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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT, CALIFORNIA

FELIPE ALVARADO CHIC

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden of Otay Mesa Detention Center; GREGORY J. ARCHAMBEAULT, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; TODD BLANCHE, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security.

Respondents.

Case No. '26CV4134 LEK BJW

Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS; FOR AN ORDER TO SHOW CAUSE WITHIN 3 DAYS; AND TO ENJOIN TRANSFER FROM THE JURISDICTION

INTRODUCTION

1. Petitioner, Felipe Alvarado Chic (hereinafter "Petitioner"), brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention. Petitioner does not seek review of an Immigration Judge's custody determination, nor does he request a bond hearing. Instead, this petition presents a threshold question of statutory authority, which is whether Respondents may lawfully continue detaining Petitioner under the mandatory detention provisions applicable to applicants for admission.

2. Petitioner is presently confined at the Otay Mesa Detention Center in the custody of Respondents. *See* Exhibit 1. His removal proceedings remain pending before the Otay Mesa Immigration Court, where he is scheduled to appear for a Master Calendar Hearing on July 20, 2026.

3. This petition does not challenge Petitioner's removability or otherwise interfere with those pending removal proceedings. Rather, it challenges only the statutory authority for Respondents' continued detention during the pendency of those proceedings. DHS asserts that Petitioner is subject to mandatory detention under INA § 235. Petitioner challenges that legal conclusion and contends that Respondents lack statutory authority to continue detaining him under that provision.

4. The allegations contained in DHS's own Notice to Appear (NTA) demonstrate why this issue is appropriate for habeas review. DHS alleges that Petitioner was "(4)...not then admitted or paroled after inspection by a immigration officer," that he is "(2)... a native of Guatemala and citizen of Guatemala," that he "(3)... arrived in the United States at or near Sasabe, Arizona, on or about September 12, 2012". Based on those factual allegations, DHS charged Petitioner as removable under INA § 212(a)(6)(A)(i). *See* Exhibit 2.

5. Significantly, DHS's charging document alleges that Petitioner's entry occurred about thirteen years ago and that he has been present in the United States since that time. The NTA does not allege that Petitioner is an arriving alien, that he presented himself for inspection at a port of entry, or that he is presently seeking admission into the United States. Rather, DHS's own allegations establish that this case concerns an individual who allegedly entered the country in September 2012 and has remained physically present in the United States ever since. Accordingly, the statutory authority for Petitioner's continued detention presents a pure question of law appropriate for review under 28 U.S.C. § 2241.

6. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. Maldonado Bautista v. Santacruz, No. 5:25 CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

7. Nevertheless, DHS continues to detain Petitioner under the mandatory detention provisions applicable to applicants for admission. Because this petition contests the statutory basis for detention, and not the denial of discretionary custody relief, this Court possesses jurisdiction under 28 U.S.C. § 2241 to determine whether Petitioner's detention is authorized by the Immigration and Nationality Act.

8. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus declaring that Respondents lack statutory authority to continue detaining him under INA

§ 235, order Petitioner's immediate release from immigration custody, and grant such other and further relief as the Court deems just and proper.

STATEMENT OF FACTS

9. Petitioner last entered the United States without being admitted in or about September of 2012, at or near Sasabe, Arizona. He was apprehended shortly after his entry. *See* Exhibit 2. Petitioner was a minor at the time of his entry, and he was shortly apprehended after his entry and sent to a center from refugee minors. *See* Exhibit 6. Petitioner was eventually released from DHS custody and sent to live with a family member. *Id.*

10. Petitioner is now married to Caty Tum Chivalan. *See* Exhibit 4. Petitioner is the father of three United States citizen children, ages 7, 3 and 2. *See* Exhibit 5. Since Petitioner's detention, his wife has been struggling to pay their living expenses as the Petitioner is the breadwinner of his home. *See* Exhibit 6.

11. Petitioner has been employed as an independent contractor for landscaping and earning an honest income to support his family. *See* Exhibit 6. Since his arrival to the U.S. Petitioner has no criminal history aside from his immigration history. *Id.*

12. Petitioner was detained by DHS officers while leaving a gas station. *See* Exhibit 6. Petitioner was told by DHS agents that they were looking for someone else but decided to stop him when they saw him at the gas station. *Id.* Petitioner contends he has strong features from his Guatemalan heritage and believes he suffered discrimination and thus targeted without cause. *Id.* Petitioner was taken to the Miramar Detention center then to Krome Detention located in Miami where he mentions the officers refused to provide him along with other transferees' food and water for almost three days. *Id.* Petitioner was subsequently transferred to the Otay Mesa

Detention Center, where he remains detained. *Id.*; *See Also* Exhibit 1. He was subsequently given a Master Hearing scheduled for July 20th, 2026.

13. Although the Ninth Circuit stayed portions of the district court's orders in *Maldonado Bautista* outside the certified class, the district court's statutory analysis remains persuasive. The reasoning of that decision recognizes that detention authority under the INA depends upon the statutory posture of the noncitizen, not merely the fact of an unlawful entry. Here, DHS's own charging allegations establish that Petitioner allegedly entered the United States in September 2012 and has remained in the country for more than thirteen years. Whether such an individual may nevertheless be subjected to mandatory detention as an applicant for admission presents a legal question that is properly resolved through habeas review. *See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).*

VENUE AND JURISDICTION

14. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center, located within San Diego County, and Christopher J. LaRose is his immediate custodian as the Warden of the facility. As such, venue is proper in this Court. 28 U.S.C. section 2241(d) and 1391 (e) Braden *v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

15. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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REQUIREMENTS OF 28 U.S.C. § 2241, 2243

16. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved by its sister court in *Maldonado Bautista.* If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

18. Petitioners are "in custody" for the purpose of § 2241 because they were arrested and remain detained by the Respondents.

PARTIES

19. Petitioner Felipe Alvarado Chic is a native of Guatemala who has been in immigration detention since July 4, 2026, and he remains detained at the Otay Mesa Detention Center. *See* Exhibit 1.

20. Respondent Gregory J. Archambeault is the Field Office Director of ICE's Enforcement and Removal Operations division, San Diego, CA. As such, Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

21. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and

Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

22. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

23. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

24. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

25. Respondent Christopher J. LaRose is employed as Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

26. No statutory exhaustion requirement applies to this petition because Petitioner seeks relief under 28 U.S.C. § 2241. See *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). This petition does not seek review of an Immigration Judge's custody determination, nor does it request a bond hearing. Rather, Petitioner challenges Respondents' statutory authority to continue detaining him under INA § 235 based upon the allegations contained in DHS's own Notice to Appear.

27. There is no available administrative remedy through which Petitioner may obtain the relief requested in this action. Neither the Immigration Court nor the Board of Immigration Appeals has authority to grant the habeas relief sought here or to issue a writ declaring Petitioner's continued detention unlawful. The issue presented is a pure question of statutory interpretation concerning the legality of Petitioner's detention, which falls within this Court's jurisdiction under 28 U.S.C. § 2241.

28. Moreover, requiring Petitioner to pursue additional administrative proceedings would be futile because no administrative tribunal can provide the relief requested in this petition. Petitioner does not seek discretionary custody relief or review of a bond determination; instead, he seeks judicial review of Respondents' statutory authority to continue detaining him. Because the administrative process cannot resolve that issue or afford the requested relief, no further exhaustion is required. Accordingly, habeas corpus is Petitioner's only adequate and effective means of obtaining judicial review of the legality of his continued detention.

CLAIMS FOR RELIEF

Respondents Lack Statutory Authority to Continue Detaining Petitioner Under INA § 235

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

30. This petition presents a pure question of statutory interpretation: whether Respondents possess authority under the Immigration and Nationality Act to continue detaining Petitioner as an applicant for admission where DHS's own Notice to Appear alleges that Petitioner entered the United States without inspection on or about September 12, 2012, and has remained present in the United States since that time.

31. DHS's charging document alleges that Petitioner is an alien who was "not then admitted or paroled after inspection by an Immigration Officer" that he entered the United States

at or near Sasabe, Arizona, on or about September 12, 2012, and that he was not admitted or paroled after inspection. Based on those allegations, DHS charged Petitioner as removable under INA § 212(a)(6)(A)(i). The Notice to Appear does not allege that Petitioner is an arriving alien or that he is presently seeking admission into the United States.

32. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2).

33. Although the Ninth Circuit stayed portions of the district court's orders in *Maldonado Bautista* outside the certified class, the district court's statutory analysis remains persuasive. That decision recognized that the mandatory detention provisions of INA § 235 do not automatically apply to noncitizens who entered the United States without inspection years earlier and have remained continuously present in the country. *See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).* Petitioner's circumstances fall squarely within that statutory analysis because DHS itself alleges that his entry occurred more than ten years ago.

34. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

35. Respondents nevertheless continue to detain Petitioner under INA § 235 despite the allegations contained in their own charging document. This petition does not seek review of an Immigration Judge's custody determination or request a bond hearing. Rather, it asks this Court to determine whether Respondents possess statutory authority to continue detaining Petitioner under the Immigration and Nationality Act.

36. Because Petitioner's continued detention rests upon an erroneous interpretation of the detention statutes, Respondents are acting in excess of their statutory authority. Accordingly, Petitioner's continued detention is unlawful, and he is entitled to relief under 28 U.S.C. § 2241.

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Petitioner's Continued Detention Violates the Due Process Clause of the Fifth Amendment

37. Petitioner reiterates and incorporates by reference paragraphs 1 through 36 as if fully set forth herein.

38. Additionally, 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 U.S. regardless of legal status. *See Zadvydas v. Davis, 533 U.S. 678, 698 (2001).* A vital liberty interest is at stake when an individual is subject to detention by the government. According to *Zadvydas*, the government may only deprive a non-citizen of physical liberty when it serves a legitimate purpose, commonly understood to include securing one's appearance at future hearings.

39. In this case, DHS's own Notice to Appear alleges that Petitioner entered the United States at or near Sasabe, Arizona, on or about September 12, 2012, and has been present in the United States since that time. Nevertheless, Respondents continue to detain Petitioner under the mandatory detention provisions applicable to applicants for admission. By depriving Petitioner of his physical liberty pursuant to an erroneous interpretation of the detention statutes, Respondents have subjected him to continued detention without lawful statutory authority.

40. Due process requires, at a minimum, a meaningful opportunity to challenge the legal basis for one's detention before being deprived of liberty. *See Mathews v. Eldridge, 424 U.S. 319 (1976).* Here, Petitioner has no meaningful administrative mechanism through which to obtain a determination that Respondents lack statutory authority to continue detaining him under INA § 235. Neither the Immigration Judge nor the Board of Immigration Appeals possesses authority to grant the habeas relief sought in this action. As a result, absent review by this Court, Petitioner faces continued detention without an adequate forum to challenge the legal basis for that detention.

41. Under the balancing framework established in *Mathews*, Petitioner's private liberty interest is substantial. The risk of an erroneous deprivation is significant because Respondents continue to detain Petitioner despite DHS's own allegations that he entered the United States more than thirteen years ago and has remained continuously present in the country ever since. The Government has no legitimate interest in continuing to deprive Petitioner of his liberty under a statutory provision that does not authorize his detention. Judicial intervention is therefore necessary to safeguard Petitioner's constitutional right to due process.

42. Because Respondents continue to detain Petitioner without lawful statutory authority and without providing an adequate process to challenge the legal basis for that detention, Petitioner's continued confinement violates the Due Process Clause of the Fifth Amendment.

43. Counsel thus posits that the Defendants are in violation of the *Maldonado Bautista* precedent, the statutory framework in the INA and the code of federal regulations, as well as the Fifth Amendment/ Due Process Clause.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Petitioner out of the jurisdiction during the pendency of these proceedings;

c. Order Respondents to file a response within 3 business days of the filing of this petition as to why Petitioner should not be given a custody hearing;

d. Issue a writ of habeas corpus requiring Respondents to release Petitioner within one day;

e. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED: July 18, 2026

//S//CYNTHIA S. BARBOSA
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Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

DATED: July 18, 2026

//S// CYNTHIA S. BARBOSA
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(619) 394-2100
cynthia@barbosarodriguezlaw.com
Attorney for Petitioner

DECLARATION OF FELIPE ALVARADO CHIC

I, Felipe Alvarado Chic, declare the following to the best of my knowledge:

1. I was born in 1998 in Quiché, Guatemala, and I am currently 28 years old.

2. I came to the United States alone in 2012, I believe I was around 13 or 14 years old. I crossed the border on foot. I was apprehended by ICE shortly after entering, and they took me to a refugee center for minors in Arizona.

3. While I was at the center for minors, I was given a notice with a court date. I was then released and sent by plane to North Carolina to be placed in the custody of a family member, who was in communication with the authorities at that time.

4. I remember attending my first court hearing. At that hearing, they asked me my name, whether I was in school, and whether I lived at the address the court had on file for me. I did not have an attorney at that hearing. I eventually spoke with an attorney, who informed me that my case had been paused by the government and that I did not need to do anything for the moment.

5. I am the father of three children who were born here in the United States: [redacted]

6. My daughter [redacted] goes to school, and [redacted] attend daycare.

7. I am married to Caty Tum Chivalan, who is my wife and the mother of my children. Caty is currently 24 years old.

8. For the last three years, I have been working independently doing landscaping and handyman jobs. I earn about [redacted] a month, although my income varies a lot depending on how much work I get.

9. My monthly expenses include [redacted]

10. My family and I go to church four times a week, and we have good friendships there with other people from Guatemala. I am very involved in the church. I am part of the worship team, and I play the drums.

11. I do not have a criminal record. The only incident I remember was about four years ago, when someone crashed into my car and the officer gave me a ticket for not having my driver's license.

12. I have been living here since 2012, which means I have lived in the United States almost longer than I lived in Guatemala. I consider the United States my home. My wife, my children, and my community are all here.

13. On July 4, 2026, I was detained by ICE. I was working that day, and I stopped at a gas station to buy food to eat during my break. Near the gas station, I noticed a suspicious car: it was a black car with tinted windows, and its lights were off. While I was inside the store, I noticed that someone from that car came inside, and he also went into the bathroom where I was. I bought my food as normal and kept a calm demeanor, because I know I am not a criminal and I have nothing to fear.

14. When I left the gas station, I noticed that the black car was following me. About ten minutes later, they turned on their lights; I stopped my vehicle, and they stopped behind me. They approached my car, and the first thing I noticed was that two of the men were wearing uniforms with the letters "DHS" on them. The first thing they asked me was whether I was in the country illegally and whether I had my documents. I told them that I did not have papers. They asked for my ID, looked up my name in their system, and saw that I had a pending court hearing.

15. The officer told me that they had actually been there looking for a van, but that they noticed me and decided to follow me. I believe I was discriminated against because I am from Guatemala. I look like someone from Guatemala: I have dark skin, I have Guatemalan features, and I am short. Without a doubt, I look Hispanic.

16. At that moment, I had no idea that a court hearing had been scheduled for me; as far as I understood, my court case was still paused. They detained me and took me to the Miramar ICE detention facility, then to the Krome Detention Center in Miami, and I was then moved from Florida to Otay Mesa, in California.

17. When I was moved to Krome, located in Miami, Florida, the other detainees and I went almost three days without food or water. When I heard that they were moving us to California, the other individuals on the plane and I felt relieved, because we had heard that in California they treat detainees better than in Florida.

18. I am currently working with my attorney to present my forms of relief before the immigration court. It was always my intention to continue pursuing my case once the court decided to un-pause it and continue with it.

19. Now that I am in California, I feel very sad being so far from my family, although I am treated more humanely here. I try to encourage my family to stay strong, but it is still very hard for me. My wife needs me a lot, because I am the provider for our home and for the things our three children need. Right now, she is overwhelmed trying to keep things afloat, because she does not have the means to support the children and herself.

20. I pray for an opportunity to be released so that I can continue my case outside of detention, together with my family.

SWORN DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[Signature]

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Felipe Alvarado Chic

Executed on July 17, 2026, at Otay Mesa Detention Center, California.

DECLARATION OF TRANSLATION AND INTERPRETATION

I, Cynthia Barbosa, declare as follows:

1. I am over the age of eighteen and I am fluent in both the English and Spanish languages.

2. I translated the foregoing Declaration of Felipe Alvarado Chic from Spanish into English.

3. Felipe Alvarado Chic confirmed to me that he understood the entire contents of the declaration before signing it, and that its contents are true and correct to the best of his knowledge.

4. The Spanish translation is a true and accurate translation of the Spanish declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 17, 2026, at San Diego, California.



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Cynthia Barbosa