

1 Victor E. Hernandez, Esq. (Cal. State Bar No.: 349076)
2 Victor Hernandez Law
3 402 West Broadway, Suite 400
4 San Diego, CA 92101
5 (619) 514-4500
6 Victor@VEHLaw.com

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT, CALIFORNIA

9 DIANA BERENICE CORTEZ MORALES

10 Petitioner,

11 v.

12 Daniel BRIGHTMAN, Field Office Director of
13 Enforcement and Removal Operations, San
14 Diego Field Office, Immigration and Customs
15 Enforcement; Markwayne MULLIN, Secretary,
16 U.S. Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Todd BLANCHE, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Christopher J.
LAROSE, Senior Warden of Otay Mesa
Detention Center,

17 Respondents.

Case No. '26CV3698 BJC MMP

**PETITION FOR WRIT OF
HABEAS CORPUS; FOR AN ORDER
TO SHOW CAUSE WITHIN
3 DAYS; AND TO ENJOIN
TRANSFER FROM THE
JURISDICTION**

INTRODUCTION

1. Petitioner DIANA BERENICE CORTEZ MORALES is a noncitizen who entered the United States without inspection on March 30, 2024, and who has since resided within the United States. She is in the physical custody of Respondents at the OTAY MESA DETENTION CENTER. Petitioner is being unlawfully detained without access to a bond hearing on the government's erroneous classification of her as an "arriving alien" under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2. If Petitioner was an "alien arriving in the United States," the government was obligated by statute to immediately order her removed from the United States or refer her to an asylum officer, at which point she would have been subject to either removal or mandatory detention pending review of her claims. 8 U.S.C. § 1225(b)(1). Alternatively, if she was "an applicant for admission" to the United States, the government was obligated to detain her pending resolution of removal proceedings. 8 U.S.C. § 1225(b)(2).

3. The government did not exercise either authority. Rather, the Department of Homeland Security ("DHS") has charged Petitioner as an "alien present in the United States without being admitted or paroled" under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), through a Notice to Appear ("NTA"). NTA does not classify her as an "arriving alien".

4. Nevertheless, this statutory and regulatory framework, DHS and the Immigration Court have treated Petitioner as if she were subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b), based on the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1 5. This position is contrary to the text and structure of the INA, where a noncitizen, charged
2 under § 1182(a)(6)(A)(i), not designated as an “arriving alien”, and arrested within the
3 United States, is detained under §1226(a) and therefore entitled to a bond hearing.

4 6. Petitioner seeks a Writ of Habeas Corpus ordering Respondents to provide her with a
5 constitutionally adequate bond hearing under 8 U.C.S. § 1226(a) within a short, specified
6 period.

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8 **STATEMENT OF FACTS**

9 7. Petitioner DIANA BERENICE CORTEZ MORALES is a citizen of MEXICO who has
10 resided in the United States since 2024. Petitioner entered the United States without
11 inspection On March 30, 2024, and was apprehended in Arizona after crossing the border,
12 though not at a port of entry. Her removal case was docketed with the Orlando Immigration
13 Court on April 01, 2024. Petitioner was released from detention on her own recognizance
14 on or about April 2, 2024.

15 8. After this initial apprehension, Petitioner remained in the United States until May 13, 2026.

16 9. On April 16, 2026, Petitioner appeared for her scheduled Immigration and Customs
17 Enforcement (“ICE”) check-in in Orlando, Florida, where she informed ICE of her change
18 of address to Charlotte, NC. ICE scheduled her next check-in appointment at the Charlotte,
19 NC office for May 13, 2026.

20 10. Petitioner subsequently appeared for the check-in scheduled appointment, and she was
21 arrested by ICE in Charlotte, NC.

22 11. On the same day she was arrested, Petitioner was transferred by ICE to a detention facility
23 in Georgia. Beginning around May 30, 2026, ICE initiated a series of additional transfers,
24

1 moving Petitioner through multiple detention facilities in Texas, Louisiana, and Arizona,
2 before ultimately relocating her to Otay Mesa Detention Center on June 3, 2026.

3 12. Following her 2026 arrest, ICE declined to set a bond, and Petitioner requested custody
4 redetermination before an Immigration Judge (“IJ”). On June 04, 2026, Petitioner was
5 unable to appear for her scheduled bond hearing before the Lumpkin Immigration Court
6 because ICE had transferred her to another detention facility. As a result, the Immigration
7 Judge issued an order stating only that “Respondent transferred to another facility,” and no
8 bond hearing was conducted.

9 13. As a result, Petitioner has remained in immigration detention since May 13, 2026, without
10 ever a meaningful opportunity to seek release on bond. Her continued detention is based
11 solely on DHS’s and the IJ’s application of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216
12 (BIA 2025) classifying her as an arriving alien, despite the undisputed facts that he entered
13 without inspection, was not apprehended at a port of entry, and has lived in the United
14 States since 2024.

15 14. Petitioner has pursued, and continues to pursue, her asylum claim through proceedings
16 before an immigration judge pursuant to Section 240 of the Immigration and Nationality
17 Act. Moreover, there have been no changed circumstances supporting a finding that
18 Petitioner is a flight risk or danger to the community that could justify her detention. On
19 the contrary, Petitioner has complied with his legal obligations.

20 JURISDICTION

21 15. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
22 OTAY MESA DETENTION CENTER in OTAY MESA, CALIFORNIA.

16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

18. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center, an ICE detention center, located within San Diego County, and Christopher J. LAROSE is his immediate custodian as the Warden of the facility. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the CALIFORNIA SOUTHERN DISTRICT, the judicial district in which Petitioner currently is detained.

19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the CALIFORNIA SOUTHERN DISTRICT.

20. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

REQUIREMENTS OF 28 U.S.C. § 2241, 2243

21. The Court should grant the petition for writ of habeas corpus “forthwith,” as required by 28 U.S.C. § 2243. When a petitioner alleges unlawful immigration detention and seeks immediate judicial review, 28 U.S.C. § 2243 mandates prompt action: the Court must

1 either award the writ or issue an Order to Show Cause without delay. If an OSC is issued,
2 Respondents must file a return “within three days unless for good cause additional time, not
3 exceeding twenty days, is allowed.” 28 U.S.C. § 2243.

4 22. Habeas corpus is “perhaps the most important writ known to the constitutional
5 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
6 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).¹ “The application for
7 the writ usurps the attention and displaces the calendar of the judge or justice who entertains it
8 and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*,
9 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

10 23. Petitioner is “in custody” for the purpose of § 2241 because she was arrested and
11 remain detained by the Respondents.

12 PARTIES

13 24. Petitioner DIANA BERENICE CORTES MORALES is a citizen of MEXICO
14 who has been in immigration detention since May 13, 2026. Petitioner entered the United States
15 on or about March 30, 2024, and has since resided in the United States. After Petitioner was
16 arrested in Charlotte, NC, ICE did not set bond. Petitioner remains detained at the OTAY MESA
17 DETENTION CENTER in Otay Mesa, CA.

18 25. Respondent Daniel BRIGHTMAN is the Director of the San Diego Field Office
19 of ICE’s Enforcement and Removal Operation division. As such, Daniel Brightman is
20 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is
21 named in his official capacity.

22 26. Respondent Markwayne MULLIN is the Secretary of the Department of
23 Homeland Security. He is responsible for the implementation and enforcement of the
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1 Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's
2 detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official
3 capacity.

4 27. Respondent Department of Homeland Security (DHS) is the federal agency
5 responsible for implementing and enforcing the INA, including the detention and removal of
6 noncitizens.

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

11 29. Respondent Executive Office for Immigration Review (EOIR) is the federal
12 agency responsible for implementing and enforcing the INA in removal proceedings, including
13 for custody redeterminations in bond hearings.

14 30. Respondent Christopher J. LAROSE is employed as Warden of the OTAY MESA
15 DETENTION CENTER, where Petitioner is detained. He has immediate physical custody of
16 Petitioner. HE is sued in HIS official capacity.

17 **CLAIM FOR RELIEF**

18 **Violation of the INA:**

19 31. Petitioner repeats, re-alleges, and incorporates by reference each and every
20 allegation in the preceding paragraphs as if fully set forth herein.

21 32. Petitioner satisfies all statutory requirements for custody under INA § 236(a):

- 22 a. Petitioner has no lawful status and be detained by DHS;
23 b. Entered the U.S. without inspection and was not apprehended upon arrival;
24 c. Is not detained under 8.U.S.C. sections 1226 (c), 1225(b), or 1231

- 1 d. Respondent's classification of Petitioner as an "arriving alien" under *Matter of Q.*
2 *Li*, 29 I&N Dec. 66 (BIA 2025) or *Matter of Yajure-Hurtado*, 29 I&N Dec. 216
3 (BIA 2025) is contrary to the statutory framework of the INA, which
4 distinguishes between individuals apprehended at ports of entry and those arrested
5 within the interior of the United States. Petitioner was charged under
6 212(a)(6)(A)(i) as an alien present in the United States who has not been admitted
7 or paroled.
8 e. Was not detained under 8.U.S.C. section 1225(b) upon her entry to the United
9 States.
10 f. By refusing to provide Petitioner with a bond hearing and by asserting that the IJ
11 lacks jurisdiction to consider custody under § 236(a), Respondents are violating
12 the INA and depriving Petitioner of the statutory procedures Congress mandated
13 for individuals detained under § 236(a).

14 **The Petitioner's Detention without a Custody Hearing Violates Due Process and the**
15 **Fifth Amendment**

16 33. Petitioner reiterates and incorporates by reference paragraphs 1 through 32 as if fully set
17 forth herein.

18 34. Additionally, the Fifth Amendment forbids deprivation of liberty without notice and a
19 meaningful opportunity to be heard before a neutral decision maker. Due process protects all
20 persons within the U.S. regardless of legal status. *Zadvydas v. Davis*, 533 U.S. 678, 698
21 (2001) A vital liberty interest is at stake when an individual is subject to detention by the
22 government. According to *Zadvydas*, the government may only deprive a non-citizen of
23 physical liberty when it serves a legitimate purpose, commonly understood to include securing
24 one's appearance at future hearings.

- 1 e. Alternatively, issue a writ of habeas corpus requiring Respondents to release
2 Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within
3 seven days; and
4 f. Grant any other and further relief that this Court deems just and proper.

5 DATED this 24th of June, 2026.

/s/ Victor E. Hernandez

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7 Victor E. Hernandez
8 *Attorney for Petitioner*
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: June 24, 2026

/s/ Victor E. Hernandez
Victor E. Hernandez, Esq.
(619) 514-4500
Victor@VEHLaw.com
Attorney for Petitioner