

Michael R. Hirman, Esq. SBN 228469
7777 Alvarado Road, Suite 404
La Mesa, CA 91942
(619) 238-9700 Phone
(619) 238-9700 Facsimile
mhirman@hotmail.com

Attorney for Petitioner, Karen Patricia Flores Gomez

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAREN PATRICIA FLORES GOMEZ,

Petitioner,

v.

WARDEN, OTAY MESA DETENTION
CENTER; ICE FIELD OFFICE DIRECTOR,
SAN DIEGO FIELD OFFICE; SECRETARY
OF THE DEPARTMENT OF HOMELAND
SECURITY; ATTORNEY GENERAL OF THE
UNITED STATES

Respondents.

Case No. '26CV3538 DMS SBC

**PETITION FOR WRIT OF
HABEAS CORPUS UNDER**

INTRODUCTION

Petitioner, Karen Patricia Flores Gomez () is a 40-year-old native and citizen of Honduras. She last entered the United States without inspection on or about April 23, 2012, and has remained continuously present in this country ever since. Over the past decade, she has established deep roots in the United States and developed substantial family and community ties. Among her strongest equities is her relationship with her 12-year-old United States citizen daughter, whose life and well-being are closely intertwined with Petitioner's continued presence in this country.

On or around October 2025, Respondent was arrested in Gwinnett County, Georgia, for a traffic-related offense. Following that arrest, Immigration and Customs Enforcement (ICE) placed an immigration detainer on her. Thereafter, on or about November 2025, Respondent was taken into ICE custody and transferred to the Stewart Detention Center in Stewart County, Georgia.

On November 10, 2025, Petitioner was served with a Notice to Appear, thereby initiating removal proceedings against her pursuant to INA § 240. The Notice to Appear charges Petitioner solely under INA § 212(a)(6)(A)(i) as an individual present in the United States without being admitted or paroled. Accordingly, Petitioner is not subject to mandatory detention under INA § 236(c).

Since November 2025, Respondent has remained detained in ICE custody. On February 20, 2026, she appeared before the Stewart Immigration Court for her individual hearing. At the conclusion of the hearing, the Immigration Judge issued an order of removal against her.

On March 16, 2026, Respondent timely filed a Notice of Appeal with the Board of Immigration Appeals ("BIA"), and the appeal remains pending. Thereafter, the BIA issued a

briefing schedule, and Petitioner timely submitted her appellate brief on May 26, 2026. The Department of Homeland Security ("DHS") did not file a responsive brief.

After the appeal was filed, Petitioner retained counsel to seek a bond hearing before the Immigration Court. However, while counsel was preparing the bond motion, Petitioner was transferred from the Stewart Detention Center in Stewart County, Georgia, to the Otay Mesa Detention Center in San Diego, California.

Petitioner now brings this writ of habeas corpus to seek enforcement of her rights to a bond hearing in the U.S. Immigration Court. Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center, San Diego County, California. She now faces unlawful detention because the Respondents have taken the position that Petitioner is not entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a).

Respondents have asserted that Immigration Judges lack jurisdiction to conduct bond hearings in cases such as Petitioner's, relying on the Board's decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), to support its position that Petitioner is ineligible for an individualized custody determination before the Immigration Court. As a result, Petitioner now faces the denial of access to an individualized custody determination before the Immigration Court. Accordingly, Petitioner seeks a writ of habeas corpus to enforce her statutory and constitutional right to a bond hearing before an Immigration Judge and to challenge the government's continued detention without such a hearing.

JURISDICTION AND VENUE

Petitioner is detained at the Otay Mesa Detention Center, San Diego County, California. The Otay Mesa Detention Center is in the Southern District of California. This court has jurisdiction to grant a writ of habeas corpus to a petitioner who demonstrates that she is being held

in custody in violation of federal law 28 USC §2241(a), (c)(3). Venue is proper in the United States District Court for the Southern District of California, the judicial district in which the petitioner is being detained. Venue is also proper in this court pursuant to 28 USC §1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

PARTIES

Petitioner, Karen Patricia Flores Gomez, is a native and citizen of Honduras. On or about November 2025, following her arrest in Gwinnett County, Georgia, she was taken into custody by U.S. Immigration and Customs Enforcement (ICE). She has remained continuously detained since that time. To date, Petitioner has not been afforded an individualized bond hearing, and no bond has been set in her case.

Respondent Warden of the Otay Mesa Detention Center has immediate physical custody of Petitioner, as she is detained at the Otay Mesa Detention Center. Respondent is being sued in their official capacity.

Respondent Immigration and Customs Enforcement Field Office Director for San Diego County, California is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. Respondent is named in their official capacity

Respondent Secretary of the Department of Homeland Security is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. The Secretary of the Department of Homeland Security has ultimate custodial authority over Petitioner and is sued in their official capacity.

Respondent Attorney General of the United States is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system are component agencies. Respondent is sued in their official capacity.

LEGAL BACKGROUND

The Immigration and Nationality Act (INA) establishes different detention frameworks that apply depending on the procedural posture of a noncitizen's case. INA § 236(a), 8 U.S.C. § 1226(a), governs the detention of noncitizens who are apprehended within the interior of the United States and placed in removal proceedings pursuant to INA § 240. Section 236(a) expressly authorizes release on bond or conditional parole and vests Immigration Judges with custody-redetermination jurisdiction. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Section 235(b), by contrast, applies exclusively at ports of entry and during the inspection process. Its text and structure confirm that an “application for admission” is a discrete event occurring at the time of entry, not a perpetual legal status that attaches indefinitely to individuals who entered without inspection. *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc). See also *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (describing the INA’s bifurcated detention scheme distinguishing inspection-stage detention at entry from detention of noncitizens found in the United States after entry).

The regulatory history following the enactment of IIRIRA reinforces this distinction. In its 1997 rulemaking, the Department of Justice explained that noncitizens who entered without inspection but are later placed in § 240 removal proceedings are detained under § 236(a), not § 235. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

In July 2025, DHS issued internal guidance directing ICE officers and government counsel to categorically deny bond redetermination hearings to all noncitizens who entered without

inspection, regardless of length of residence or place of arrest. That guidance treated such individuals as perpetual “applicants for admission” subject to INA § 235(b)(2).

In September 2025, the Board of Immigration Appeals adopted that policy as binding precedent in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), instructing Immigration Judges that they lacked jurisdiction to conduct bond hearings in such cases. That interpretation is not entitled to judicial deference. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), courts must independently interpret the INA and may not defer to agency constructions that conflict with statutory text, structure, or history.

Furthermore, in *Bautista v. Santacruz*, No. 5:25-cv-01873- SSS-BFM, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026), the United States District Court for the Central District of California vacated *Matter of Yajure Hurtado*. Subsequently, the United States Court of Appeals for the Ninth Circuit issued a temporary stay of that order pending appeal. See *Bautista v. DHS*, No. 26-1044, 2026 U.S. App. LEXIS 6750, at *2–3 (9th Cir. Mar. 6, 2026). Nevertheless, the underlying reasoning remains persuasive and the decision reflects a growing recognition that DHS may not automatically subject long-term interior residents to detention under § 1225(b)(2) without providing an individualized custody determination consistent with § 1226(a).

Petitioner is a long-term Georgia resident apprehended in the interior of the United States and placed in § 240 removal proceedings. Under the INA’s text, implementing regulations, historical application, and controlling Ninth Circuit authority, § 236(a) governs her detention and entitles her to a custody redetermination hearing before an Immigration Judge.

Immigration Judges in the Southern District of California nevertheless have declined jurisdiction and denied any bond hearing solely by operation of *Matter of Yajure-Hurtado*. Because the agency’s binding interpretation effectively forecloses any meaningful administrative remedy and deprives Petitioner of the opportunity to obtain an individualized custody

determination, a petition for a writ of habeas corpus represents Petitioner's only available avenue to protect and enforce her statutory and constitutional rights.

CLAIM FOR RELIEF

Under 8 U.S.C. § 1226(a), noncitizens apprehended in the interior of the United States and placed in § 240 removal proceedings are detained, if at all, subject to discretionary bond redetermination by an immigration judge.

The statute expressly authorizes release on bond or conditional parole pending a decision on removal, and the implementing regulations vest Immigration Judges with jurisdiction to conduct bond hearings. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Petitioner was apprehended in the interior of the United States, placed in § 240 removal proceedings, and is not charged with any offense triggering mandatory detention under 8 U.S.C. § 1226(c). Accordingly, 8 U.S.C. § 1226(a) governs her custody.

Nevertheless, Immigration Judges are declining to conduct any custody redetermination hearing, concluding that they lack jurisdiction based solely on *Matter of Yajure-Hurtado*, which instructs Immigration Judges to categorically treat noncitizens who entered without inspection as subject to detention under § 1225(b)(2) and ineligible for bond.

Because *Matter of Yajure-Hurtado* is binding on Immigration Judges and categorically forecloses bond jurisdiction, Petitioner has no meaningful administrative avenue through the immigration court system to seek a bond hearing or obtain release from custody. Instead, her continued detention results not from an individualized determination that she poses a danger to the community or a flight risk, but from the application of a binding agency interpretation that exceeds the authority granted by Congress.

Respondents' application of § 1225(b)(2) to detain Petitioner without a bond hearing exceeds their statutory authority, violates 8 U.S.C. § 1226(a), and results in unlawful civil detention in the absence of the procedural safeguards Congress required.

Accordingly, Petitioner is entitled to habeas corpus relief ordering Respondents to provide a prompt custody redetermination hearing under § 1226(a) or to release Petitioner from custody pending removal proceedings.

CAUSE OF ACTION

COUNT I

Violation of Procedural Due Process (Fifth Amendment)

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

The Fifth Amendment provides that no person shall be deprived of liberty 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 Due Process Clause Protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens in removal proceedings possess a substantial liberty interest in freedom from unnecessary civil detention.

By foreclosing bond jurisdiction for a broad class of noncitizens, Respondents' policy deprives Petitioner of a meaningful opportunity to seek release from civil detention resulting in mandatory detention without process. This categorical denial of a bond hearing bears no reasonable relationship to the purposes of civil immigration detention and results in prolonged confinement based solely on legal classification rather than individualized findings. Such detention is fundamentally inconsistent with the procedural protections required by the fifth amendment.

At minimum, due process requires that individuals subject to discretionary civil immigration detention receive a bond hearing before a neutral adjudicator, with consideration of alternatives to detention and an opportunity to be heard. The absolute denial of any such hearing violates basic principles of procedural fairness.

Since Respondents' binding policy eliminates all individualized custody review and mandates detention by legal classification alone, Petitioner is deprived of procedural safeguards required by the Due Process Clause and remains detained without any meaningful opportunity to seek release.

PRAYER FOR RELIEF

Petitioner requests that this Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Issue an order requiring Respondent to conduct a bond hearing under 8 USC § 1226(a) within seven days;
- (c) In the alternative, order Petitioner's immediate release from Immigration and Customs Enforcement Custody; and
- (d) Any other relief this Court feels is fair and just.

Respectfully submitted,

/s/ Michael R. Hirman

Michael R. Hirman, Attorney for Petitioner
7777 Alvarado Road, Suite 404
La Mesa, CA 91942
(619) 238-9700
Licensed in Minnesota and California

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I caused the attached Entry of Appearance to be served electronically to the United States and the attorneys for the other parties.

June 12, 2026.

Respectfully submitted,

/s/ Michael R. Hirman

Michael R. Hirman, Attorney for Petitioner
7777 Alvarado Road, Suite 404
La Mesa, CA 91942
(619) 238-9700
Licensed in Minnesota and California