UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HORALIA FLORES HERNANDEZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE
ACTING FACILITY ADMINISTRATOR
Otay Mesa Detention Center,

MARKWAYNE MULLIN,
SECRETARY OF THE
DEPARTMENT OF HOMELAND SECURITY

TODD LYONS AS THE ACTING DIRECTOR
OF U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT

Case No. '26CV3277 BAS DDL

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR ORDER

TO SHOW CAUSE
(28 U.S.C. § 2241)

INTRODUCTION

1. Petitioner, **HORALIA FLORES HERNANDEZ,** seeks a writ of habeas corpus under 28 U.S.C. § 2241 because Respondents are detaining Petitioner under color of federal immigration authority without lawful custody authority, without a timely and lawful custody determination, and without constitutionally adequate process.

2. Petitioner entered the United States without inspection and without any request for admission in or about the year 2000. Petitioner does not dispute that DHS may initiate civil immigration proceedings. This petition challenges only Petitioner's

present physical detention.

3. On April 28, 2026, Petitioner was arrested by the Hillsborough County Sheriff's Office in Hillsborough County, Florida, for the misdemeanor offense of driving without a valid driver's license. Following her arrest by local law enforcement, Petitioner was detained by Immigration and Customs Enforcement ("ICE") and is currently confined at Otay Mesa Detention Center in San Diego, California.

4. On April 29, 2026, DHS served Petitioner with a Notice to Appear ("NTA"), DHS served Petitioner with an NTA on April 29, 2026. Removal proceedings commenced when DHS filed the NTA with the Immigration Court under 8 C.F.R. § 1003.14(a).

5. Petitioner requested a custody redetermination hearing before the Immigration Court. On May 21, 2026, the Immigration Judge denied granting the petitioner a bond solely upon the basis that he lacked jurisdiction to grant a bond based upon the conclusion that Petitioner was subject to mandatory detention pursuant to INA § 235(b)(1)(B)(iii)(IV). *See attached order.*

6. The Immigration Judge ruled:

> "The evidence indicates that the respondent entered the country without inspection and thus is an applicant for admission under INA section 235(a)(1) and subject to mandatory detention under INA section

235(b)(1)(B)(iii)(IV). Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The court notes that the Maldanado Bautista orders were stayed by the 9th Circuit on March 6, 2026. See Maldanado Bautista v. DHS, No. 26-1044 (9th Cir. Mar. 6, 2026)." See attached order.

7. As a result of the Immigration Judge's ruling under Matter of Yajure Hurtado, Petitioner remains detained without any meaningful administrative mechanism through which to seek release or obtain an individualized custody determination before a neutral decisionmaker.

Parties

8. Petitioner, **HORALIA FLORES HERNANDEZ,** is a noncitizen detained by ICE at Otay Mesa Detention Center in San Diego, California. Petitioner is in Respondents' physical custody.

9. Respondent, **CHRISTOPHER J. LAROSE,** Warden/Facility Administrator is Petitioner's immediate physical custodian and has day-to-day control over Petitioner's confinement.

10. Respondent TODD LYONS is responsible for ICE detention and removal operations in the area where Petitioner is detained.

11. Respondent Secretary of Homeland Security is responsible for administration and enforcement of the immigration laws through DHS and its component agency ICE.

Jurisdiction and Venue

12. This Court has habeas jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody under color of federal authority and contends that custody violates the Constitution, statutes, or regulations of the United States.

13. Venue is proper in this District because Petitioner is confined at Otay Mesa Detention Center in San Diego, California which is located within this District.

14. For a core habeas petition challenging present physical custody, the proper respondent is ordinarily the immediate custodian, and the proper district is the district of confinement. See *Rumsfeld v. Padilla,* 542 U.S. 426 (2004).

15. Petitioner does not seek a review of a final order of removal as no final order of removal has been entered. Petitioner does not ask this Court to adjudicate removability, cancel removal proceedings, or review any discretionary decision to grant or deny immigration relief.

16. This petition instead solely challenges the legality of present detention. The petition therefore is not barred by 8 U.S.C. § 1252(a)(5), § 1252(b)(9), or § 1252(g).

17. Section 1252(g) applies only to claims arising from the decision or action to commence proceedings, adjudicate cases, or execute removal orders. See *Reno v. American-Arab Anti-Discrimination Committee,* 525 U.S. 471 (1999).

18. Section 1252(b)(9) does not eliminate habeas jurisdiction over detention claims that are independent of the merits of removal and do not seek review of a

removal order. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Factual Allegations

19. Petitioner is 47 years old and is a native and citizen of Mexico.

20. Petitioner entered the United States without inspection and without any application for admission in or about 2000. Petitioner has resided in the United States ever since 2000.

21. Petitioner has family ties in the United States, including a husband who she married in the United States, 5 children, all who were born in the United States, nephews and nieces who reside in the United States, and has been gainfully employed for the past 20 years in the United States, and has paid taxes while employed in the United States. Attached to this petition are several letters that, not only identify Petitioner's ties to the community, but they speak volumes as to the Petitioner's outstanding character and good reputation in her family and within the community.

22. Petitioner has no felony criminal history and other than the traffic offense of driving without a valid driver's license, has no other criminal history in her 25 years in this country.

23. As of the filing of this petition, Petitioner has not sought admission into the United States through any application or claim of asylum.

24. Petitioner is neither a danger to the community nor a flight risk. Conditions of

supervision, bond, or recognizance would be sufficient to ensure Petitioner's appearance for any future proceedings.

Legal Background

25. District courts have the authority to grant writs of habeas corpus. *See* 28 U.S.C. § 2241(a). Habeas corpus is fundamentally "a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citation omitted). A writ may be issued to a petitioner who shows that he is being held in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3). The Court's jurisdiction extends to challenges involving immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

26. Immigration court jurisdiction vests, and removal proceedings commence, when DHS files the charging document with the immigration court. 8 C.F.R. § 1003.14(a).

27. If DHS detains Petitioner under 8 U.S.C. § 1226(a), DHS may release Petitioner on bond or conditional parole, and the regulations provide for immigration judge review of a custody determination except where a regulatory or statutory limitation applies. 8 U.S.C. § 1226(a),8 C.F.R. § 236.1(d); 8 C.F.R. § 1003.19(a)-(b).

28. Civil immigration detention is constitutionally limited and must be reasonably related to a valid civil immigration purpose. See *Zadvydas v. Davis,* 533 U.S. 678

(2001).

29. The INA supplies three general pathways to detain an alien. First, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395, at *2 (11th Cir. May 6, 2026). This basis does not exist in this case. A second means is when an alien is detained and held upon the issuance of a final order of removal, pending the execution of the order and the return of the alien to his country of origin or a different country as provided by the statute. *Id; 8 U.S.C. § 1231(a)(2)(A)–(b)(1)(B).* This basis too is not involved in this case.

30. The third basis, which is pursuant to § 1225 provides for the detention of certain other aliens without need of a warrant. That section applies to "applicants for admission," which the INA defines this way:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1). Section 1225 requires the detention of certain classes of applicants for admission, depending on the applicant's status. For instance, an alien "who is arriving in the United States" without appropriate entry documents, or who

is in possession of fraudulent entry documents, is to be "removed from the United States without further hearing or review" unless the alien raises a claim for asylum or a credible fear of persecution, and is detained pending expedited removal.

31. Applicants for admission detained pursuant to §1225(b)(1) or §1225(b)(2) may be released from DHS custody on a grant of "humanitarian parole," which allows an applicant to be released for "urgent humanitarian reasons" or "significant public benefit," provided he "present[s] neither a security risk nor a risk of absconding." *Id. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b).*

32. The legality of applying INA § 235 mandatory detention to noncitizens apprehended in the interior of the United States years after entry remains the subject of substantial ongoing litigation and disagreement among federal courts. The Government relies upon *Matter of Yajure Hurtado* and the Ninth Circuit's temporary stay in *Maldanado Bautista*, which is contrary to the persuasive authority from Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami, No. 25-14065, 2026 WL 1243395, at *21 (11th Cir. May 6, 2026), which recognized serious statutory and constitutional concerns with extending mandatory detention under INA § 235 to noncitizens arrested within the interior of the United States years after entry.

33. The *Hernandez Alvarez* court reasoned that the language Congress chose does not grant the Executive unfettered authority to detain, without the possibility of

bond, every unadmitted noncitizen present in the country. The court further explained that the statutory terms "an alien who is an applicant for admission" and "an alien seeking admission" must be interpreted consistent with Congress's longstanding border-interior distinction for detention purposes. At minimum, Hernandez Alvarez demonstrates that substantial disagreement exists regarding the scope of DHS's detention authority under INA § 235 and whether such detention may occur without any meaningful opportunity for individualized custody review.

34. In fact, the Government, in a borderline bad faith attempt effort to avoid the *Hernandez* decision, transferred Petitioner 2500 miles from her home in Tampa, Florida where she resided with her family, and completely across the country to be detained in San Diego, California.

CLAIM ONE
Violation of the Fifth Amendment Due Process Clause

35. Petitioner realleges and incorporates by reference paragraphs 1 through 34.

36. Petitioner possesses a protected liberty interest in freedom from unlawful civil detention.

37. Respondents have deprived Petitioner of liberty without constitutionally adequate process.

38. Petitioner has been denied any meaningful opportunity to obtain an individualized custody determination because the Immigration Judge concluded that no bond jurisdiction exists under Matter of Yajure Hurtado. *See attached order.*

39. Continued detention without a meaningful opportunity to challenge custody before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment.

40. Civil immigration detention must remain reasonably related to a legitimate governmental purpose. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

41. Respondents have never established through an individualized hearing that Petitioner poses either a danger to the community or a flight risk warranting continued detention.

42. Less restrictive alternatives, including bond, supervision, reporting requirements, or recognizance, would adequately protect any legitimate governmental interest.

CLAIM TWO
Unlawful Detention Under 28 U.S.C. § 2241

43. Petitioner realleges and incorporates by reference paragraphs 1 through 42. Respondents continue to detain Petitioner pursuant to INA § 235 based upon the contention that Petitioner remains an "applicant for admission."

44. The legality of applying INA § 235 mandatory detention to noncitizens apprehended within the interior of the United States years after entry remains the subject of substantial ongoing litigation and disagreement among federal courts.

45. While the Government relies upon Matter of Yajure Hurtado and the Ninth Circuit's temporary stay in Maldanado Bautista, persuasive authority from Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026), recognized serious statutory and constitutional concerns regarding extending mandatory detention under INA § 235 to individuals arrested within the interior of the United States years after entry.

46. Petitioner was not apprehended at the border or while attempting entry into the United States. Rather, Petitioner resided continuously within the United States since approximately the year 2000 before being arrested within the interior of the country by local law enforcement.

47. Under these circumstances, Respondents' continued mandatory detention of Petitioner without any individualized custody review exceeds the lawful scope of detention authority under the INA.

48. Continued detention under these circumstances is unlawful under 28 U.S.C. § 2241.

CLAIM THREE
Violation of Substantive and Procedural Due Process

49. Petitioner realleges and incorporates by reference paragraphs 1 through 48.

50. The Fifth Amendment prohibits arbitrary civil detention without adequate procedural safeguards.

51. Petitioner remains detained solely because the Immigration Judge determined that no bond jurisdiction exists under Matter of Yajure Hurtado.

52. No neutral adjudicator has ever determined that Petitioner's continued detention is necessary based upon danger to the community, risk of flight, or inability to comply with conditions of supervision.

53. Petitioner has substantial ties to the United States, including residence in the United States since approximately the year 2000, family members residing in the United States, and minimal criminal history limited to a misdemeanor traffic offense.

54. Continued detention without any meaningful opportunity to obtain release or challenge continued confinement is excessive in relation to any legitimate governmental purpose and violates substantive and procedural due process.

55. Accordingly, Petitioner is entitled to immediate release or, at minimum, a prompt individualized custody hearing before a neutral decisionmaker at which Respondents bear the burden of proving continued detention is necessary.

Request for Relief

Petitioner respectfully requests that this Court:

A. Issue an order to show cause requiring Respondents to justify Petitioner's detention;

B. Grant the petition for writ of habeas corpus;

C. Declare that Petitioner's continued detention is unlawful;

D. Order Respondents to release Petitioner immediately under reasonable conditions of supervision;

E. In the alternative, order Respondents to provide a prompt individualized custody hearing before a neutral decisionmaker, at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary because Petitioner poses a danger or flight risk that cannot be addressed by conditions of release;

F. Award reasonable attorney's fees and costs to the extent permitted by law; and

G. Grant any other relief the Court deems just and proper.

Respectfully submitted,

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
FLORES HERNANDEZ, HORALIA

To:
Ocasio, Imabel
PO BOX 941194
Miami, FL 33194

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
05/21/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☑ Denied, because
The evidence indicates that the respondent entered the country without inspection and thus is an applicant for admission under INA section 235(a)(1) and subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV). Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The court notes that the Maldanado Bautista orders were stayed by the 9th Circuit on 6 March 2025. See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

Immigration Judge: SAMEIT, MARK 05/21/2026

Appeal: Department of Homeland Security: ☑ waived ☐ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 06/22/2026

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Respondent Name : FLORES HERNANDEZ, HORALIA | A-Number [redacted]
Riders:
Date: 05/21/2026 By: Rosa Rodriguez, Court Staff