

Pedro De Lara, Jr. (SBN 238795)
355 Third Avenue, Suite C
Chula Vista, CA 91910
(619) 550-9496
Email: delara.law77@gmail.com

Leroy George Siddell (SBN 48670)
2323 Broadway, Ste. 104
San Diego, CA 92102
Office: (619) 231-3991
Email: attorneysiddell@yahoo.com

Attorneys for Petitioner,
Fidel Arias Torres

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

FIDEL ARIAS TORRES,	)	Case No. <u>'25CV2457 BAS MSB</u>
	)	
Petitioner,	)	
	)	
v.	)	
	)	
PAM BONDI, Attorney General of the	)	PETITION FOR WRIT OF
United States, in her official capacity;	)	HABEAS CORPUS AND
KRISTI NOEM, Secretary of the U.S.	)	COMPLAINT FOR
Department of Homeland Security, in her	)	DECLARATORY AND
official capacity; EXECUTIVE OFFICE	)	INJUNCTIVE RELIEF
FOR IMMIGRATION REVIEW; TODD	)	
LYONS, Acting Director of U.S.	)	
Immigration and Customs Enforcement,	)	
in his official capacity; PATRICK	)	
DIVVER, ICE Field Office Director for	)	
San Diego County, in his official capacity.	)	
	)	
Respondents.	)	

INTRODUCTION

1. Petitioner Fidel Arias Torres has resided in California since 2001, with deep family and community ties. He is the beneficiary of an approved I-130 visa petition and appeared voluntarily for a scheduled USCIS adjustment-of-status interview on June 25, 2025. Instead of adjudicating his application, ICE arrested him at the interview and transferred him to the Otay Mesa ICE Processing Center.

2. On July 14, 2025, the Immigration Judge ("IJ") held a custody redetermination hearing under INA § 236(a). DHS argued that Petitioner was detained under § 235(b)(2) and therefore ineligible for bond.

3. By contrast, the INA and its implementing regulations provide that individuals like Petitioner — long-term residents apprehended in the interior and placed in § 240 proceedings — are detained, if at all, under § 236(a), which expressly authorizes Immigration Judges to conduct custody redeterminations. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). The Ninth Circuit has confirmed that an ‘application for admission’ is a discrete event that occurs when a noncitizen presents themselves for entry, not a permanent status that attaches to everyone who entered without inspection. *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc).

4. The IJ rejected DHS’s argument, finding that Petitioner is not an “arriving alien,” that § 236(a) governs custody, and that Petitioner posed no danger and only a mitigated flight risk. The IJ set a \$2,500 bond with Alternative to Detention (ATD) as appropriate.

5. DHS filed a Notice of Intent to Appeal (Form EOIR-43), which under

1 8 C.F.R. § 1003.19(i)(2) automatically stayed the IJ's bond order and barred
2
3 Petitioner's release while the appeal is pending. In practice, such appeals extend
4 detention for months or years, making habeas the only timely remedy.

5 6. Petitioner's ability to obtain relief from the pending BIA appeal is
6 futile. In July 2025, ICE issued a memorandum instructing its attorneys to
7 coordinate with EOIR to reject bond redetermination hearings for all individuals
8 who entered without inspection, regardless of length of residence or location of
9 arrest.
10

11 7. That outcome effectively deprives Petitioner of liberty for years and
12 directly conflicts with Ninth Circuit precedent, the statutory framework, and due
13 process of law, leaving habeas as the only timely and effective remedy.
14

15 8. Despite recent federal court rulings rejecting Respondents' position,
16 DHS and EOIR continue to maintain that all noncitizens who entered the United
17 States without inspection are categorically ineligible for bond redetermination
18 hearings, treating them as perpetual "applicants for admission" under 8 U.S.C. §
19 1225(b)(2)(A), regardless of how long they have lived in this country or where
20 they were apprehended. This interpretation directly contravenes the statute, binding
21 Ninth Circuit precedent, and the Fifth Amendment's Due Process Clause. See
22 *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24,
23 2025), Dkt. 29, 38; *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.
24 July 2025), Dkt. 14; *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020).
25
26

27 9. In September 2025, the BIA formally adopted the new position in a
28 precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025),

1 holding that such individuals fall under § 235(b)(2) and are categorically ineligible
2 for bond. Given that ruling, DHS is effectively guaranteed to prevail before the
3 BIA, forcing Petitioner to seek relief in the Ninth Circuit Court of Appeals
4 regardless of the facts of his case.
5

6 10. Following *Matter of Yajure Hurtado*, DHS and immigration judges
7 have categorically denied bond redetermination hearings to all noncitizens who
8 entered without inspection, regardless of their length of residence, family ties, or
9 equities. This blanket denial demonstrates that administrative remedies are
10 foreclosed and that only judicial intervention can secure a hearing consistent with
11 § 236(a), Ninth Circuit precedent, and due process.
12

13 11. Petitioner seeks the following relief:

- 14 (a) A writ of habeas corpus directing Respondents to release him
15 forthwith under the conditions set by the IJ's July 14, 2025 bond order
16 or, if the Court determines further process is required, to provide an
17 immediate § 236(a) bond hearing before a neutral adjudicator;
18
19 (b) Declaratory and injunctive relief prohibiting Respondents from
20 categorically applying § 235(b)(2) to long-term residents in § 240
21 proceedings; and
22
23 (c) Set-aside relief under the Administrative Procedure Act requiring that
24 individuals like Petitioner be provided bond redetermination hearings
25 before the immigration judge.
26

27 JURISDICTION AND VENUE

28 12. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331. The

1 Suspension Clause protects habeas review of civil immigration detention. See U.S.
2 Const. art. I, § 9, cl. 2.

3
4 13. Venue properly lies in the Southern District of California under 28
5 U.S.C. § 1391(e)(1)–(2). Petitioner was arrested in this District, the Immigration
6 Judge conducted bond proceedings here, and the ICE Field Office Director
7 responsible for Petitioner’s custody resides in this District. Petitioner is presently
8 housed at the Otay Mesa detention facility in San Diego, California. Should DHS
9 transfer Petitioner outside the District prior to filing this Petition, such transfer
10 would not divest this Court of venue where the petition challenges systemic DHS
11 and ICE policies and seeks relief that only those Respondents — not the immediate
12 facility warden — can provide. See *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.8
13 (2004) (recognizing exceptions to the immediate-custodian rule). Because the
14 petition challenges DHS and ICE policies governing bond eligibility, relief runs
15 against higher-level officials and agencies located in this District, not solely the
16 immediate custodian.
17
18
19
20
21

22 14. The Court may grant declaratory and injunctive relief under 28 U.S.C.
23 §§ 2201–2202 and the APA, 5 U.S.C. § 702, to the extent necessary.
24

25 PARTIES

26 15. Petitioner Fidel Arias Torres is a native and citizen of Mexico who
27 has resided continuously in California since 2001. He was arrested in this District
28

1 on June 25, 2025, following his voluntary appearance for a USCIS adjustment
2 interview, and remains detained in ICE custody

3
4 16. Respondent Pam Bondi is the Attorney General of the United States
5 and is sued in her official capacity as the head of the Department of Justice. The

6 17. Attorney General is responsible for the fair administration of the laws
7 of the United States.

8 18. Kristi Noem, Secretary of the U.S. Department of Homeland Security
9 (DHS), is sued in her official capacity as the Cabinet official charged with
10 administration and enforcement of the immigration laws, including custody and
11 release authority. See 8 U.S.C. § 1103(a).

12
13 19. Respondent Executive Office for Immigration Review is a
14 component agency of the Department of Justice responsible for conducting
15 removal and bond hearings of noncitizens. EOIR is comprised of a lower
16 adjudicatory body administered by immigration judges and an appellate body
17 known as the Board of Immigration Appeal (BIA). Immigration judges issue bond
18 redetermination hearing decisions, which are then subject to appeal to the BIA.
19 EOIR is sued as an agency respondent because its policies and decisions are at
20 issue in this action.
21

22
23 20. Respondent Todd Lyons is the Acting Director of U.S. Immigration
24 and Customs Enforcement (ICE) and is sued in his official capacity. ICE is
25 responsible for the detention of Petitioners.

26 21. Patrick Divver is the Immigration and Customs Enforcement Field
27 Office Director for San Diego County, including the Otay Mesa detention facility
28 and is sued in his official capacity.

LEGAL BACKGROUND

22. The Immigration and Nationality Act (INA) establishes four distinct detention regimes for noncitizens in removal proceedings. Section 236(a) (8 U.S.C. § 1226(a)) is the default, discretionary authority for individuals “*found in the United States*” and placed in § 240 proceedings; it expressly authorizes an immigration judge to conduct custody redeterminations at the outset of detention (see 8 C.F.R. §§ 1003.19(a), 1236.1(d)).

23. Section 236(c) (8 U.S.C. § 1226(c)) mandates detention for noncitizens charged with or convicted of certain criminal and terrorism-related offenses. Section 235(b)(1) & (b)(2) (8 U.S.C. § 1225) governs custody at the inspection stage, with expedited removal under subsection (b)(1) and other applicants for admission under subsection (b)(2). Finally, section 241 (8 U.S.C. § 1231) provides for post-final-order detention (not at issue here).

24. Section 236(a) governs the detention of long-term residents arrested in the interior and placed in § 240 removal proceedings. By its plain terms, it applies “*pending a decision on whether the [noncitizen] is to be removed from the United States,*” and the implementing regulations vest an immigration judge with bond-hearing jurisdiction (8 C.F.R. §§ 1003.19(a), 1236.1(d)).

25. By contrast, section 235(b) applies exclusively at ports of entry. Its text and structure confirm that an “*application for admission*” is a single event occurring at entry, triggering inspection or fear-screening procedures. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and this Court en

1 banc in *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020), held that “*applicant for*
2 *admission*” is not a perpetual status but a discrete event at the border.

3
4 26. Regulatory history under IIRIRA reinforces this textual split. In its
5 1997 rulemaking, EOIR explained that persons who entered without inspection but
6 are placed in § 240 proceedings remain detained under § 236(a), not § 235. See
7 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;
8 Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312,
9 10,323 (Mar. 6, 1997).

10
11 27. Despite that clear framework, ICE’s July 2025 internal guidance
12 directed field offices to reject § 236(a) bond hearings for all individuals who
13 entered without inspection, irrespective of their length of residence or place of
14 arrest.

15
16 28. In September 2025, the BIA adopted this position in *Matter of Yajure*
17 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that those individuals are
18 categorically ineligible for bond under § 235(b)(2).

19
20 29. Several district courts in this Circuit have enjoined that categorical
21 policy and ordered bond hearings under § 236(a) for long-term residents arrested in
22 the interior. See *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D.
23 Wash. Apr. 24, 2025); *Bautista v. Sec’y of DHS*, No. 5:25-cv-01873 (C.D. Cal.
24 July 2025).

25
26 30. Petitioner is a long-term California resident arrested in the interior and
27 placed in § 240 proceedings. Under the INA’s text, its implementing regulations,
28 and controlling Ninth Circuit authority, § 236(a) governs his detention and bond-
hearing rights. The government’s contrary, categorical reliance on § 235(b)(2)

1 directly conflicts with this statutory and regulatory scheme and forecloses any
2 administrative remedy—necessitating this Court’s intervention.

3
4 FACTUAL AND PROCEDURAL BACKGROUND

5 31. Mr. Arias Torres has lived in California since 2001, where he co-owns
6 a licensed construction business, files taxes, and is active in his church. He is
7 married, the father of three children (including a U.S. citizen), and has no criminal
8 history beyond a minor traffic infraction. His extended U.S.-citizen family and
9 long-term residence underscore his deep ties to the community.
10

11 32. On June 25, 2025, after voluntarily appearing for a USCIS adjustment
12 of status interview based on an approved I-130 petition, ICE officers arrested him
13 and served a Notice to Appear, placing him in § 240 removal proceedings. He was
14 transferred to the Otay Mesa ICE Processing Center.
15

16 33. Although USCIS denied Respondent’s adjustment application at the
17 interview and placed him into removal proceedings, that denial was not dispositive.
18 Respondent filed an administrative motion to reopen and the issue is still pending.
19

20 34. In addition, once DHS issued the Notice to Appear, jurisdiction over
21 Respondent’s application for adjustment of status transferred exclusively to the
22 Immigration Judge under 8 C.F.R. § 1245.2(a)(1)(i), which provides that “*in the*
23 *case of any alien who has been placed in deportation proceedings or in removal*
24 *proceedings ... the immigration judge hearing the proceeding has exclusive*
25 *jurisdiction to adjudicate any application for adjustment of status the alien may*
26 *file.*” See also 8 C.F.R. § 1240.11(a)(1) (requiring the IJ to advise respondents of
27 apparent eligibility for relief and afford them an opportunity to apply).
28

1 35. Respondent is actively pursuing lawful status through this renewed
2 adjustment application based on the approved I-130 petition filed by his U.S.
3 citizen father.
4

5 36. These pending avenues of relief underscore his strong family ties,
6 long-term residence, and deep equities, further supporting the Immigration Judge's
7 finding that Respondent poses no danger and only a mitigated flight risk.

8 37. On July 7, 2025, Mr. Arias Torres moved for custody redetermination
9 under INA § 236(a). At the July 14 hearing, the Immigration Judge ruled that §
10 236(a) governs because he is not an arriving alien; found he posed no danger and
11 only a mitigated flight risk; and set bond at \$2,500 with ATD conditions. On July
12 31, the IJ issued a written memorandum to assist the Board of Immigration
13 Appeals with review.
14

15 38. DHS appealed, invoking the automatic stay under 8 C.F.R. §
16 1003.19(i)(2). In its appeal, DHS advanced the categorical theory that all
17 individuals who entered without inspection are subject to mandatory detention
18 under INA § 235(b)(2) and therefore ineligible for bond. The Immigration Judge
19 — consistent with every federal court to consider the issue — rejected that theory,
20 explaining that Mr. Arias Torres's interior arrest decades after entry placed him
21 squarely within § 236(a), not § 235(b)(2).
22

23 39. Nevertheless, in September 2025 the Board of Immigration Appeals
24 issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's
25 categorical position. That precedential ruling forecloses any possibility of relief on
26 Petitioner's pending appeal. Even if the Ninth Circuit ultimately overturns *Yajure*
27 *Hurtado*, the appellate process will take years, during which Petitioner would
28

1 remain in detention without bond. This renders administrative remedies illusory
2 and makes habeas, injunctive, and declaratory relief from this Court the only
3 meaningful means of vindicating his statutory and constitutional rights.
4

5 CAUSES OF ACTION

6 COUNT I

7 Violation of 8 U.S.C. § 1226(a):

8 Unlawful Continued Detention Despite Bond Grant

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

11 41. Under 8 U.S.C. § 1226(a), noncitizens apprehended in the interior and
12 placed in § 240 removal proceedings are detained, if at all, subject to
13 discretionary bond redetermination by an immigration judge. On July 14, 2025, the
14 IJ found that Petitioner is not an “arriving alien,” determined that he posed no
15 danger and only a mitigated flight risk, and ordered release on a \$2,500 bond with
16 ATD.

17 42. Although 8 C.F.R. § 1003.19(i)(2) provides for an automatic stay of
18 release pending appeal, Congress did not intend that mechanism to function as a
19 categorical override of immigration judges’ bond authority or to perpetuate
20 detention for years where an IJ has already determined release is appropriate.

21 43. The congressional intent is reflected in § 236(a), which expressly
22 authorizes custody redeterminations and release on bond “pending a decision on
23 whether the alien is to be removed from the United States,” and is confirmed by §
24 240A(b)(1), which authorizes cancellation of removal for long-term residents to
25 prevent exceptional hardship to U.S. citizen spouses and children — not to inflict
26
27
28

1 that hardship through prolonged and unnecessary detention while removal
2 proceedings drag on.

3 44. Respondents' continued reliance on § 235(b)(2) to nullify the IJ's
4 order, combined with their invocation of the automatic stay to prolong detention
5 for years, constitutes a tactical abuse of the limited procedural mechanism
6 Congress created. This practice exceeds the statutory authority conferred by §
7 236(a), unlawfully denies Petitioner the release Congress authorized, and frustrates
8 the very family-unity protections Congress embedded in both bond and
9 cancellation-of-removal provisions.
10

11 45. Accordingly, Respondents' actions violate the Immigration and
12 Nationality Act, and Petitioner is entitled to habeas, declaratory, and injunctive
13 relief.
14

15 COUNT II

16 Violation of the Administrative Procedure Act (5 U.S.C. § 706) 17 Unlawful Denial of Bond Jurisdiction

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

21 47. The INA and its implementing regulations authorize Immigration
22 Judges to redetermine custody for noncitizens apprehended in the interior and
23 placed in § 240 proceedings. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a),
24 1236.1(d). For decades, EOIR and DHS consistently applied § 236(a) to such
25 individuals, affording bond hearings before an IJ, consistent with the statute's text
26 and EOIR's 1997 rulemaking.
27
28

1 48. In July 2025, however, ICE abruptly abandoned this settled practice.
2 Through an internal memorandum, ICE instructed its trial attorneys to resist §
3 236(a) bond hearings across the board for all who had entered without inspection,
4 regardless of how long they had resided in the United States or where they were
5 arrested. That directive, though aimed at DHS attorneys, had the practical effect of
6 shifting the adjudicatory framework once EOIR began adopting the same
7 categorical position.
8

9 49. Two months later, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
10 (BIA 2025), the Board of Immigration Appeals formally ratified that position,
11 holding that all noncitizens who entered without inspection are detained under §
12 235(b)(2) and categorically ineligible for bond. That decision stripped Immigration
13 Judges of jurisdiction to conduct bond hearings, even where an IJ had already
14 found release appropriate.
15

16 50. This abrupt reversal of decades of practice was adopted without notice
17 and comment, lacks reasoned explanation, and is contrary to the governing statute
18 and regulations. The BIA's post hoc rationale in *Yajure Hurtado* cannot cure those
19 defects.
20

21 51. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024),
22 this Court owes no Chevron deference to the agency's construction of § 235(b)(2),
23 but must apply its own judgment to the statutory text. Properly construed, §
24 235(b)(2) does not apply to long-term residents arrested in the interior and placed
25 in § 240 proceedings.
26

27 52. Accordingly, Respondents' categorical reclassification is unlawful,
28 arbitrary, capricious, and not in accordance with law within the meaning of 5
U.S.C. § 706(2).

COUNT III

Violation of Procedural Due Process (Fifth Amendment)

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

54. The Fifth Amendment provides that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. V. Freedom from imprisonment (from government custody, detention, or other forms of physical restraint) lies at the heart of the liberty that the Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens in removal proceedings possess a fundamental interest in liberty and in being free from unnecessary official restraint.

55. Here, Petitioner was afforded an individualized custody redetermination under § 236(a). The Immigration Judge found that he is not an “arriving alien,” determined that he posed no danger and only a mitigated flight risk, and ordered his release on bond with conditions. Due process required that this individualized determination be honored, absent a lawful statutory basis for continued detention.

56. Respondents’ invocation of § 235(b)(2) and reliance on the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) to nullify the IJ’s bond order, combined with their categorical refusal to recognize § 236(a) jurisdiction for noncitizens who entered without inspection, deprives Petitioner of a meaningful opportunity for release.

57. This tactic amounts to an abuse of process: a procedural device intended only for temporary review has been converted into an instrument for

1 indefinite detention, ensuring that even individuals found releasable by an IJ
2 remain imprisoned for months or years despite a judicial finding that release is
3 appropriate.
4

5 58. Further, Congress expressly recognized that long-term residents
6 develop deep family and community ties and that removal proceedings must
7 account for the “exceptional and extremely unusual hardship” that detention and
8 removal inflict on U.S. citizen spouses and children. 8 U.S.C. § 1229b(b)(1).
9

10 59. Respondents’ categorical detention policy and their refusal to honor
11 IJ bond determinations defeat that congressional intent, prolonging separation and
12 inflicting the very harms Congress sought to prevent.

13 60. Such continued detention without effectual access to bond violates
14 procedural due process. At a minimum, due process requires that individuals in
15 civil immigration custody receive a bond hearing before a neutral adjudicator, with
16 consideration of ability to pay, alternatives to detention, and with the government
17 bearing the burden of proof by clear and convincing evidence.
18

19 61. By overriding the IJ’s bond order and foreclosing further
20 individualized review, Respondents’ policy and practice violate the Fifth
21 Amendment.
22

23 PRAYER FOR RELIEF

24 Petitioner respectfully requests that this Court:

25 A. Declare that INA § 236(a), not § 235(b)(2), governs Petitioner’s custody
26 as a long-term resident arrested in the interior and placed in § 240 proceedings, and
27 that Respondents’ contrary application of § 235(b)(2) is unlawful as applied;
28

1 B. Enjoin Respondents from enforcing any categorical policy or practice that
2 denies Immigration Judges jurisdiction to conduct bond hearings under § 236(a)
3 for noncitizens who entered without inspection but are placed in § 240
4 proceedings;
5

6 C. Set aside Respondents' unlawful detention policy, including the July
7 2025 ICE memorandum, and enjoin enforcement of the BIA's September 2025
8 decision in *Matter of Yajure Hurtado* as applied to Petitioner and similarly situated
9 long-term residents arrested in the interior;
10

11 D. Issue a writ of habeas corpus directing Respondents to release Petitioner
12 forthwith under the terms provided for in the IJ hearing order of July 14, 2025;

13 E. Award reasonable attorneys' fees and costs under the Equal Access to
14 Justice Act, 28 U.S.C. § 2412, or any other applicable authority; and
15

16 F. Grant such other and further relief as this Court deems just and proper.

17 Dated: September 15, 2025

18 Respectfully submitted,

19
20 /s/ Pedro De Lara, Jr.
Pedro De Lara, Jr.

21
22 /s/LeRoy George Siddell
LeRoy George Siddell
23

24 Attorneys for Petitioner
25
26
27
28

EXHIBIT LIST

- A . IJ's Bond Order (July 14, 2025) and Written Memorandum (July 31, 2025).
- B. DHS EOIR-43, Notice of Intent to Appeal (July 17, 2025)
- C. DHS EOIR-26, Notice of Appeal (July 28, 2025)