stage,
26 including expedited removal and related border-processing procedures. Finally, INA
27 § 241, 8 U.S.C. § 1231, governs detention after a final order of removal. None of
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1 those provisions applies here.

2 19. Section 236(a) governs detention pending a decision on whether the
3 alien is to be removed from the United States, i.e., during ongoing § 240
4 proceedings. Its implementing regulations confirm that Immigration Judges retain
5 authority to conduct bond hearings for noncitizens detained under this provision. See
6 8 C.F.R. §§ 1003.19(a), 1236.1(d).

7 20. Section 235(b), by contrast, applies exclusively at ports of entry and
8 during the inspection process. Its text and structure confirm that an “application for
9 admission” is a discrete event occurring at the time of entry, not a perpetual legal
10 status that attaches indefinitely to individuals who entered without inspection. *Torres*
11 *v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc). See also *Jennings v. Rodriguez*,
12 583 U.S. 281 (2018) (describing the INA’s bifurcated detention scheme
13 distinguishing inspection-stage detention at entry from detention of noncitizens
14 found in the United States after entry).

15 21. The regulatory history following the enactment of IIRIRA reinforces
16 this distinction. In its 1997 rulemaking, the Department of Justice explained that
17 noncitizens who entered without inspection but are later placed in § 240 removal
18 proceedings are detained under § 236(a), not § 235. See *Inspection and Expedited*
19 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*
20 *Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

21 22. Recent congressional action further confirms that § 236(a) governs
22 detention of noncitizens apprehended in the interior and placed in § 240
23 proceedings. In 2024, Congress enacted the Laken Riley Act, which expanded
24 mandatory detention under § 236(c) for certain noncitizens charged with specified
25 offenses. Notably, Congress did not amend § 235(b)(2) to mandate detention of all
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1 noncitizens who entered without inspection, nor did it displace § 236(a) as the
2 default detention authority. Congress’s targeted amendments to § 236 presuppose its
3 continued applicability and would be superfluous if § 235(b)(2) already governed
4 detention of long-term interior residents.

5 23. In July 2025, DHS issued internal guidance directing ICE officers and
6 government counsel to categorically deny bond redetermination hearings to all
7 noncitizens who entered without inspection, regardless of length of residence or
8 place of arrest. That guidance treated such individuals as perpetual “applicants for
9 admission” subject to INA § 235(b)(2).

10 24. In September 2025, the Board of Immigration Appeals adopted that
11 policy as binding precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA
12 2025), instructing Immigration Judges that they lacked jurisdiction to conduct bond
13 hearings in such cases.

14 25. That interpretation is not entitled to judicial deference. Under *Loper*
15 *Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), courts must independently
16 interpret the INA and may not defer to agency constructions that conflict with
17 statutory text, structure, or history.

18 26. Courts in this Circuit—including multiple courts in this District—have
19 rejected DHS’s categorical application of 8 U.S.C. § 1225(b)(2) to long-term interior
20 residents and have granted habeas relief or ordered custody redetermination hearings
21 under § 1226(a). See, e.g., *Arias Torres v. Bondi*, No. 25-cv-02457-BAS-MSB (S.D.
22 Cal. Nov. 18, 2025); *Lazaro Maldonado Bautista et al. Ernesto Santacruz Jr. et al.*,
23 No. 5:25-cv-01873 (C.D. Cal. 2025).

24 27. In *Bautista* the district court granted habeas relief through a temporary
25 restraining order on July 28, 2025, requiring individualized bond hearings and
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2 31. On March 25, 2025, Petitioner was arrested by U.S. Customs and
3 Border Protection agents (CBP) when he was leaving his residence in Hot Springs,
4 California.

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6 32. On March 27, 2026, Petitioner was served with a Notice to Appear,
7 placing him in removal proceedings under INA § 240. Petitioner is charged solely
8 under INA § 212(a)(6)(A)(i) and is not subject to mandatory detention under INA §
9 236(c) or post-order detention under INA § 241.

10 33. Petitioner is currently detained at the Imperial Regional Detention
11 Facility in Calexico, California. DHS has not charged him with any offense
12 triggering mandatory detention under INA § 236(c), nor has it asserted that he is
13 subject to post-order detention under INA § 241.

14 34. As a relief, Petitioner plans to apply in Immigration Court for
15 Cancellation of Removal and Adjustment of Status for Certain Nonpermanent
16 Residents, Form EOIR-42B, based on the extreme and unusual hardship that his
17 U.S. Citizen child would suffer in case of removal.

18 35. On April 20, 2026, Petitioner sought a custody redetermination hearing
19 pursuant to INA § 236(a). The Immigration Judge declined to conduct a bond
20 hearing, concluding that she lacked jurisdiction based solely on the Board of
21 Immigration Appeals' precedential decision in Matter of Yajure-Hurtado, which
22 instructs immigration judges to treat noncitizens who entered without inspection as
23 subject to detention under INA § 235(b)(2), regardless of length of time in the
24 United States or location of apprehension.

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26 36. As a result of that ruling, Petitioner was denied any individualized
27 custody determination, including consideration of flight risk, danger, family ties,

1 length of residence, or pending avenues of lawful status. The Immigration Judge did
2 not make any factual findings regarding Petitioner's suitability for release and did
3 not exercise discretion under § 236(a).

4 37. Because Matter of Yajure-Hurtado is binding on Immigration Judges
5 and categorically forecloses bond jurisdiction, Petitioner has no meaningful
6 administrative remedy through the immigration court system. Absent judicial
7 intervention, he faces continued detention without bond solely by operation of a
8 binding agency rule, notwithstanding Congress's detention framework and
9 longstanding historical interpretation and application.

10 38. Petitioner therefore brings this action seeking habeas corpus relief from
11 unlawful detention, as well as declaratory and injunctive relief under the
12 Administrative Procedure Act, to challenge the legality of DHS's categorical
13 application of INA § 235(b)(2) to long-term interior residents placed in § 240
14 proceedings.

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16 **CAUSES OF ACTION**
17 **COUNT I**
18 **Violation of 8 U.S.C. § 1226(a):**
19 **Unlawful Continued Detention Despite Bond Grant**

20 39. Petitioner repeats, re-alleges, and incorporates by reference each and
21 every allegation in the preceding paragraphs as if fully set forth herein.

22 40. Under 8 U.S.C. § 1226(a), noncitizens apprehended in the interior and
23 placed in § 240 removal proceedings are detained, if at all, subject to discretionary
24 bond redetermination by an immigration judge.

25 41. The statute expressly authorizes release on bond or conditional parole
26 pending a decision on removal, and the implementing regulations vest Immigration
27 Judges with jurisdiction to conduct bond hearings. See 8 C.F.R. §§ 1003.19(a),

1 1236.1(d).

2 42. Petitioner was apprehended in the interior of the United States, placed
3 in § 240 removal proceedings, and is not charged with any offense triggering
4 mandatory detention under § 1226(c). Nor is he subject to post-final-order detention
5 under § 1231. Accordingly, § 1226(a) governs his custody.

6 43. The congressional intent is reflected in § 236(a), which expressly
7 authorizes custody redeterminations and release on bond pending a decision on
8 whether the alien is to be removed from the United States.

9 44. Nevertheless, the Immigration Judge declined to conduct any custody
10 redetermination hearing, concluding that she lacked jurisdiction based solely on
11 Matter of Yajure-Hurtado, which instructs Immigration Judges to categorically treat
12 noncitizens who entered without inspection as subject to detention under §
13 1225(b)(2) and ineligible for bond.

14 45. Because Matter of Yajure-Hurtado is binding on Immigration Judges
15 and categorically forecloses bond jurisdiction, Petitioner has no meaningful
16 administrative remedy to obtain a bond hearing or secure release from custody
17 through the immigration court system. His continued detention is therefore solely
18 the product of a binding agency rule that exceeds statutory authority, rather than an
19 individualized assessment of danger or flight risk.

20 46. Respondents' application of § 1225(b)(2) to detain Petitioner without a
21 bond hearing exceeds their statutory authority, violates 8 U.S.C. § 1226(a), and
22 results in unlawful civil detention in the absence of the procedural safeguards
23 Congress required.

24 47. Accordingly, Petitioner is entitled to habeas corpus relief, as well a
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1 declaratory and injunctive relief, ordering Respondents to provide a prompt custody
2 redetermination hearing under § 1226(a) or to release Petitioner from custody
3 pending removal proceedings.

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5 **COUNT II**
6 **Violation of the Administrative Procedure Act (5 U.S.C. § 706)**
7 **Unlawful Denial of Bond Jurisdiction**

8 48. Petitioner repeats, re-alleges, and incorporates by reference each and
9 every allegation in the preceding paragraphs as if fully set forth herein.

10 49. The INA and its implementing regulations authorize Immigration
11 Judges to redetermine custody for noncitizens apprehended in the interior and placed
12 in § 240 proceedings. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d).
13 For decades, EOIR and DHS consistently applied § 236(a) to such individuals,
14 affording bond hearings before an IJ, consistent with the statute's text and EOIR's
15 1997 rulemaking.

16 50. In July 2025, however, ICE abruptly abandoned this settled practice.
17 Through an internal memorandum, ICE instructed its trial attorneys to resist §236(a)
18 bond hearings across the board for all who had entered without inspection,
19 regardless of how long they had resided in the United States or where they were
20 arrested. That directive, though aimed at DHS attorneys, had the practical effect of
21 shifting the adjudicatory framework once EOIR began adopting the same categorical
22 position.

23 51. Two months later, in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA
24 2025), the Board of Immigration Appeals formally ratified that position, holding that
25 all noncitizens who entered without inspection are detained under §235(b)(2) and
26 categorically ineligible for bond. That decision stripped Immigration Judges of
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1 jurisdiction to conduct bond hearings, even where an IJ had already found release
2 appropriate.

3 52. This abrupt reversal of decades of practice was adopted without notice
4 and comment, lacks reasoned explanation, and is contrary to the governing statute
5 and regulations. The BIA's post hoc rationale in Yajure Hurtado cannot cure those
6 defects.

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8 53. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024),
9 this Court owes no Chevron deference to the agency's construction of § 235(b)(2),
10 but must apply its own judgment to the statutory text. Properly construed, §
11 235(b)(2) does not apply to long-term residents arrested in the interior and placed in
12 § 240 proceedings.

13 54. Accordingly, Respondents' categorical reclassification is unlawful,
14 arbitrary, capricious, and not in accordance with law within the meaning of 5 U.S.C.
15 § 706(2).

16 **COUNT III**

17 **Violation of Procedural Due Process (Fifth Amendment)**

18 55. Petitioner repeats, re-alleges, and incorporates by reference each and
19 every allegation in the preceding paragraphs as if fully set forth herein.

20 56. The Fifth Amendment provides that no person shall be deprived of
21 liberty without due process of law. U.S. Const. amend. V.

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23 57. Freedom from imprisonment—from government custody, detention,
24 or other forms of physical restraint—lies at the heart of the liberty that the Due
25 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens
26 in removal proceedings possess a substantial liberty interest in freedom from
27 unnecessary civil detention.

1 58. Petitioner is subject to pre-removal detention pending the outcome of
2 removal proceedings under INA § 240, and is not charged with any offense
3 triggering mandatory detention. Under the statutory framework Congress enacted,
4 such detention is discretionary and must be accompanied by an opportunity for
5 individualized custody review before a neutral adjudicator.

6 59. Nevertheless, the Immigration Judge declined to conduct any custody
7 redetermination hearing for Petitioner, concluding that she lacked jurisdiction based
8 solely on Matter of Yajure-Hurtado. As a result, Petitioner was denied any
9 opportunity to present evidence or receive an individualized assessment of danger,
10 flight risk, ability to pay, or alternatives to detention.

11 60. By categorically foreclosing bond jurisdiction for a broad class of
12 noncitizens, Respondents' policy deprives Petitioner of a meaningful opportunity to
13 seek release from civil detention and converts discretionary pre-removal detention
14 into mandatory detention without process.

15 61. This categorical denial of a bond hearing bears no reasonable
16 relationship to the purposes of civil immigration detention and results in prolonged
17 confinement based solely on legal classification rather than individualized findings.
18 Such detention is fundamentally inconsistent with the procedural protections
19 required by the Fifth Amendment.

20 62. At a minimum, due process requires that individuals subject to
21 discretionary civil immigration detention receive a bond hearing before a neutral
22 adjudicator, with consideration of alternatives to detention and an opportunity to be
23 heard. The complete denial of any such hearing violates basic principles of
24 procedural fairness.
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F. Grant such other and further relief as this Court deems just and proper.

Dated: April 27, 2026

Respectfully submitted,

_____/s/_____
Ray Estolano
Attorney for Petitioner,
Marvin Orlando Curruchich-
Bernardino