

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

JUAN ORSO-TINOCO,
Agency No. 

Petitioner,

'26CV3609 TWR BJW

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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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11 SAN DIEGO DIVISION
12

13 JUAN ORSO-TINOCO,)

'26CV3609 TWR BJW

14 Petitioner,)

15 v.)

PETITION FOR WRIT
OF HABEAS CORPUS

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

27 Respondents.)
28

I. INTRODUCTION

1. Petitioner JUAN ORSO-TINOCO, ("Petitioner") is a 33-year-old Mexican national who last entered the United States on an unknown date due to us not having a copy of the NTA.

2. Counsel was recently retained in this matter and, as of the time of

1 filing, has not received a copy of the Notice to Appear (NTA) or the complete
2 underlying charging document from prior counsel or the Department of
3 Homeland Security. Despite diligent efforts to obtain the NTA and related
4 charging materials, the record remains incomplete. Accordingly, counsel is
5 presently unable to confirm the specific factual allegations and statutory
6 charges asserted against Respondent and reserves the right to supplement and
7 amend this filing upon receipt of the complete immigration record.
8

9 3. Petitioner has not requested a custody redetermination as the impact
10 of the Board of Immigration Appeals (“BIA”) decision in *Matter of Yajure*
11 *Hurtado*, 28 I&N Dec. 216 (BIA 2025) has meant that all requests for custody
12 redetermination under Petitioner’s circumstances have been dismissed for lack
13 of jurisdiction. Accordingly, requesting a bond hearing would be frivolous.
14

15 4. Petitioner therefore seeks a writ of habeas corpus directing his
16 immediate release.
17

18 II. VENUE AND JURISDICTION

19 5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
20 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution
21 (Suspension Clause), as Petitioner is presently in custody under the authority
22 of the United States and challenging his detention as in violation of the
23 Constitution, laws, or treaties of the United States.
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25 6. The federal district courts have jurisdiction under Section 2241 to
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1 hear habeas claims by individuals challenging the lawfulness of their detention
2 by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

3 7. Venue is proper because Petitioner is detained in the Otay Mesa
4 Detention Center, within the San Diego Division, and Respondent LaRose is his
5 immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).
6

7 8 III. PARTIES

9 8. Petitioner is a 33-year-old Mexican national who resides in San Diego,
10 California. Petitioner is currently detained by Respondents at the Otay Mesa
11 Detention Center in San Diego, California, pending removal proceedings.
12

13 9. Respondent Christopher J. LaRose is the Warden of Otay Mesa
14 Detention Center. Respondent La Rose is responsible for the operation of the
15 Detention Center where Petitioner is detained. As such, Respondent LaRose
16 has immediate physical custody of the Petitioner. He is being sued in his
17 official capacity.
18

19 10. Respondent Gregory J. Archambeault is the San Diego Field Office
20 Director ("FOD") for ICE Enforcement and Removal Operations. Respondent
21 Archambeault is responsible for the oversight of ICE operations at the Otay
22 Mesa Detention Center. Respondent Archambeault is being sued in his official
23 capacity.
24

25 11. Respondent Dave Venturella is the Acting Director of ICE.
26 Respondent Lyons is responsible for the administration of ICE and the
27

1 implementation and enforcement of the immigration laws, including
2 immigrant detention. As such, Respondent Venturella is a legal custodian of
3 Petitioner and is being sued in his official capacity.

4
5 12. Respondent Markwayne Mullin is the Secretary of the Department
6 of Homeland Security ("DHS"). As Secretary of DHS, Secretary Mullin is
7 responsible for the general administration and enforcement of the immigration
8 laws of the United States. Respondent Secretary Mullin is being sued in his
9 official capacity.

10 IV. EXHAUSTION OF REMEDIES

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12 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;
13 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not
14 jurisdictionally required. Moreover, exhaustion should not be required here
15 because any attempt to exhaust would be futile, as BIA appeals routinely take
16 more than six months to reach a decision.

17
18 14. Additionally, further agency steps will be futile. Recently, the BIA
19 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,
20 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals
21 similarly situated to Petitioner ineligible for release on bond.

22
23 15. In Petitioner's case, any request for custody redetermination will be
24 dismissed by the Immigration Court for lack of jurisdiction and any appeal to
25 the BIA will be dismissed. *Matter of Yajure Hurtado* currently controls in
26 Petitioner's case and any attempt to request agency evaluation of his detention
27

1 will be futile.

2 **V. STATEMENT OF FACTS**

3 16. Petitioner is a Mexican national born or 

4 17. Petitioner was detained by Respondents at the Otay Mesa Detention
5 Center.
6

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

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

11 **VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT**

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13 20. 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

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

VII. CAUSES OF ACTION

COUNT ONE

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

22. Petitioner incorporates paragraphs 1 through 21 as if fully set out herein.

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

24. Respondents' newly formulated definition of "applicant for admission," which would include any noncitizen who has not been formally admitted regardless of years of residence in the United States, directly contradicts both the plain text of the statute and controlling Ninth Circuit precedent.

25. As the Ninth Circuit explained in interpreting the phrase "applicant for admission" under § 1225(b)(1), "*an immigrant submits an 'application for admission' at a distinct point in time,*" and stretching that phrase to apply "*potentially for years or decades ... would push the statutory text beyond its*

1 *breaking point.” United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
2 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).

3 26. Because Petitioner has resided continuously in the United States
4 since February 1, 2000, his period as an “applicant for admission” has long
5 since closed.
6

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

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

19
20 **COUNT TWO**
21 **(PROCEDURAL DUE PROCESS)**

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

24 30. The Fifth Amendment forbids deprivation of liberty without notice
25 and a meaningful opportunity to be heard before a neutral decision-maker. Due
26 process protects “all ‘persons’ within the United States, including [non-
27
28

1 citizens], whether their presence here is lawful, unlawful, temporary, or
 2 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).

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

7 32. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
 8 Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is
 9 extreme considering the Immigration Judge’s determination that Petitioner is
 10 not subject to mandatory detention under 8 U.S.C. § 1226(c) and does not pose
 11 a danger to the community. Likewise, the risk of erroneous deprivation of
 12 liberty is great due to the lack of a non-independent adjudicator. *Marcello v.*
 13 *Bonds*, 39 U.S. 302, 305-306 (1955). In filing Form EOIR-43, ICE is acting as
 14 both the prosecutor as well as the adjudicator.
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 16
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18 33. While the government has discretion to detain individuals under 8
 19 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
 20 discretion is not “unlimited” and must comport with constitutional due process.
 21 See *Zadvydas*, 533 U.S. at 698.
 22
 23

24 PRAYER FOR RELIEF

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

- 26 1) Assume jurisdiction over this matter;
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- 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 18th day of June, 2026.

/s/ Murray D. Hilts

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