


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

ISRRAEL CORTEZ GARRIDO,

'26CV2800 LEK GC

Agency No. 

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, et.

al.,

Respondents.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13 **SAN DIEGO DIVISION**

14 ISRRAEL CORTEZ GARRIDO,)

15 Petitioner,)

16 v.)

17 Markwayne MULLIN, in his official capacity as)
18 Secretary of Homeland Security, Christopher J.)
19 LAROSE, in his official capacity as Senior Warden of)
20 Otay Mesa Detention Center, Gregory J.)
21 ARCHAMBEAULT, in his official capacity as San)
22 Diego Field Office Director, ICE Enforcement)
23 Removal Operations; Todd LYONS, in his official)
24 capacity as Acting Director of ICE; and Todd)
25 BLANCHE, Acting U.S. Attorney General;)
26 IMMIGRATION AND CUSTOMS)
27 ENFORCEMENT; DEPARTMENT OF)
28 HOMELAND SECURITY,)

Respondents.)

'26CV2800 LEK GC

**PETITION FOR WRIT
OF HABEAS CORPUS**



I. INTRODUCTION

1. Petitioner, ISRRAEL CORTEZ GARRIDO, ("Petitioner") is a 29-year-old Mexican national who last entered the United States in 2011.

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III. PARTIES

8. Petitioner is a 29-year-old Mexican national who resides in Lindsay, California in Tulare County. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California, pending removal proceedings.

9. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. Respondent La Rose is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent LaRose has immediate physical custody of the Petitioner. He is being sued in his official capacity.

10. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Archambeault is being sued in his official capacity.

11. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner and is being sued in his official capacity.

12. Respondent Markwayne Mullin is the Secretary of the Department

1 of Homeland Security ("DHS"). As Secretary of DHS, Secretary Mullin is
2 responsible for the general administration and enforcement of the immigration
3 laws of the United States. Respondent Secretary Mullin is being sued in his
4 official capacity.
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6 7 IV. EXHAUSTION OF REMEDIES

8 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;
9 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not
10 jurisdictionally required. Moreover, exhaustion should not be required here
11 because any attempt to exhaust would be futile, as BIA appeals routinely take
12 more than six months to reach a hearing.
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14 14. Additionally, further agency steps will be futile. Recently, the BIA
15 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,
16 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals
17 similarly situated to Petitioner ineligible for release on bond.
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19 15. In Petitioner's case, any request for custody redetermination have
20 been dismissed by the Immigration Court for lack of jurisdiction and any appeal
21 to the BIA will be dismissed. *Matter of Yajure Hurtado* currently controls in
22 Petitioner's case and any attempt to request agency evaluation of his detention
23 will be futile.
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25 26 V. STATEMENT OF FACTS

1 16. Petitioner is a Mexican national born  He last
2 entered the United States in 2011.

3 17. On or about April 20, 2026, Petitioner was detained by Respondents
4 at the Otay Mesa Detention Center.

5 18. Petitioner has remained in Respondents' custody since that time.

6 19. Petitioner's next master hearing is scheduled for May 5, 2026, at 8:00
7 a.m. before Immigration Judge Mark Sameit at 7488 Calzada de la Fuente,
8 San Diego, California.

9 20. Petitioner now seeks habeas relief because continuing his detention
10 exceeds statutory authority and violates the Fifth Amendment.
11

12 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

13 21. Habeas corpus relief extends to a person "in custody under or by color
14 of the authority of the United States" if the person can show he is "in custody
15 in violation of the Constitution or laws or treaties of the United States." 28
16 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542
17 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under
18 28 U.S.C. section 2241 if they concern the continuation or execution of
19 confinement).

20 22. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
21 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
22 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
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1 in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553
2 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus
3 properly is invoked the judicial officer must have adequate authority to make
4 a determination in light of the relevant law and facts and to formulate and
5 issue appropriate orders for relief, including, if necessary, an order directing
6 the prisoner’s release.” *Id.* at 787.
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10 **VII. CAUSES OF ACTION**

11 **COUNT ONE**

12 **8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER**

13 23. Petitioner incorporates paragraphs 1 through 22 as if fully set out
14 herein.

15 24. Recently, Respondents began arguing that those in situations similar
16 to Petitioner are detained pursuant to 8 U.S.C. § 1225(b)(2), which mandates
17 the detention of an “applicant for admission” throughout the entirety of
18 removal proceedings.

19 25. Respondents’ newly formulated definition of “applicant for
20 admission,” which would include any noncitizen who has not been formally
21 admitted regardless of years of residence in the United States, directly
22 contradicts both the plain text of the statute and controlling Ninth Circuit
23 precedent.
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25 26. As the Ninth Circuit explained in interpreting the phrase “applicant
26 for admission” under § 1225(b)(1), “*an immigrant submits an ‘application for*
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1 admission' at a distinct point in time," and stretching that phrase to apply
2 "potentially for years or decades ... would push the statutory text beyond its
3 breaking point." *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
4 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).

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6 27. Because Petitioner has resided continuously in the United States
7 since 2011, his period as an "applicant for admission" has long since closed.

8 28. Numerous courts across the United States have considered this issue
9 subsequent to Respondents' new policy of treating the vast majority of
10 immigrants in their custody as being detained pursuant to 8 U.S.C. §
11 1225(b)(2) and the BIA's decision supporting this interpretation in *Matter of*
12 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).

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14 29. This Court, joining the general consensus with other courts across
15 this country, has previously held those similarly situated to Petitioner are
16 being held under 8 U.S.C. § 1226(a) and therefore are not subject to mandatory
17 detention under 8 U.S.C. § 1225(b). *See e.g., Martinez Lopez v. Noem, et al.*, No:
18 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).

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22 **COUNT TWO**
(PROCEDURAL DUE PROCESS)

23 30. Petitioner incorporates paragraphs 1 through 22 as if fully set out
24 herein.

25 31. The Fifth Amendment forbids deprivation of liberty without notice
26 and a meaningful opportunity to be heard before a neutral decision-maker. Due
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1 process protects “all ‘persons’ within the United States, including [non-
2 citizens], whether their presence here is lawful, unlawful, temporary, or
3 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).

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5 32. Subsection 1003.19(i)(2) strips Petitioner of that protection by
6 allowing the prosecuting agency—after losing at the bond hearing—to veto the
7 Immigration Judge’s order with a one-page notice that requires no showing of
8 danger, flight risk, or likelihood of success on appeal.

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10 33. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
11 Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is
12 extreme considering the Immigration Judge’s determination that Petitioner is
13 not subject to mandatory detention under 8 U.S.C. § 1226(c) and does not pose
14 a danger to the community. Likewise, the risk of erroneous deprivation of
15 liberty is great due to the lack of a non-independent adjudicator. *Marcello v.*
16 *Bonds*, 39 U.S. 302, 305-306 (1955). In filing Form EOIR-43, ICE is acting as
17 both the prosecutor as well as the adjudicator.
18

19 34. While the government has discretion to detain individuals under 8
20 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
21 discretion is not “unlimited” and must comport with constitutional due process.
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23 *See Zadvydas*, 533 U.S. at 698.

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26 **PRAYER FOR RELIEF**

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WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release him from custody, under reasonable conditions of supervision;
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these proceedings and while the Petitioner remains in Respondents' custody;
- 4) Order Respondents to file a response within 3 business days of the filing of this petition;
- 5) Award attorneys' fees to Petitioner; and
- 6) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this 1st day of May, 2026.

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