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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALBERTO DIAZ MARTINEZ,

Petitioner,

v.

Christopher LAROSE, Senior Warden, Otay

Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S.

Department of Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the

United States, U.S. Department of Justice.

Respondents

Case No.: **'26CV3406 LL MSB**



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

1 1. Petitioner, Alberto Diaz Martinez, 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, Alberto Diaz Martinez, is a native and citizen of Nicaragua currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner entered the United States without inspection on or about June 2007 and
8 thereafter resided continuously in the United States for nearly nineteen years before being taken
9 into immigration custody.

10 4. On or about April 24, 2026, Petitioner was stopped by local law enforcement in Fort
11 Myers, Florida, for a moving violation and was subsequently taken into immigration custody by
12 ICE.

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

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

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

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

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

3 10. Where DHS takes a noncitizen into custody under these circumstances, detention—if
4 lawful at all—must proceed under INA § 236(a), which provides for eligibility for an
5 individualized bond hearing before an Immigration Judge.

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

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

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

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

20 CUSTODY

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

24 JURISDICTION AND VENUE

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

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

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

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

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

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

18 **PARTIES**

19 22. Petitioner, Alberto Diaz Martinez, is a native and citizen of Nicaragua currently
20 detained at the Otay Mesa Detention Center in San Diego, California.

21 23. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
22 Center.

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

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

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

3 27. All Respondents are named in their official capacities.

4 **STATEMENT OF FACTS**

5 28. Petitioner, Alberto Diaz Martinez, is a native and citizen of Nicaragua currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 29. Petitioner entered the United States without inspection on or about June 2007 and
8 thereafter resided continuously in the United States for nearly nineteen years before being taken
9 into immigration custody.

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

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

15 32. On or about April 24, 2026, Petitioner was stopped by local law enforcement in Fort
16 Myers, Florida, for a moving violation and was subsequently taken into immigration custody by
17 ICE.

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

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

23 35. DHS now appears to be treating Petitioner as subject to detention under INA §
24 235(b), notwithstanding that he was apprehended in the interior of the United States nearly
25 nineteen years after entry and was never subjected to inspection or processing under INA § 235.

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

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

3 **REQUIREMENTS OF 28 U.S.C. § 2243**

4 38. Under 28 U.S.C. § 2243, the Court “must” grant the petition for a writ of habeas
5 corpus or issue an order to show cause (“OSC”) “forthwith,” unless the petitioner is not entitled
6 to relief. If an OSC is issued, the statute requires that Respondents file a return “within three
7 days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
8 (emphasis added).

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

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

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

4 43. Petitioner's claims also present pure questions of law and constitutional questions
5 concerning the statutory basis of his detention and DHS's authority to invoke INA § 235(b)
6 under these circumstances. Such claims fall outside the agency's adjudicatory competence and
7 remain subject to habeas review under 28 U.S.C. § 2241.

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

11 **LEGAL FRAMEWORK**

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

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

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

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

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

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

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

5 52. The legality of this interpretation has since become the subject of ongoing federal
6 litigation. In *Maldonado-Bautista v. Santacruz*, the United States District Court for the Central
7 District of California issued a declaratory judgment vacating DHS's July 8, 2025 interim
8 guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz*, No.
9 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

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

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

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

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

3 57. Separately, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General
4 addressed detention authority for certain asylum seekers who remained in continuous custody
5 during expedited removal proceedings. *Matter of M-S-* presumes uninterrupted detention under
6 INA § 235(b) and does not address circumstances in which DHS seeks to apply INA § 235(b) to
7 a noncitizen who was never subjected to inspection, expedited removal, credible fear screening,
8 or any form of initial processing under INA § 235.

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

14 **CLAIM FOR RELIEF**

15 **COUNT 1**

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

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

19 60. Petitioner was never encountered by immigration authorities at or near the border,
20 was not subjected to inspection or expedited removal, and was not processed under INA § 235 at
21 any point. Instead, on or about April 24, 2026, Petitioner was stopped by local law enforcement
22 in Fort Myers, Florida, for a moving violation and was subsequently taken into immigration
23 custody by ICE nearly nineteen years after entry.

24 61. Under these circumstances, detention—if lawful at all—must proceed under INA §
25 236(a) (8 U.S.C. § 1226(a)), which governs the arrest and detention of noncitizens pending a
26 decision on removal and provides for the possibility of release on bond or conditional parole. See
27 *Jennings v. Rodriguez*.

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

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

4 71. Petitioner—who has lived in the United States for nearly nineteen years and was
5 taken into immigration custody following a moving-violation stop in Fort Myers, Florida, on or
6 about April 24, 2026—has been subjected to detention that is not meaningfully tied to any front-
7 end inspection or admission purpose under INA § 235.

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

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioner respectfully requests that this Court:

18 A) Assume jurisdiction over this matter;

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

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

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

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

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

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

7 H) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
8 2412, and any other basis authorized by law; and

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

10 Respectfully submitted,

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

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17 Counsel for Petitioner

18 Dated: June 4, 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.

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 as those circumstances have been represented to me.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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

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Dated: June 4, 2026