

See 8 C.F.R. §§ 236.1 & 1236.1.

II. VENUE AND JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution (Suspension Clause).
5. Venue is proper in the Southern District of California because Petitioner is detained at Otay Mesa Detention Center, , and Respondent Christopher Larose exercises immediate physical custody over Petitioner in this District. See 28 U.S.C. §§ 2241(d), 1391(e); *Singh v. Noem*, 2026 WL 206716, at 4 (S.D. Cal. Jan. 27, 2026), *Williams v. Taylor*, 529 U.S. 362, 374-75 (2000).

III. PARTIES

6. Petitioner Mr. Moreno Berrios is a native and citizen of Venezuela who resides in Hollywood, Florida. He is currently detained at the Otay Mesa Detention Center.
7. Respondent Christopher Larose is the Warden of Otay Mesa Detention Center, where Petitioner is presently detained. Respondent Larose exercises immediate physical custody over Petitioner and is sued in his official capacity.
8. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (hereinafter "ICE"). As such, Respondent Lyons is being sued in his official capacity.
9. Respondent Gregory J. Archambeault is the Field Office Director for Enforcement and Removal Operations, San Diego Field Office, U.S. Immigration and Customs Enforcement. The San Diego Field Office's area of responsibility includes San Diego and Imperial County, and Otay Mesa Detention Center is listed by ICE under the San Diego Field Office. Respondent Archambeault is responsible for ICE/ERO custody decisions affecting Petitioner at Otay Mesa Detention Center and is sued in his official capacity.
10. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. As Secretary of DHS, Secretary Mullin is responsible for the general administration and

enforcement of the immigration laws of the United States. Respondent Mullin is being sued in his official capacity.

11. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

IV. EXHAUSTION OF REMEDIES

12. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

V. STATEMENT OF FACTS

13. Petitioner, Mr. Moreno Berrios, is a native and citizen of Venezuela, who entered the United States on April 20, 2021, and has resided in the country for the past 5 years. See **Exhibit A**, *Copy of Petitioner's Passport*.

14. On April 22, 2025, the Board of Immigration Appeals ("BIA") issued a decision which proposes that, "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

15. As of May 14, 2026, Petitioner has been denied the opportunity to request bond before an Immigration Judge.

16. DHS served Petitioner with a Notice to Appear, placing him in removal proceedings under INA § 240. The NTA charges Petitioner under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and ICE previously treated Petitioner as subject to INA § 236 custody authority. Petitioner requested a bond hearing or custody redetermination before the

Immigration Court, but the Immigration Judge denied bond jurisdiction based on INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

17. Petitioner's continued detention is causing irreparable harm, as he has been separated from his family and continues to suffer trauma as a result of this unlawful restraint on his liberty.

VI. LEGAL FRAMEWORK

18. The Immigration and Nationality Act ("INA") establishes three basic forms of detention for most noncitizens in removal proceedings.

19. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. See 8 U.S.C. § 1229a. This provision applies to "applicants for admission," defined as those "present in the United States who has not been admitted." § 1225(a)(1). Individuals in §1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c). *Jennings v. Rodriguez*, 583 U.S. 281, 289, 297 (2018).

20. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" referred to under § 1225(b)(2). However, the Supreme Court has not definitively resolved whether § 1225(b) applies to noncitizens apprehended in the interior of the United States who do not seek admission at a port of entry.

21. Third, the INA provides for detention of noncitizens who have received a final order of removal from the United States, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231 (a)-(b).

22. The distinction between “applicants for admission” and “aliens seeking admission” runs throughout immigration law and has profound consequences for detention rights. The Supreme Court has held that an alien detained shortly after unlawful entry in the interior may not have “effected an entry” for purposes of § 1225(b). *See Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) [discussing the distinction].
23. This case concerns the detention provisions at § 1226(a) instead of § 1225(b)(2) because he is in regular § 240 proceedings and ICE custody documents including the NTA support bond jurisdiction.

VII. CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. 1226(a) Unlawful Denial of Release on Bond

24. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-17.
25. At the time of his arrest, Petitioner was a noncitizen present in the United States who had not been admitted, and thus he falls within the broad definition of “applicant for admission,” which is distinct from an “alien seeking admission,” and his detention is therefore governed by § 1226(a)(2).
26. The BIA has wrongfully construed § 1225(b)(2) as applying to all noncitizens who are found in the United States unlawfully, such as the Petitioner. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
27. The BIA’s decision in *Yajure Hurtado* erroneously synonymizes the terms “applicant for admission” and “alien seeking admission” in order to apply mandatory detention under § 1225(b)(2) to an entire class of noncitizens for whom it was never intended by Congress.
28. The unlawful application of § 1225(b)(2) to Petitioner unlawfully mandates his continued

detention without a discretionary bond hearing and violates the INA.

COUNT II

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1 and 1003.19
Unlawful Denial of Release on Bond**

29. Petitioner incorporates by reference the allegations and facts set forth in the preceding paragraphs 1-17.
30. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the headings of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing regulations.
31. Nonetheless, the BIA has asserted that, instead, §1225(b)(2) should apply to those noncitizens “present without having been admitted or paroled.”
32. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Fifth Amendment Due Process Clause

33. Petitioner incorporates by reference the allegations and facts set forth in paragraphs 1-17.
34. The Fifth Amendment provides that “[n]o person” shall “be deprived of life, liberty, or property, without due process of law.”
35. “Freedom from imprisonment, from government custody, detention, or other forms of

physical restraint, lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

36. Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

37. Respondents’ mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus declaring that Petitioner’s detention without access to an individualized bond hearing is unlawful because Petitioner is detained under INA § 236(a), 8 U.S.C. § 1226(a), and is eligible for custody redetermination before an Immigration Judge under the applicable bond regulations;
- 3) order Respondents to immediately release Petitioner from custody under reasonable conditions of supervision, or, in the alternative, order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within a short, definite period set by this Court;
- 4) 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;
- 5) Order Respondents to file a response to this Petition on an expedited;
- 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 May 14, 2026.

Herbert Jesus Moreno Berríos
7488 Calzada de la Fuente
San Diego, CA 92154

Detained in ICE Custody at:
Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154.

VERIFICATION PURSUANT TO 28 U.S.C. §2242

I, Herbert Jesus Moreno Berrios, am the Petitioner of this action. I declare under penalty of perjury that the factual statements set forth in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief, and that I have personal knowledge of the matters stated herein.

Herbert Jesus Moreno Berrios

Date: 05/14/2026