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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 **AMILCAR SANTIAGO CRUZ,**

13 Petitioner,

14 v.

15 **Christopher LAROSE,** Senior Warden, Otay

16 Mesa Detention Center;

17 **Markwayne MULLIN,** Secretary, U.S.

18 Department of Homeland Security;

19 **Todd LYONS,** Acting Director, U.S.

20 Immigration and Customs Enforcement;

21 **Todd BLANCHE,** Acting Attorney General of the

22 United States, U.S. Department of Justice.

23 Respondents
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Case No.: **'26CV3216 JAO DEB**



**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 1. Petitioner, Amilcar Santiago Cruz, petitions this Court for a writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and
3 alleges as follows:

4 **INTRODUCTION**

5 2. Petitioner, Amilcar Santiago Cruz, is a native and citizen of Guatemala currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner entered the United States without inspection on or around 2004 and
8 thereafter resided continuously in the United States for more than two decades before being
9 taken into immigration custody.

10 4. On or about April 24, 2026, Petitioner was arrested in the interior of the United States
11 in or near Pompano Beach, Florida, during a routine traffic stop.

12 5. Petitioner was never encountered by immigration authorities at or near the border at
13 the time of entry and was not subjected to inspection, expedited removal proceedings, credible
14 fear screening, or any form of initial processing under INA § 235.

15 6. Petitioner's arrest did not occur at or near the border, was not connected to any
16 inspection or admission process, and did not arise from any ongoing expedited removal
17 proceeding or front-end border-processing detention framework under INA § 235.

18 7. Petitioner was subsequently transferred through ICE detention facilities before arriving
19 at the Otay Mesa Detention Center in San Diego, California, where he remains detained.

20 8. Despite these facts, DHS is treating Petitioner as subject to detention under INA §
21 235(b), rather than INA § 236(a), thereby denying him access to the individualized custody
22 determination ordinarily available to noncitizens apprehended in the interior of the United States
23 and placed in removal proceedings.

24 9. This habeas petition challenges that unlawful custody classification. INA § 235(b)
25 governs front-end, border-processing detention authority and does not permit the government to
26 invoke that authority for the first time more than two decades after entry against a noncitizen
27 apprehended in the interior of the United States during a routine traffic stop.

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11. DHS's contrary position, including its reliance on *Matter of Yajure-Hurtado*, would erase the statutory distinction between INA § 235 and INA § 236(a), allowing the government to treat any noncitizen who entered without inspection—no matter how long ago—as though he were an arriving applicant for admission at the border.

12. Petitioner does not challenge the initiation of removal proceedings or the merits of removability. Rather, he challenges only the legal basis of his detention and DHS's unlawful custody classification under INA § 235(b) instead of INA § 236(a).

13. Petitioner's continued detention without access to the custody procedures available under INA § 236(a) violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

14. Petitioner therefore respectfully requests that this Court declare his detention unlawful and order his immediate release from custody or, in the alternative, direct Respondents to treat Petitioner's detention as governed by INA § 236(a) and provide a prompt individualized custody determination before an Immigration Judge.

CUSTODY

15. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

16. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

17. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is presently detained within this District under color of federal authority and challenges the legality of that detention.

1 18. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises
2 under the Constitution and laws of the United States, including the Immigration and Nationality
3 Act and the Due Process Clause of the Fifth Amendment.

4 19. Federal district courts possess broad authority to issue writs of habeas corpus where a
5 person is held “in custody in violation of the Constitution or laws or treaties of the United
6 States.” 28 U.S.C. § 2241(c)(3). Petitioner seeks the traditional habeas remedy of release from
7 allegedly unlawful detention and does not challenge the merits of removability or any final order
8 of removal. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

9 20. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction.
10 Petitioner challenges only the statutory and constitutional basis of his detention and DHS’s
11 custody classification under INA § 235(b), not the decision to commence removal proceedings or
12 execute a removal order.

13 21. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because
14 Petitioner is detained within this District and his immediate custodian resides within this District.

15 **PARTIES**

16 22. Petitioner, Amilcar Santiago Cruz, is a native and citizen of Guatemala currently
17 detained at the Otay Mesa Detention Center in San Diego, California.

18 23. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
19 Center.

20 24. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
21 Security (DHS).

22 25. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
23 Enforcement (ICE).

24 26. Respondent Todd Blanche is the Acting Attorney General of the United States and
25 the head of the U.S. Department of Justice (DOJ).

26 27. All Respondents are named in their official capacities.
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28

STATEMENT OF FACTS

28. Petitioner, Amilcar Santiago Cruz, is a native and citizen of Guatemala currently detained at the Otay Mesa Detention Center in San Diego, California.

29. Petitioner entered the United States without inspection on or around 2004 and thereafter resided in the United States for more than two decades.

30. Petitioner was never encountered by immigration authorities at or near the border at the time of entry and was never subjected to inspection, expedited removal proceedings, credible fear screening, or any form of initial processing under INA § 235.

31. During his residence in the United States, Petitioner established ties within the community and maintained a stable presence in the country.

32. On or about April 24, 2026, Petitioner was arrested in or near Pompano Beach, Florida, during a routine traffic stop and was subsequently taken into immigration custody.

33. Petitioner's arrest did not occur at or near the border and was unrelated to any inspection or admission process.

34. Following his arrest, Petitioner was transferred through ICE detention facilities before ultimately being detained at the Otay Mesa Detention Center in San Diego, California, where he remains detained.

35. DHS now appears to be treating Petitioner as subject to detention under INA § 235(b), notwithstanding that he was apprehended in the interior of the United States more than two decades after entry and was never subjected to inspection or processing under INA § 235.

36. Petitioner has not been provided with a meaningful opportunity to obtain release through an individualized custody determination under INA § 236(a).

37. Absent relief from this Court, Petitioner faces continued detention without access to the custody procedures ordinarily available under INA § 236(a).

REQUIREMENTS OF 28 U.S.C. § 2243

38. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled

1 to relief. If an OSC is issued, the statute requires that Respondents file a return “within three
2 days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
3 (emphasis added).

4 39. Federal courts have long emphasized the importance of habeas corpus as a
5 protection against unlawful restraint. The Supreme Court has described the Great Writ as
6 “perhaps the most important writ known to the constitutional law of England, affording as it
7 does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
8 *Noia*, 372 U.S. 391, 400 (1963).

9 40. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain
10 a prompt and expeditious remedy. As the Ninth Circuit has explained, “The statute itself directs
11 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
12 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000)
13 (citation omitted). The court cautioned that delays in habeas proceedings risk creating the
14 impression “that courts are more concerned with efficient trial management than with the
15 vindication of constitutional rights.” *Id.*

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 41. In habeas corpus proceedings, exhaustion of administrative remedies is prudential
18 rather than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts may
19 waive prudential exhaustion where administrative remedies are inadequate, futile, or incapable of
20 providing the relief sought. *Id.*

21 42. Exhaustion should be excused here because, to the extent DHS classifies Petitioner as
22 detained under INA § 235(b), Immigration Judges lack jurisdiction to conduct custody
23 redetermination hearings. See 8 C.F.R. § 1003.19(h)(2)(i)(B). Accordingly, no meaningful
24 administrative mechanism exists through which Petitioner may challenge DHS’s custody
25 classification or obtain a custody determination under INA § 236(a).

26 43. Petitioner’s claims also present pure questions of law and constitutional questions
27 concerning the statutory basis of his detention and DHS’s authority to invoke INA § 235(b)

1 under these circumstances. Such claims fall outside the agency’s adjudicatory competence and
2 remain subject to habeas review under 28 U.S.C. § 2241.

3 44. Petitioner further suffers irreparable harm for each additional day he remains detained
4 without access to the custody procedures available under INA § 236(a). Under these
5 circumstances, prudential exhaustion should be waived.

6 **LEGAL FRAMEWORK**

7 45. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et
8 seq., provides multiple detention authorities that apply at different stages of the immigration
9 process. For decades, courts, Congress, and agencies have consistently distinguished between
10 two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which governs applicants for
11 admission encountered at or near the border, and INA § 236 (8 U.S.C. § 1226), which governs
12 the arrest and detention of individuals already present in the United States and placed in removal
13 proceedings. The Supreme Court analyzed the interplay between these provisions in *Jennings v.*
14 *Rodriguez*, 583 U.S. 281 (2018).

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

26 47. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
27 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
28

1 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
2 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
3 conditional parole, except as provided in subsection (c), which applies only to a narrow category
4 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
5 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
6 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
7 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
8 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
9 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
10 Rep. No. 104-469, pt. 1, at 229 (1996).

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

14 49. Only in 2025 did DHS and the Board of Immigration Appeals begin advancing, in
15 certain proceedings, a contrary interpretation—asserting that noncitizens who entered without
16 inspection could be treated as subject to detention under § 1225(b)(2). This interpretation
17 represented a departure from longstanding agency practice and contradicted settled expectations
18 regarding custody jurisdiction.

19 50. On July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”), in
20 coordination with the Department of Justice, issued Interim Guidance Regarding Detention
21 Authority for Applicants for Admission. The guidance asserted that noncitizens who entered
22 without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of
23 when or where they were apprehended, including individuals who had resided in the United
24 States for many years.

25 51. The Board of Immigration Appeals later adopted a similar statutory interpretation in
26 *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1 52. The legality of this interpretation *has since become the subject of ongoing federal*
2 *litigation.* In *Maldonado-Bautista v. Santacruz*, the United States District Court for the Central
3 District of California issued a declaratory judgment vacating DHS's July 8, 2025 interim
4 guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.
5 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

6 53. The district court subsequently granted a motion to enforce that judgment and vacated
7 the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, concluding that the
8 agency could not rely on that decision to continue applying the same detention interpretation
9 previously rejected by the court.

10 54. The government appealed those rulings to the United States Court of Appeals for the
11 Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-1044 (9th Cir.). On
12 March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution of the
13 government's emergency motion for a stay pending appeal. The court temporarily stayed the
14 district court's December 18, 2025 judgment insofar as it extended beyond the Central District of
15 California and also temporarily stayed the district court's February 18, 2026 enforcement order
16 vacating *Matter of Yajure-Hurtado*. The appeal remains pending.

17 55. As a result, immigration courts within this circuit have continued to treat *Matter of*
18 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), as binding precedent when determining custody
19 jurisdiction. In practice, noncitizens apprehended in the interior of the United States long after
20 entry continue to be denied bond hearings based on the assertion that detention is governed by
21 INA § 235 rather than INA § 236(a).

22 56. INA § 235(b) authorizes detention only in connection with the inspection and
23 admission process. That authority is event-based, not status-based. Where a noncitizen is not
24 apprehended at or near the border and is not placed in the inspection process, the statutory
25 predicate for § 235 custody does not exist.

26 57. Separately, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General
27 addressed detention authority for certain asylum seekers who remained in continuous custody
28

1 during expedited removal proceedings. *Matter of M-S-* presumes uninterrupted detention under
2 INA § 235(b) and does not address circumstances in which DHS seeks to apply INA § 235(b) to
3 a noncitizen who was never subjected to inspection, expedited removal, credible fear screening,
4 or any form of initial processing under INA § 235.

5 58. Applying INA § 235(b) to Petitioner despite his residence in the United States for
6 more than two decades and his arrest during a routine interior traffic stop would effectively
7 permit DHS to subject virtually any noncitizen who entered without inspection—regardless of
8 how many years ago—to mandatory detention without bond, thereby collapsing the distinction
9 between INA § 235 and INA § 236(a).

10 **CLAIM FOR RELIEF**

11 **COUNT 1**

12 **Violation of the Immigration and Nationality Act**

13 59. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all
14 preceding paragraphs.

15 60. Petitioner was never encountered by immigration authorities at or near the border,
16 was not subjected to inspection or expedited removal, and was not processed under INA § 235 at
17 any point. Instead, he was arrested in or near Pompano Beach, Florida, during a routine traffic
18 stop on or about April 24, 2026, more than two decades after entry.

19 61. Under these circumstances, detention—if lawful at all—must proceed under INA §
20 236(a) (8 U.S.C. § 1226(a)), which governs the arrest and detention of noncitizens pending a
21 decision on removal and provides for the possibility of release on bond or conditional parole. See
22 *Jennings v. Rodriguez*.

23 62. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully
24 mandates his continued detention in violation of the INA. By treating Petitioner as an applicant
25 for admission rather than a respondent subject to detention under INA § 236(a), DHS has acted
26 contrary to the statutory text and longstanding agency practice.

63. By treating Petitioner as an applicant for admission subject to INA § 235(b), rather than as a noncitizen detained under INA § 236(a), DHS has disregarded the statutory structure of the INA and collapsed the distinction between these two separate detention frameworks.

64. DHS's interpretation would permit the government to subject virtually any noncitizen who entered without inspection—regardless of how long ago—to mandatory detention without bond, thereby rendering INA § 236(a) largely meaningless for a broad class of individuals. Nothing in the text or structure of the INA supports such an expansive reading of INA § 235.

65. Accordingly, Petitioner's continued detention under INA § 235(b) is unlawful. He is entitled, at a minimum, to be treated as detained under INA § 236(a) and to receive a prompt, individualized custody determination before an Immigration Judge.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

66. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

67. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. U.S. CONST. amend. V.

68. The protections of the Due Process Clause apply to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

69. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Id.* at 690.

70. Immigration detention is civil in nature and is constitutionally permissible only when reasonably related to legitimate governmental objectives, such as ensuring appearance at proceedings or protecting the community. *Id.* at 690–91.

71. Petitioner—who has lived in the United States for more than two decades and was arrested during an interior enforcement action following a routine traffic stop on or about April

24, 2026—has been subjected to detention that is not meaningfully tied to any front-end inspection or admission purpose under INA § 235.

72. By classifying Petitioner’s custody as governed by INA § 235(b) and thereby denying him access to the custody procedures available under INA § 236(a), Respondents have deprived Petitioner of any meaningful opportunity for an individualized custody determination before a neutral decisionmaker.

73. The continued detention of Petitioner under INA § 235(b), notwithstanding his residence in the United States for more than two decades and his apprehension during an interior enforcement action unrelated to any inspection or admission process, constitutes an arbitrary deprivation of liberty in violation of the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents’ return, consistent with 28 U.S.C. § 2243;

C) Declare that Petitioner’s continued detention under INA § 235(b) violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;

D) Declare that Respondents lack lawful authority to detain Petitioner under INA § 235(b), and that any detention must proceed, if at all, under INA § 236(a);

E) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;

F) In the alternative, order Respondents to provide Petitioner with a prompt individualized custody hearing before a neutral decisionmaker pursuant to INA § 236(a);

G) Enjoin Respondents from transferring Petitioner outside this District without prior approval of this Court;

1 H) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
2 2412, and any other basis authorized by law; and

3 I) Grant such other and further relief as the Court deems just and proper.

4 Respectfully submitted,

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11 Counsel for Petitioner

12 Dated: May 26, 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 this Petition are based on information provided to me by Petitioner's close family members and relatives, as well as my review of available immigration records and detention information.

Based on that information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

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

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Counsel for Petitioner

Dated: May 26, 2026