
**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

JESUS SANTANA PEREZ,

Agency No. ,

Petitioner,

v.

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

al.,

Respondents.

'26 CV3544 TWR VET

PETITION FOR WRIT OF HABEAS CORPUS

Todd J. Hilts, Esq. (SBN 190711)
Law Offices of Todd J. Hilts
1912 Coronado Avenue, Suite 102
San Diego, CA 92154
(619) 531-7900 (office)
(619) 531-7904 (fax)
thilts@toddhiltslaw.com

Attorney for Petitioner,

JESUS SANTANA PEREZ

TODD J. HILTS, ESQ. (CA Bar No. 190711)
LAW OFFICES OF TODD J. HILTS
1912 CORONADO AVENUE, SUITE 102
SAN DIEGO, CA 92154
TEL: (619) 531-7900
FAX: (619) 531-7904

Attorney for Petitioner JESUS SANTANA PEREZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

JESUS SANTANA PEREZ,

Petitioner,

v.

Markwayne MULLIN, in his official capacity as
Secretary of Homeland Security, Christopher J.
LAROSE, in his official capacity as Senior Warden of
Otay Mesa Detention Center, Gregory J.
ARCHAMBEAULT, in his official capacity as San
Diego Field Office Director, ICE Enforcement
Removal Operations; Todd LYONS, in his official
capacity as Acting Director of ICE; and Todd
BLANCHE, Acting U.S. Attorney General;
IMMIGRATION AND CUSTOMS
ENFORCEMENT; DEPARTMENT OF
HOMELAND SECURITY,

Respondents.

'26CV3544 TWR VET

PETITION FOR WRIT
OF HABEAS CORPUS



I. INTRODUCTION

1. Petitioner, JESUS SANTANA PEREZ, ("Petitioner") is a 45-year-old Mexican national who last entered the United States in 2026.

2. On or about March 25, 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 because Petitioner is detained in the Otay Mesa Detention Center, within the San Diego Division, and Respondent LaRose is his immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

8. Petitioner is a 45-year-old Mexican national who resides in Corona, California in Riverside County. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California, pending removal proceedings.

9. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. Respondent La Rose is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent LaRose has immediate physical custody of the Petitioner. He is being sued in his official capacity.

10. Respondent Gregory J. Archambeault is the San Diego Field Office Director (“FOD”) for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Archambeault 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

1 responsible for the general administration and enforcement of the
2 immigration laws of the United States. Respondent Secretary Mullin is being
3 sued in his official capacity.

4 5 IV. EXHAUSTION OF REMEDIES

6 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;
7 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is
8 not jurisdictionally required. Moreover, exhaustion should not be required
9 here because any attempt to exhaust would be futile, as BIA appeals routinely
10 take more than six months to reach a hearing.

11
12 14. Additionally, further agency steps will be futile. Recently, the BIA
13 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its
14 decision, the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding
15 individuals similarly situated to Petitioner ineligible for release on bond.

16
17 15. In Petitioner's case, any request for custody redetermination has
18 been dismissed by the Immigration Court for lack of jurisdiction and any
19 appeal to the BIA will be dismissed. *Matter of Yajure Hurtado* currently
20 controls in Petitioner's case and any attempt to request agency evaluation of
21 his detention will be futile.

22 23 V. STATEMENT OF FACTS

24 16. Petitioner is a Mexican national . He last
25 entered the United States in 2026.

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1 17. On or about March 25, 2026, Petitioner was detained by
2 Respondents at the Otay Mesa Detention Center.

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

4 19. Petitioner now seeks habeas relief because continuing his detention
5 exceeds statutory authority and violates the Fifth Amendment.
6

7 VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

8 20. Habeas corpus relief extends to a person "in custody under or by
9 color of the authority of the United States" if the person can show he is "in
10 custody in violation of the Constitution or laws or treaties of the United
11 States." 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P.*
12 *Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims
13 are proper under 28 U.S.C. section 2241 if they concern the continuation or
14 execution of confinement).
15

16 21. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v.*
17 *Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law
18 and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive
19 in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553
20 U.S. 723, 779–80 (2008). "[W]hen the judicial power to issue habeas corpus
21 properly is invoked the judicial officer must have adequate authority to make
22 a determination in light of the relevant law and facts and to formulate and
23 issue appropriate orders for relief, including, if necessary, an order directing
24 the prisoner's release." *Id.* at 787.
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VII. CAUSES OF ACTION

COUNT ONE

8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b), APPLIES TO PETITIONER

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

23. 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.

24. 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.

25. 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)).

26. Numerous courts across the United States have considered this issue subsequent to Respondents’ new policy of treating the vast majority of

1 immigrants in their custody as being detained pursuant to 8 U.S.C. §
2 1225(b)(2) and the BIA's decision supporting this interpretation in *Matter of*
3 *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).
4

5 27. This Court, joining the general consensus with other courts across
6 this country, has previously held those similarly situated to Petitioner are
7 being held under 8 U.S.C. § 1226(a) and therefore are not subject to
8 mandatory detention under 8 U.S.C. § 1225(b). *See e.g., Martinez Lopez v.*
9 *Noem, et al.*, No: 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30,
10 2025).
11

12 **COUNT TWO**
13 **(PROCEDURAL DUE PROCESS)**

14 28. Petitioner incorporates paragraphs 1 through 22 as if fully set out
15 herein.

16 29. The Fifth Amendment forbids deprivation of liberty without notice
17 and a meaningful opportunity to be heard before a neutral decision-maker.
18 Due process protects “all ‘persons’ within the United States, including [non-
19 citizens], whether their presence here is lawful, unlawful, temporary, or
20 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001).
21

22 30. Subsection 1003.19(i)(2) strips Petitioner of that protection by
23 allowing the prosecuting agency—after losing at the bond hearing—to veto
24 the Immigration Judge's order with a one-page notice that requires no
25 showing of danger, flight risk, or likelihood of success on appeal.
26

27 31. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test,
28

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

9 32. While the government has discretion to detain individuals under 8
10 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b),
11 this discretion is not "unlimited" and must comport with constitutional due
12 process. *See Zadvydas*, 533 U.S. at 698.
13

14 PRAYER FOR RELIEF

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

- 16 1) Assume jurisdiction over this matter;
- 17 2) Grant Petitioner a writ of habeas corpus directing the Respondents
18 to immediately release him from custody, under reasonable conditions of
19 supervision;
20
- 21 3) Order Respondents to refrain from transferring Petitioner out of
22 the jurisdiction of this court during the pendency of these proceedings and
23 while the Petitioner remains in Respondents' custody;
24
- 25 4) Order Respondents to file a response within 3 business days of the
26 filing of this petition;
27

1 5) Award attorneys' fees to Petitioner; and

2 6) Grant any other and further relief which this Court deems just and
3 proper.
4

5 I affirm, under penalty of perjury, that the foregoing is true and correct.

6 Respectfully submitted this 15th day of June, 2026.

7
8 /s/ Todd J. Hilts

9 Law Offices of Todd J. Hilts

10 1912 Coronado Avenue, Suite 102

11 San Diego, CA 92154

12 CA Bar # 190711

13 *Attorney for Petitioner*
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