UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

HERMILO CANO CRUZ,

Agency No. [redacted] '26CV2250 LL GC

Petitioner,

v.

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

Respondents.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Murray D. Hilts
Law Offices of Murray D. Hilts
3020 Meade Ave.
San Diego, CA 92116
(619) 688-1174 (office)
(619) 285-1977 (fax)
murrayhilts@murrayhiltslaw.com

Attorney for Petitioner,

HERMILO CANO CRUZ,

MURRAY D. HILTS, ESQ. (CA Bar No. 169690)
LAW OFFICES OF MURRAY D. HILTS
3020 MEADE AVE.
SAN DIEGO, CA 92116
TEL: (619) 688-1174
FAX: (619) 285-1977
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

HERMILO CANO CRUZ,

Petitioner,

v.

Markwayne MULLIN, in his official capacity as Secretary of Homeland Security, Eric ROKOSKY, in his official capacity as Warden of Eloy Detention Center, John CANTU, in his official capacity as Eloy Field Office Director , ICE Enforcement Removal Operations; Todd LYONS, 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.

'26CV2250 LL GC

PETITION FOR WRIT OF HABEAS CORPUS
A# [redacted]

I. INTRODUCTION

1. Petitioner HERMILO CANO CRUZ, ("Petitioner") is a 44-year-old Mexican national who last entered the United States in 2001.

2. On March 29, 2026, Petitioner was detained by Respondents at the Otay Mesa Detention Center.

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

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

II. VENUE AND JURISDICTION

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

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

7. Venue is proper in this District because Petitioner's immigration proceedings are pending before the San Diego Immigration Court, within the Southern District of California, and Petitioner resides in Vista, California. *See* 28 U.S.C. §§ 2241(d), 1391(b)(2).

III. PARTIES

8. Petitioner is a 44-year-old Mexican national who resides in Vista, California. He is currently detained by Respondents at the Eloy Detention Center in Eloy, Arizona, pending removal proceedings.

9. Respondent Eric Rokosky is the Warden of Eloy Detention Center. Respondent Rokosky is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent Rokosky has immediate physical custody of the Petitioner. He is being sued in his official capacity.

10. Respondent John E. Cantu is the Field Office Director ("FOD") for ICE Enforcement and Removal Operations. Respondent Cantu is responsible for the oversight of ICE operations at the Eloy Detention Center. Respondent Cantu is being sued in his official capacity.

11. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner and is being sued in his official capacity.

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 on [redacted] He last entered the United States in 2001.

17. On or about March 29, 2026, Petitioner was detained by Respondents at the Eloy Detention Center.

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

19. Although the EOIR automated system currently reflects that no future hearings are scheduled, the San Diego Immigration Court is listed as the court of record for Petitioner's proceedings.

20. Petitioner now seeks habeas relief because continuing his detention exceeds statutory authority and violates the Fifth Amendment.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

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

22. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). "[W]hen the judicial power to issue habeas corpus 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

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

24. 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.

25. 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.

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

27. Because Petitioner has resided continuously in the United States

since 2001, his period as an "applicant for admission" has long since closed.

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

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

COUNT TWO
(PROCEDURAL DUE PROCESS)

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

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

32. Subsection 1003.19(i)(2) strips Petitioner of that protection by allowing the prosecuting agency—after losing at the bond hearing—to veto the

Immigration Judge's order with a one-page notice that requires no showing of danger, flight risk, or likelihood of success on appeal.

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

34. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and mist comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;

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 9th day of April, 2026.

/s/ Murray D. Hilts
The Law Offices of Murray D. Hilts
3020 Meade Ave.
San Diego, CA 92116
CA Bar # 2169690
Attorney for Petitioner