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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARIA IVETH GURROLA RECENDIZ,



Petitioner,

vs.

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
PATRICK DIVVER, San Diego Field Office
Director, ICE;
WARDEN, OTAY MESA DETENTION
CENTER; and
TODD BLANCHE, Attorney General of the
United States

Respondents.

Case No. **'26CV3187 RBM DEB**

Agency No. 

**PETITION FOR WRIT OF HABEAS
CORPUS and MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Expedited Hearing Requested

**PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF PURSUANT TO 28 U.S.C. § 2241**

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I. [PROPOSED] ORDER TO SHOW CAUSE

Upon consideration of the attached Petition for Writ of Habeas Corpus filed by Petitioner, Maria Iveth Gurrola Recendiz, and the accompanying Memorandum of Points and Authorities,

IT IS HEREBY ORDERED that Respondents show cause before this Court, at a date and time to be determined, why a Writ of Habeas Corpus should not be granted and why Petitioner should not be released from custody or, in the alternative, provided an immediate individualized bond hearing before an Immigration Judge under INA § 236(a).

IT IS FURTHER ORDERED THAT:

1. Pursuant to 28 U.S.C. § 2243, Respondents shall file a return/response to this Order to Show Cause within **three (3) days** of service of this Order.
2. Petitioner may file a traverse/reply to Respondents' return within **two (2) days** of the filing of the return.
3. A hearing on this matter, if deemed necessary by the Court, shall be scheduled immediately upon receipt of the briefing.

DATED: _____, 2026

UNITED STATES DISTRICT JUDGE

1 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**
2 **CHALLENGING UNLAWFUL CIVIL IMMIGRATION DETENTION**

3
4 Petitioner, Maria Iveth Gurrola Recendiz, through counsel, respectfully petitions this Court
5 for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges her
6 mandatory, unreviewable civil immigration detention at the Otay Mesa Detention Center.
7 Petitioner asserts that the administrative denial of her right to an individualized bond
8 hearing violates the Immigration and Nationality Act (INA) and the Due Process Clause of
9 the Fifth Amendment.

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12 **II. PRELIMINARY STATEMENT & EXHAUSTION EXEMPTION**

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14 1. Petitioner, Maria Iveth Gurrola Recendiz, is a long-term interior resident of
15 Escondido, California . On May 21, 2026, an Immigration Judge summarily denied
16 her request for a custody redetermination, checking a standard agency template
17 declaring that the Executive Office for Immigration Review (EOIR) completely lacks
18 statutory jurisdiction to grant her a bond under INA § 236(a) .
- 19 2. The Immigration Judge based this total abdication of jurisdiction on the Board of
20 Immigration Appeals' (BIA) recent administrative framework, *Matter of Yajure*
21 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), which purports to strip Immigration Judges
22 of bond authority over noncitizens present without admission .
- 23 3. **Exemption from Exhaustion / Futility of Waiver:** Although the administrative
24 order notes that the administrative appeal was waived, Petitioner asserts that any
25 requirement to exhaust administrative remedies through the BIA is completely
26 excused under the **Futility Exception** . Because *Matter of Yajure Hurtado* is a
27 binding, precedential decision issued by the BIA itself, the BIA is legally incapable
28 of overturning its own statutory framework in an ordinary administrative appeal .

1 Furthermore, an administrative agency lacks the Article III judicial power to rule on
2 the constitutionality of its own jurisdictional bars. Because the agency has self-
3 certified its total lack of statutory jurisdiction over her custody status, further
4 administrative review is a logical impossibility . By passing the BIA to seek
5 immediate federal habeas relief is the only available mechanism to vindicate
6 Petitioner's constitutional rights.

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9 **III. JURISDICTION AND VENUE**

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11 4. Jurisdiction is invoked pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §
12 1331 (federal question), and the Suspension Clause of the U.S. Constitution, art. I, §
13 9, cl. 2.
- 14 5. Venue is proper in the Southern District of California because Petitioner is currently
15 detained by Respondents at the Otay Mesa Detention Center in San Diego,
16 California, which sits squarely within this judicial district .

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19 **IV. PARTIES**

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21 6. **Petitioner:** Maria Iveth Gurrola Recendiz  is a national of Mexico
22 who has continuously resided, worked as a laborer, and raised a family in San Diego
23 County, California for over two decades .
- 24 7. **Respondents:** The Respondents include the Warden of the Otay Mesa Detention
25 Center (the immediate custodian), U.S. Immigration and Customs Enforcement
26 (ICE), and the Department of Homeland Security (DHS) . They maintain legal and
27 physical custody over Petitioner.
- 28

1 **V. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

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- 3 8. On April 2, 2026, the ICE Enforcement and Removal Operations (ERO) Fugitive
- 4 Operations Unit targeted Petitioner near her permanent interior residence in
- 5 Escondido, California, and took her into administrative custody following a law
- 6 enforcement stop executed at 
- 7 9. On the same day, DHS issued a Notice to Appear (NTA) initiating Section 240
- 8 removal proceedings . Critically, on page 1 of the NTA, DHS explicitly designated
- 9 Petitioner under the interior framework: "☒ **You are an alien present in the United**
- 10 **States who has not been admitted or paroled.**" . The "arriving alien" box was left
- 11 entirely blank .
- 12 10. On May 21, 2026, Petitioner appeared before the Otay Mesa Immigration Court for a
- 13 custody redetermination hearing .
- 14 11. Immigration Judge Mark Sameit issued a summary order denying the request . The
- 15 Immigration Judge ruled that because Petitioner entered the country without
- 16 inspection, she must be categorized as an "applicant for admission" under INA §
- 17 235(a)(1) and is therefore subject to mandatory, unreviewable civil detention under
- 18 INA § 235(b)(1)(B)(iii)(IV), citing *Matter of Yajure Hurtado* . The Immigration
- 19 Judge further noted that local circuit protections under *Maldonado-Bautista v.*
- 20 *Sessions* were stayed .
- 21 12. As a result of this ruling, Petitioner is trapped in indefinite civil detention without
- 22 any administrative mechanism to evaluate whether she poses a flight risk or a danger
- 23 to the community.
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VI. CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE INA AND STATUTORY MISCONSTRUCTION

(Unlawful Enforcement of Section 235(b) Mandatory Detention to an Interior Apprehension)

13. Petitioner incorporates paragraphs 1 through 12 as if fully set forth herein.

14. Respondents' detention of Petitioner lacks statutory authority under the INA.

Congress clearly delineated separate regulatory tracks for noncitizens arriving at a port of entry under INA § 235(b) and noncitizens apprehended deep within the interior of the United States under INA § 236(a).

15. By checking the specific statutory designation on the NTA, "☒ **You are an alien present in the United States who has not been admitted or paroled,**" DHS bound itself to an arrest and custody framework governed strictly by INA § 236(a) .

16. Under the unambiguous language of INA § 236(a), the administrative authorities possess the explicit statutory authority to release a noncitizen arrested on an administrative warrant pending removal proceedings on a bond or conditional parole.

17. Respondents have erroneously expanded the reach of INA § 235(b)—a provision strictly reserved for border inspections, expedited removal, and formal arrivals—to encompass an individual who successfully entered undetected, established physical presence, and set up a long-term home in the interior . By expanding the boundary of Section 235(b) mandatory detention past the border and into the interior, Respondents have rewritten the plain language of the INA, committed a structural error of statutory construction, and unlawfully stripped Petitioner of her statutory right to seek a bond under Section 236(a) .

COUNT II: VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE

(Unlawful Categorization & Deprivation of an Individualized Custody Hearing)

18. Petitioner incorporates paragraphs 1 through 17 as if fully set forth herein.

19. Freedom from bodily restraint lies at the absolute core of the liberty protected by the Due Process Clause of the Fifth Amendment. Civil immigration detention violates due process unless it is accompanied by narrow, individualized procedural safeguards to ensure the government's regulatory interests justify the detention.

20. Under controlling Ninth Circuit law, *Maldonado-Bautista v. Sessions*, 874 F.3d 1096 (9th Cir. 2017), a noncitizen who enters the United States without inspection, establishes physical presence, and is apprehended deep within the interior cannot be stripped of bond rights via border-entry metrics. An administrative agency's internal stay of an orders packet does not dissolve underlying constitutional mandates.

21. This spatial constitutional boundary is reinforced by persuasive federal jurisprudence in *Alvarez v. Warden*, 35 F.4th 1321 (11th Cir. 2022), which affirms that individuals taken into custody within the interior of the United States fall strictly under the general detention provisions of INA § 236(a)—granting an absolute right to an individualized custody redetermination—rather than the restrictive, mandatory border mechanics of INA § 235(b).

22. By applying *Matter of Yajure Hurtado* to an interior resident, Respondents have created a system of irrebuttable mandatory detention that bars Petitioner from presenting overwhelming evidence of community safety and stability.

COUNT III: PETITIONER IS NEITHER A DANGER NOR A FLIGHT RISK

(Objective Lack of Regulatory Justification for Detention)

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

1 24. Due process requires that civil detention be justified by an individualized showing
2 that the detainee is a flight risk or a physical danger to the community. Respondents'
3 own evidentiary record completely disproves both metrics:

- 4 o **Zero History of Violence:** Petitioner's 18-year history consists strictly of
5 minor property and theft offenses . Her FBI Rap Sheet notes that a historical
6 2023 weapon and child cruelty entry resulted in an immediate
7 **"RELEASED/DETENTION ONLY"** status, with local authorities granting
8 absolute statutory **Arrest Relief under California Penal Code § 851.93**,
9 proving the charges were legally dissolved .
- 10 o **Impeccable Domiciliary and Equities Anchor:** Objective financial evidence
11 via a San Diego Gas & Electric (SDG&E) utility account establishes that
12 Petitioner's family maintains a stable permanent apartment at [REDACTED]
13 [REDACTED], where she will
14 immediately return to work as a laborer upon release .
- 15 o **U.S. Citizen Dependents:** Petitioner is the sole maternal lifeline for three
16 U.S. citizen children: [REDACTED] (22), [REDACTED] (19), and
17 [REDACTED] (13), alongside an upcoming first grandchild .
18 Her children have testified to severe emotional collapse and financial
19 upending since her removal from the interior home .

20 25. Subjecting a non-violent laborer and mother of U.S. citizens to indefinite civil
21 detention with zero opportunity to ask an administrative judge for a bond violates
22 basic tenets of American jurisprudence .
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1 **VII. MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Petitioner is Exempt from Administrative Exhaustion Under the Futility Exception**

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4 Respondents will inevitably argue that this Court cannot review this petition because
5 administrative remedies were waived at the conclusion of the immigration court hearing .
6 However, the Supreme Court and the Ninth Circuit have long recognized that a litigant is
7 exempt from exhausting administrative remedies when pursuing such remedies would be
8 demonstrably futile. *See, e.g., Sun v. Ashcroft*, 370 F.3d 932, 942–43 (9th Cir. 2004); *El*
9 *Rescate Legal Services v. EOIR*, 959 F.2d 742, 747 (9th Cir. 1991).

10
11 Exhaustion is entirely futile here for two separate, unassailable reasons:

- 12 1. **The BIA is Bound by its Own Precedent:** The Immigration Judge based his denial
13 on a binding, precedential decision issued by the BIA itself—*Matter of Yajure*
14 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) . The BIA cannot overrule its own binding
15 precedent through an ordinary, single-member administrative appeal.
16 2. **The Agency Lacks Constitutional Authority:** Petitioner’s claims turn on whether
17 stripping interior residents of bond hearings violates the Fifth Amendment. It is a
18 foundational principle of administrative law that executive agencies and immigration
19 courts lack the Article III judicial authority to adjudicate the constitutionality of the
20 very statutes and binding rules they are tasked with enforcing. *See Hernandez-Avalos*
21 *v. INS*, 378 F.3d 444, 448 (9th Cir. 2004).

22
23 Because the agency has explicitly declared that it lacks statutory jurisdiction to provide a
24 remedy, there is nothing left to exhaust . Requiring Petitioner to remain detained for months
25 while processing a pro forma appeal to an agency that has already locked its doors from the
26 inside would create a severe miscarriage of justice.

B. Respondents' Detention of Petitioner Violates the Statutory Structure of the INA and Controlling Jurisprudence

The text and structure of the INA establish two distinct geographical tracks for civil immigration custody: (1) INA § 235(b), which mandates detention for specific classes of noncitizens arriving at the border or seeking initial entry, and (2) INA § 236(a), which governs the arrest, detention, and release of noncitizens encountered within the interior of the United States.

The Ninth Circuit addressed this exact spatial boundary in *Maldonado-Bautista v. Sessions*, 874 F.3d 1096, 1098 (9th Cir. 2017). The Court explicitly held that a noncitizen who enters the United States without inspection, establishes physical presence on U.S. soil, and is subsequently taken into custody in the interior cannot be classified as an "arriving alien". Once a noncitizen has crossed the border undetected and settled within the interior, their custody is governed strictly by the general arrest provisions of INA § 236(a).

This statutory boundary was further reinforced by the Eleventh Circuit in *Alvarez v. Warden*, 35 F.4th 1321, 1326–27 (11th Cir. 2022). The *Alvarez* court held that individuals apprehended inside the interior of the United States fall under the general detention framework of INA § 236(a)—granting them an absolute right to an individualized custody assessment—rather than the restrictive, mandatory border-entry mechanics of INA § 235(b).

Here, DHS's own official record confirms that Petitioner was located deep within the interior. She was surveilled at an apartment and pulled over by a Fugitive Operations unit on an interior road in Escondido, California. DHS's own NTA legally categorized her as a noncitizen **"present in the United States who has not been admitted or paroled."**

Under *Maldonado-Bautista* and *Alvarez*, she is a Present Without Inspection (PWI) interior resident. By attempting to apply border-entry mandatory detention under Section 235(b) to

1 an interior resident, Respondents have misconstrued the clear text of the INA and
2 unlawfully stripped the lower court of its statutory authority to grant a bond .

3
4 **C. Indefinite Civil Detention Without an Individualized Hearing Violates the Fifth**
5 **Amendment's Due Process Clause**

6 Freedom from bodily restraint lies at the absolute core of the liberty protected by the Due
7 Process Clause of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The
8 government may not subject an individual to civil immigration detention without narrow
9 procedural protections, including an individualized hearing to determine whether detention
10 is actually necessary to prevent a flight risk or a danger to the community. *See Hernandez v.*
11 *Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th
12 Cir. 2015).

13
14 When an administrative agency creates an irrebuttable presumption of mandatory detention
15 for an entire class of interior residents, it completely bypasses the constitutional requirement
16 for an individualized regulatory justification . Respondents' own evidentiary record proves
17 that Petitioner poses zero danger or flight risk:

- 18
19 1. **Complete Absence of Physical Danger:** Petitioner's 18-year history consists strictly
20 of minor property and theft offenses . To the extent that DHS points to a July 2023
21 weapon and child cruelty entry on her rap sheet, the official record notes that she was
22 immediately "**RELEASED/DETENTION ONLY**" and granted statutory **Arrest**
23 **Relief under California Penal Code § 851.93**, proving the charges were entirely
24 dissolved and never prosecuted . She has zero history of physical violence or threats.
25 2. **Impeccable Domiciliary and Equities Anchor:** Objective evidence via her San
26 Diego Gas & Electric (SDG&E) bill establishes that her family maintains a
27 permanent apartment located at 

1 **92025** . She will return directly to this apartment upon release to resume her work as
2 a laborer and provide for her dependents .

3 **3. Severe Hardship to United States Citizen Dependents:** Certified vital records
4 confirm that Petitioner is the sole maternal and financial anchor for three U.S. citizen
5 children: [REDACTED] (22), [REDACTED] (19), and [REDACTED]
6 [REDACTED] (13), alongside an upcoming first grandchild . Her children have submitted
7 written testimony regarding the severe emotional and financial collapse of their
8 household since her interior arrest .

9
10 Subjecting a non-violent laborer and mother of U.S. citizen children to indefinite civil
11 detention, while completely barring her from demonstrating her suitability for release,
12 violates the basic constitutional guarantees of the Fifth Amendment .

13 **VIII. CONCLUSION**

14
15 For the reasons set forth above, Petitioner's continuous, unreviewable civil detention lacks
16 statutory authorization and is unconstitutional under the Fifth Amendment. An
17 administrative agency's self-certification of an absolute jurisdictional bar renders standard
18 appellate review completely futile. Only this Court possesses the Article III judicial
19 authority to restore the rule of law to Petitioner's custody status. Because the record
20 establishes that Petitioner poses no physical danger and has an unbreakable domiciliary
21 anchor within this judicial district, equity commands that she be granted an individualized
22 hearing.

23 **IX. PRAYER FOR RELIEF**

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25 WHEREFORE, Petitioner respectfully requests that this Court:

26 **A. Assume jurisdiction** over this matter and issue a Writ of Habeas Corpus;
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1 **B. Declare** that the administrative application of *Matter of Yajure Hurtado* to an interior-
2 apprehended, Present Without Inspection (PWI) resident violates the clear language of the
3 INA and the Due Process Clause of the Fifth Amendment;

4
5 **C. Order Respondents to immediately provide Petitioner with an individualized bond**
6 **hearing** before an Immigration Judge under INA § 236(a), where the **government must**
7 **bear the burden** of proving by clear and convincing evidence that her continued detention
8 is justified; or, in the alternative, **order her immediate release** under reasonable conditions
9 of supervision.

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17 Dated: 5/21/2026

18 Respectfully submitted,

19
20 /s/Hernando De Cima
21 **Hernando De Cima, Esq**
22 105 N Rose St Ste 109
23 Escondido, Ca 92027
24 hernando@decimalaw.com
25 858-525-5578
26 *Attorney for Petitioner*
27
28

1 **X. VERIFICATION**

2 I, Hernando De Cima, Esq., declare as follows:

3 I am an attorney eligible to practice law in the State of California and am the attorney of
4 record for the Petitioner, Maria Iveth Gurrola Recendiz, in these habeas corpus proceedings.
5 I maintain my law office within this judicial district at 105 N Rose St, Suite 109, Escondido,
6 CA 92027.

7 I make this verification on behalf of Petitioner because she is currently detained by the
8 government at the Otay Mesa Detention Center and is physically unavailable to sign this
9 document today. I have reviewed the foregoing Petition for Writ of Habeas Corpus and
10 Memorandum of Points and Authorities, and the factual allegations contained therein are
11 true and correct to the best of my personal knowledge based upon a comprehensive review
12 of official administrative records, vital statistics certificates, utility invoices, and explicit
13 statements provided directly by Petitioner and her adult children.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing statements are true and correct.

16 Executed this 21st day of May 2026, at Escondido, California.

17
18 Respectfully submitted,

19
20 /s/Hernando De Cima
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