

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

Luis Felipe-Benitez,

Agency No. 

Petitioner,

v.

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

al.,

Respondents.

PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

Luis Felipe-Benitez,

Petitioner,

v.

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

Respondents.

AMENDED
PETITION FOR
WRIT OF HABEAS
CORPUS



I. INTRODUCTION

1. Petitioner Luis Felipe-Benitez, ("Petitioner") is a 43-year-old Mexican national who last entered the United States at or near Tecate, California, on or about September 3, 2009.

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

1 he did not have access to 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. Counsel has now received the Notice to Appear and is
4 amending the original Writ that was filed on June 22, 2026.
5

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

12 4. Petitioner therefore seeks a writ of habeas corpus directing his
13 immediate release.
14

15 II. VENUE AND JURISDICTION

16 5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
17 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution
18 (Suspension Clause), as Petitioner is presently in custody under the authority
19 of the United States and challenging his detention as in violation of the
20 Constitution, laws, or treaties of the United States.
21

22 6. The federal district courts have jurisdiction under Section 2241 to
23 hear habeas claims by individuals challenging the lawfulness of their detention
24 by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).
25

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

3 4 5 **III. PARTIES**

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

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

15 10. Respondent Gregory J. Archambeault is the San Diego Field Office
16 Director (“FOD”) for ICE Enforcement and Removal Operations. Respondent
17 Archambeault is responsible for the oversight of ICE operations at the Otay
18 Mesa Detention Center. Respondent Archambeault is being sued in his official
19 capacity.
20

21 11. Respondent Dave Venturella is the Acting Director of ICE.
22 Respondent Lyons is responsible for the administration of ICE and the
23 implementation and enforcement of the immigration laws, including
24 immigrant detention. As such, Respondent Venturella is a legal custodian of
25 Petitioner and is being sued in his official capacity.
26
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12. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Secretary Mullin is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Mullin is being sued in his official capacity.

IV. EXHAUSTION OF REMEDIES

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

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

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

V. STATEMENT OF FACTS

16. Petitioner is a Mexican national born

1 17. Petitioner was detained by Respondents at the Otay Mesa Detention
2 Center on June 18, 2026.

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

4 19. Petitioner now seeks habeas relief because continuing his detention
5 exceeds statutory authority and violates the Fifth Amendment.
6

7 8 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

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

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

2 3 VII. CAUSES OF ACTION

4 COUNT ONE

5 8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER

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

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

13 24. Respondents' newly formulated definition of "applicant for
14 admission," which would include any noncitizen who has not been formally
15 admitted regardless of years of residence in the United States, directly
16 contradicts both the plain text of the statute and controlling Ninth Circuit
17 precedent.
18

19 25. As the Ninth Circuit explained in interpreting the phrase "applicant
20 for admission" under § 1225(b)(1), "*an immigrant submits an 'application for*
21 *admission' at a distinct point in time,*" and stretching that phrase to apply
22 "*potentially for years or decades ... would push the statutory text beyond its*
23 *breaking point.*" *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.
24 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).
25
26

27 26. Because Petitioner has resided continuously in the United States
28

1 sometime within, 2009, his period as an “applicant for admission” has long
2 since closed.

3 27. Numerous courts across the United States have considered this issue
4 subsequent to Respondents’ new policy of treating the vast majority of
5 immigrants in their custody as being detained pursuant to 8 U.S.C. §
6 1225(b)(2) and the BIA’s decision supporting this interpretation in *Matter of*
7 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).
8

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

16
17 **COUNT TWO**
18 **(PROCEDURAL DUE PROCESS)**

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

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

27 31. Subsection 1003.19(i)(2) strips Petitioner of that protection by
28

1 allowing the prosecuting agency—after losing at the bond hearing—to veto the
2 Immigration Judge’s order with a one-page notice that requires no showing of
3 danger, flight risk, or likelihood of success on appeal.

4
5 32. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
6 Petitioner’s liberty interest is paramount; the risk of erroneous deprivation is
7 extreme considering the Immigration Judge’s determination that Petitioner is
8 not subject to mandatory detention under 8 U.S.C. § 1226(c) and does not pose
9 a danger to the community. Likewise, the risk of erroneous deprivation of
10 liberty is great due to the lack of a non-independent adjudicator. *Marcello v.*
11 *Bonds*, 39 U.S. 302, 305-306 (1955). In filing Form EOIR-43, ICE is acting as
12 both the prosecutor as well as the adjudicator.

13
14 33. While the government has discretion to detain individuals under 8
15 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
16 discretion is not “unlimited” and must comport with constitutional due process.
17
18 *See Zadvydas*, 533 U.S. at 698.

19
20 **PRAYER FOR RELIEF**

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

- 22
23 1) Assume jurisdiction over this matter;
24 2) Grant Petitioner a writ of habeas corpus directing the Respondents to
25 immediately release him from custody, under reasonable conditions of
26 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 21st day of July, 2026.

/s/ Murray D. Hilts

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