

1 Alejandro Monsalve  
2 CA SBN 324958  
3 Alex Monsalve Law Firm, PC  
4 240 Woodlawn Ave., Suite 9  
5 Chula Vista, CA 91910  
6 (619) 777-6796  
7 Counsel for Petitioner

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARTA HERNANDEZ-CORTEZ

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

Respondents

Case No.: '26CV2423 RBM VET

Agency File No: A 

PETITION FOR WRIT OF  
HABEAS CORPUS AND  
REQUEST FOR ORDER TO  
SHOW CAUSE WITHIN THREE  
DAYS

## INTRODUCTION

1. Petitioner Marta Hernandez-Cortez respectfully submits this Petition for a Writ of Habeas Corpus challenging her continued detention by the Department of Homeland Security (“DHS”). Petitioner is a native and citizen of El Salvador who entered the United States without inspection in or about December 2009. She remained undetected at the time of entry and has resided continuously in the United States for more than seventeen years, during which she established deep family, economic, and community ties. On January 23, 2026, Petitioner was arrested by Immigration and Customs Enforcement (“ICE”) officers during a worksite enforcement operation in Pittsburgh, Pennsylvania, far removed from any border or port of entry. She was subsequently transferred through multiple detention facilities across the country before arriving at the Otay Mesa Detention Center, where she remains detained.

2. Petitioner remains detained based on the application of an interpretation of the Immigration and Nationality Act (“INA”) articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), under which DHS and EOIR have treated certain noncitizens who entered without inspection as subject to detention under INA § 235(b) and therefore ineligible for bond, notwithstanding apprehension in the interior of the United States many years after entry.

3. As applied in Petitioner’s case, that interpretation resulted in the denial of bond jurisdiction by the Immigration Court. On April 3, 2026, the Immigration Judge denied bond, concluding that Petitioner’s entry without inspection rendered her an “applicant for admission” subject to mandatory detention under INA § 235(b), relying on *Matter of Yajure-Hurtado*. As a result, Petitioner has been deprived of any meaningful individualized custody determination under INA § 236(a), despite her arrest in the interior of the United States after more than a decade of residence and the absence of any statutory bar to discretionary release.

4. Federal courts addressing similar detention claims have consistently held that individuals apprehended in the interior of the United States long after entry are detained, if at all, under INA § 236(a), which provides for discretionary release and bond eligibility, rather than under INA § 235(b), which governs initial inspection and admission at or near the border. These

1 decisions reflect the statutory structure distinguishing between border inspection authority and  
2 detention authority applicable to individuals already present in the United States.

3 5. Petitioner remains detained without access to any meaningful individualized custody  
4 hearing. She does not challenge the initiation of removal proceedings or the merits of  
5 removability. Rather, this Petition challenges the legal basis of her continued detention,  
6 specifically, the effective classification of her custody under INA § 235(b) through the denial of  
7 bond jurisdiction, notwithstanding her long-term presence in the United States and complete lack  
8 of connection to the inspection process governed by that provision.

9 6. On February 18, 2026, the United States District Court for the Central District of  
10 California vacated *Matter of Yajure-Hurtado* under the Administrative Procedure Act. The  
11 government appealed, and on March 6, 2026, the Ninth Circuit issued an administrative stay  
12 pending resolution of that appeal. That temporary stay does not resolve the statutory question  
13 presented here and does not authorize DHS to apply INA § 235(b) to individuals who were never  
14 apprehended at or near the border and who have resided in the United States for many years prior  
15 to arrest.

16 7. Because *Matter of Yajure-Hurtado* was relied upon to deny bond jurisdiction in  
17 Petitioner's case, resulting in her continued detention without an individualized custody  
18 determination, judicial intervention is necessary. Petitioner therefore seeks a writ of habeas  
19 corpus ordering her immediate release, or, in the alternative, an order directing Respondents to  
20 provide a prompt and constitutionally adequate bond hearing before a neutral decisionmaker, at  
21 which the Government bears the burden of justifying continued detention by clear and  
22 convincing evidence.

### 23 JURISDICTION AND VENUE

24 8. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody  
25 of the Department of Homeland Security within this District and she challenges the legality of  
26 that custody.

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

10. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence proceedings, adjudicate cases, or execute removal orders,” not independent challenges to unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts of appeals, but does not foreclose habeas review of detention claims, which are collateral to the removal proceedings.

11. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

PARTIES

12. Petitioner, Marta Hernandez-Cortez, is a native and citizen of El Salvador currently detained at the Otay Mesa Detention Center in San Diego, California.

13. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

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

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

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

17. All Respondents are named in their official capacities.

## LEGAL FRAMEWORK

18. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq., provides multiple detention authorities. For decades, courts, Congress, and agencies have consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §

1 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
2 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
3 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
4 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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

16 20. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
17 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
18 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
19 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
20 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
21 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
22 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
23 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
24 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
25 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
26 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
27 Rep. No. 104-469, pt. 1, at 229 (1996).

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

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

26. Petitioner, Marta Hernandez-Cortez, is a native and citizen of El Salvador who entered the United States without inspection in or about December 2009.

28. At no point following her entry was Petitioner subjected to inspection-stage detention under INA § 235, a credible fear interview, or any other inspection framework.

1 29. Following her entry, Petitioner resided continuously in the United States for more  
2 than seventeen years, during which she established substantial family, economic, and community  
3 ties.

4 30. On January 23, 2026, Petitioner was arrested by officers of U.S. Immigration and  
5 Customs Enforcement (“ICE”) during a worksite enforcement operation in Pittsburgh,  
6 Pennsylvania.

7 31. Following her arrest, Petitioner was transferred through multiple ICE detention  
8 facilities, including facilities in Louisiana and Arizona, before ultimately being transferred to the  
9 Otay Mesa Detention Center in San Diego, California, where she remains detained.

10 32. Petitioner requested a custody redetermination hearing before the Immigration Court.  
11 On April 3, 2026, the Immigration Judge denied bond, concluding that Petitioner’s entry without  
12 inspection rendered her an “applicant for admission” subject to mandatory detention under INA  
13 § 235(b), and that the Court therefore lacked jurisdiction to conduct a bond hearing, relying on  
14 *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). See *Exhibit 1*.

15 33. Petitioner has not received an individualized, constitutionally adequate custody  
16 hearing at which the government bears the burden of justifying continued detention.

17 34. On September 5, 2025, the Board of Immigration Appeals issued its precedential  
18 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), interpreting INA § 235(b)  
19 in a manner that affected custody determinations for certain noncitizens who entered without  
20 inspection.

21 35. On November 25, 2025, the United States District Court for the Central District of  
22 California certified a class in *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.),  
23 involving challenges to detention under INA § 235(b).

24 36. On December 18, 2025, the Central District of California vacated DHS’s July 8, 2025  
25 Interim Guidance under the Administrative Procedure Act.

26 37. On February 18, 2026, the United States District Court for the Central District of  
27 California expressly vacated *Matter of Yajure-Hurtado* under the Administrative Procedure Act.

1           38. The government subsequently appealed the February 18, 2026 order to the United  
2 States Court of Appeals for the Ninth Circuit. On March 6, 2026, the Ninth Circuit issued an  
3 administrative stay pending resolution of the government's emergency motion for a stay pending  
4 appeal.

5           39. Petitioner remains detained at the Otay Mesa Detention Center without having  
6 received a constitutionally adequate bond hearing.

7           40. Absent relief from this Court, Petitioner will remain detained without a meaningful  
8 opportunity to obtain a constitutionally adequate bond hearing at which the government bears the  
9 burden of justifying continued detention.

10                                   **CLAIM FOR RELIEF**

11                                   **COUNT 1**

12                   **Violation of the Immigration and Nationality Act (INA)**

13           41. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
14 paragraphs.

15           42. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
16 noncitizens residing in the United States who are subject to grounds of inadmissibility. It applies  
17 in the context of the inspection and admission process at or near the border. Petitioner entered  
18 the United States in or about December 2009 without inspection and was not encountered by  
19 immigration authorities at or near the time of her entry. She was not placed in any inspection or  
20 expedited removal process and has resided continuously in the United States for more than  
21 seventeen years prior to her arrest in the interior of the United States in January 2026. She is  
22 therefore not lawfully detained under INA § 235(b); to the extent she remains in custody,  
23 detention must proceed under INA § 236(a), 8 U.S.C. § 1226(a), which authorizes release on  
24 bond or conditional parole.

25           43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to  
26 Petitioner for the additional and independent reason that she was never apprehended at or near  
27 the border and was never placed in inspection-stage detention under INA § 235. Because

1 Petitioner was never subjected to the inspection and admission process, the statutory predicate  
2 for detention under INA § 235(b) was never triggered. INA § 235(b) is event-based, not status-  
3 based, and applies only in connection with the inspection process at or near the border. That  
4 process never occurred in Petitioner's case.

5 44. By denying bond jurisdiction and treating Petitioner as subject to mandatory  
6 detention under INA § 235(b), DHS and EOIR have effectively applied that provision to  
7 Petitioner's custody notwithstanding the absence of any inspection process. This effective  
8 application of INA § 235(b) exceeds the statutory limits of that provision and is contrary to the  
9 structure of the Immigration and Nationality Act, which distinguishes between detention  
10 authority at the border under INA § 235 and detention authority for individuals arrested in the  
11 interior under INA § 236(a).

12 45. Where, as here, a noncitizen was not apprehended at or near the border and was not  
13 placed in the inspection and admission process, any subsequent detention following an interior  
14 arrest must proceed, if at all, under INA § 236(a), which provides for an individualized custody  
15 determination and eligibility for release on bond. The denial of access to that statutory  
16 framework based on an erroneous classification under INA § 235(b) constitutes a violation of the  
17 Immigration and Nationality Act.

## 18 COUNT 2

### 19 Violation of the Due Process Clause of the Fifth Amendment

20 46. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
21 herein.

22 47. The Fifth Amendment provides that "[n]o person shall be deprived of life, liberty, or  
23 property, without due process of law."

24 48. "Freedom from imprisonment—from government custody, detention, or other form of  
25 physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533  
26 U.S. 678, 690 (2001).

1 49. Civil immigration detention is constitutionally permissible only when it bears a  
2 reasonable relation to a legitimate governmental objective, such as ensuring appearance at  
3 proceedings or protecting the community. Detention that lacks adequate procedural safeguards or  
4 is imposed without an individualized determination violates due process. See *Zadvydas*, 533 U.S.  
5 at 690.

6 50. Petitioner's prolonged residence in the United States for more than seventeen years  
7 following her undetected entry gives rise to a substantial liberty interest that cannot be deprived  
8 without constitutionally adequate procedures. Despite that liberty interest, Petitioner has been  
9 detained without any individualized custody determination.

10 51. By treating Petitioner as subject to mandatory detention under INA § 235(b),  
11 Respondents have deprived her of any meaningful opportunity to seek release through an  
12 individualized bond hearing before a neutral decisionmaker at which the Government bears the  
13 burden of justifying continued detention.

14 52. This deprivation of process is particularly severe because it results not from any  
15 individualized determination that detention is necessary, but from a categorical legal conclusion  
16 that the Immigration Court lacks jurisdiction to consider bond. As a result, Petitioner has been  
17 denied the basic procedural safeguard required by due process—an individualized assessment of  
18 whether her continued detention is justified.

19 53. By continuing to detain Petitioner under INA § 235(b) despite the absence of any  
20 inspection or admission process under that provision, and by denying her a meaningful  
21 opportunity for an individualized custody determination, Respondents have violated the Due  
22 Process Clause of the Fifth Amendment.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court:

- 25 A) Assume jurisdiction over this matter;  
26 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
27 District while these proceedings are pending;

1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring  
2 Respondents to justify the legal basis for Petitioner's continued detention;  
3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, because  
4 Petitioner was neither apprehended at or near the border nor placed in inspection or admission  
5 proceedings under that provision, any continued detention must be governed by INA § 236(a);  
6 E) Declare that Respondents' failure to provide Petitioner with a meaningful opportunity to seek  
7 release renders her continued detention unlawful under the Immigration and Nationality Act and  
8 in violation of the Due Process Clause of the Fifth Amendment;  
9 F) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from  
10 custody, or, in the alternative, order a constitutionally adequate bond hearing before an  
11 Immigration Judge, at which the Department of Homeland Security bears the burden of  
12 demonstrating, by clear and convincing evidence, that Petitioner's continued detention is  
13 necessary to prevent flight or danger to the community;  
14 G) Grant such other and further relief as the Court deems just and proper.  
15 Respectfully submitted,

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

17 Alex Monsalve Law Firm, PC

18 240 Woodlawn Ave, Suite 9

19 Chula Vista, CA 91910

20 Phone: (619) 777-6796

21 Email: info@alexmonsalvelawfirm.com

22 Counsel for Petitioner

23 Dated: April 16, 2026

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I, Alejandro J. Monsalve, counsel of record for Petitioner, hereby declare as follows:

I submit this verification in my capacity as counsel for Petitioner in this action. The factual allegations contained in the Petition are based on information provided to me by Petitioner during multiple in-person interviews conducted at the Otay Mesa Detention Center.

In addition, I have reviewed relevant records pertaining to Petitioner's case, including the Notice to Appear (Form I-862), the Record of Deportable/Inadmissible Alien (Form I-213), and the Immigration Judge's custody determination denying bond.

I have also conferred with immigration counsel familiar with Petitioner's proceedings to confirm the procedural history and posture of her case.

Based on these communications and my review of the available records, and to the best of my knowledge, information, and belief, the factual statements set forth in this Petition are true and accurately reflect Petitioner's circumstances and the procedural history of her detention.

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

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

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: [info@alexmonsalvelawfirm.com](mailto:info@alexmonsalvelawfirm.com)

Counsel for Petitioner

Dated: April 15, 2026