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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MISAEL BOLAÑOS-PORFIRIO, (A-File No. [redacted]6),	Case No. '26CV4632 TWR DDL **HABEAS CORPUS**
Petitioner,	**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**
v.	
CHRISTOPHER LaROSE, Warden, Otay Mesa Detention Center, in his official capacity; and JESUS ROCHA, Acting Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,	(Immigration Detention, INA § 236(a); 8 U.S.C. § 1226(a)) **IMMIGRATION DETAINEE, EXPEDITED CONSIDERATION REQUESTED**
Respondents.	

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner Misael Bolaños-Porfirio, by and through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to

remedy his unlawful detention by U.S. Immigration and Customs Enforcement ("ICE"), and alleges as follows:

I. INTRODUCTION

1. Petitioner has lived continuously in the United States for approximately nineteen years and has built his life in a single Southern California community throughout that time. On June 9, 2026, federal officers arrested him in the interior of the United States, in his community of San Juan Capistrano, Orange County, California, roughly sixty miles north of the international border and nearly two decades after he entered. He has no criminal record.

2. Despite these facts, the immigration court refused even to consider releasing Petitioner on bond. On June 22, 2026, Immigration Judge Mark Sameit denied Petitioner's request for a custody redetermination solely for lack of jurisdiction, reasoning that because Petitioner entered without inspection he is an "applicant for admission" under INA § 235(a)(1) subject to mandatory detention under INA § 235(b)(1)(B)(iii)(IV), and that the court therefore had no authority to set bond. The Immigration Judge relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Exhibit C.)

3. That ruling is wrong. A noncitizen arrested in the interior long after entry and placed in ordinary removal proceedings under INA § 240, is detained under INA § 236(a), 8 U.S.C. § 1226(a), which authorizes release on bond, not under INA § 235(b), 8 U.S.C. § 1225(b). By categorically denying Petitioner any bond hearing, Respondents are holding him in mandatory, no-bond detention without any individualized determination of whether he is a flight risk

or a danger, in violation of the immigration statutes and the Due Process Clause of the Fifth Amendment. That is now the settled law of this Circuit. *Rodriguez Vazquez v. Bostock*, No. 25-6842, --- F.4th ---- (9th Cir. July 30, 2026).

4. This Petition raises an individual, as-applied challenge to Petitioner's own custody, that he is detained under the wrong statute and is entitled to an individualized bond hearing. It does not seek to invalidate any DHS policy on its face. Petitioner asks this Court to declare that he is detained under INA § 236(a) and to order Respondents to provide him a prompt, individualized bond hearing before an Immigration Judge, or, in the alternative, to order his release on reasonable conditions of supervision.

II. JURISDICTION

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), and 28 U.S.C. § 1331 (federal question). Petitioner is "in custody" in violation of the laws and Constitution of the United States.

6. Section 242 of the INA does not bar this action. First, § 242(b)(9), 8 U.S.C. § 1252(b)(9), does not apply: Petitioner does not challenge a final order of removal or the conduct of his removal proceedings; he challenges the lawfulness of his custody pending those proceedings, a challenge properly brought in habeas. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Second, § 242(e)(3), 8 U.S.C. § 1252(e)(3), does not channel this action to the District Court for the District of Columbia. By its terms, that provision makes review of "determinations under section 1225(b) of this title and its implementation" available in the District of Columbia only in an

action challenging the constitutionality of that section or its implementing regulations, or contending that a "regulation, or a written policy directive, written policy guideline, or written procedure" is unlawful. § 1252(e)(3)(A). Petitioner mounts no such facial or systemic attack. He asserts an individual, as-applied claim that he is detained under the wrong statutory authority and is entitled to a bond hearing, the classic office of habeas, properly filed against his immediate custodian in the district of confinement. Nor does § 1252(e)(2) apply: Petitioner was never placed in expedited removal, and no expedited-removal order has ever been entered against him.

III. VENUE AND THE PROPER RESPONDENTS

7. Venue is proper in the Southern District of California. Petitioner is confined at the Otay Mesa Detention Center in San Diego, California, which lies within this District. Under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), a § 2241 petition challenging present physical confinement must be filed in the district of confinement against the petitioner's immediate custodian.

8. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center, the facility where Petitioner is confined and is Petitioner's immediate custodian. Respondent Jesus Rocha is the Acting Field Office Director of the ICE San Diego Field Office, the ICE official with direct authority over Petitioner's detention, custody classification, and release. Both are sued in their official capacities. Pursuant to Fed. R. Civ. P. 25(d), the successor to any named official is automatically substituted.

IV. PARTIES

9. Petitioner Misael Bolaños-Porfirio is a native and citizen of Mexico, born [redacted], and assigned A-File No. [redacted]. He is detained at the Otay Mesa Detention Center, San Diego, California, and has been in continuous DHS custody since June 9, 2026.

10. Respondents are the custodian and the responsible ICE field official identified in Paragraph 8, sued in their official capacities.

V. EXHAUSTION

11. No statute requires Petitioner to exhaust administrative remedies before bringing this § 2241 custody challenge. In any event, Petitioner has pursued every administrative avenue available to him.

12. Petitioner presented his custody claim to the Immigration Judge, who denied it for lack of jurisdiction on June 22, 2026. (Exhibit C.) On July 22, 2026, within the appeal period, Petitioner submitted a Notice of Appeal (Form EOIR-26) from that custody ruling to the Board of Immigration Appeals. On August 7, 2026, the Board rejected that submission on an administrative filing-category ground, without reaching the merits of the custody claim, and directed that it be resubmitted as a bond appeal. (Exhibit E.) No administrative decision on Petitioner's custody is pending or forthcoming. In all events, resort to the Board would be futile: it is bound by its own precedent in *Matter of Yajure Hurtado*, the very decision on which the Immigration Judge relied, and no administrative tribunal can afford Petitioner the relief that *Rodriguez Vazquez* entitles him to receive from this Court.

13. Separately, on June 24, 2026, Petitioner submitted a written request to DHS for parole under INA § 212(d)(5)(A), and in July 2026 he submitted a

second, follow-up request. (Exhibit D.) As of the filing of this Petition, Respondents have not decided either request, and Petitioner remains detained.

VI. STATEMENT OF FACTS

14. **Continuous physical presence since 2007.** Petitioner entered the United States on or about October 19, 2007, near San Ysidro, California, and has remained here continuously since. His entry date is documented in DHS's own Form I-213. (Exhibit A.)

15. **Interior arrest.** On June 9, 2026, at approximately 6:59 a.m., officers of the U.S. Border Patrol's San Clemente Station arrested Petitioner in San Juan Capistrano, Orange County, California, in the interior of the United States, approximately sixty miles north of the international border and nearly nineteen years after his entry. (Exhibit A.)

16. **No criminal record.** Petitioner has no criminal history. The database checks reflected in DHS's Form I-213, CIS, ABIS, EARM, NCIC, NGI, and TECS, all returned no criminal record. (Exhibit A.)

17. **No prior removal order.** Petitioner's immigration history reflects two voluntary returns to Mexico in or around 2008. Those are voluntary returns, not orders of removal; DHS did not reinstate any prior order. Instead, DHS placed Petitioner in ordinary removal proceedings under INA § 240 by Notice to Appear dated June 9, 2026. (Exhibits A, B.)

18. **Ordinary § 240 proceedings, not expedited removal.** The Notice to Appear (Exhibit B) charges Petitioner under INA §§ 212(a)(6)(A)(i) (present without admission) and 212(a)(7)(A)(i)(I) (no valid entry document) and commences removal proceedings under INA § 240 before the Otay Mesa

Immigration Court. Petitioner was never placed in expedited removal under § 235(b)(1) and was never referred for a credible-fear interview.

19. **Community and family ties.** Petitioner is married to Natalia Salazar and is the stepfather of a three-year-old United States citizen child, and he lives with his family in San Juan Capistrano. He has been employed as a night janitor by Las Golondrinas Mexican Food Products of San Juan Capistrano since December 2012, approximately thirteen years, and is entrusted by his employer with locking the premises and setting the security alarm at the close of each shift. The company's general manager and chief financial officer has provided a letter attesting to his employment and character, and the company's current Statement of Information on file with the California Secretary of State confirms both the business and that officer's position. (Exhibit F.) These ties bear directly on flight risk and on his eligibility for relief from removal.

20. **Bona fide applications for relief.** On or about July 22, 2026, Petitioner filed with the Immigration Court his applications for cancellation of removal for certain nonpermanent residents (Form EOIR-42B) and for asylum, withholding of removal, and protection under the Convention Against Torture (Form I-589). Those applications remain pending, and Petitioner's removal proceedings will continue for months at a minimum.

21. **The bond denial.** On June 22, 2026, Immigration Judge Mark Sameit denied Petitioner's request for a custody redetermination for lack of jurisdiction, finding Petitioner to be an applicant for admission under INA § 235(a)(1) subject to mandatory detention under § 235(b)(1)(B)(iii)(IV), in reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Exhibit

C.) The Immigration Judge made no individualized finding that Petitioner is a flight risk or a danger. Petitioner's appeal of that ruling was rejected by the Board without reaching the merits (Exhibit E), and his parole requests to ICE remain undecided (Exhibit D). Petitioner has now been detained for more than two months without any individualized custody determination, and no mechanism exists, other than this Petition, by which he will receive one.

VII. LEGAL BACKGROUND

22. The immigration laws establish two distinct detention regimes. INA § 235(b), 8 U.S.C. § 1225(b), governs "applicants for admission", paradigmatically, noncitizens stopped at or near the border while seeking entry, with § 235(b)(1) providing for the mandatory detention of those placed in expedited removal. INA § 236(a), 8 U.S.C. § 1226(a), governs the arrest and detention of noncitizens already present in the country pending ordinary removal proceedings, and it expressly authorizes release on bond or conditional parole.

23. The Immigration Judge's reliance on § 235(b)(1)(B)(iii)(IV) is doubly mistaken. First, that provision governs detention within the expedited-removal and credible-fear process under § 235(b)(1); Petitioner is not in expedited removal and was never referred for a credible-fear interview, he is in ordinary § 240 proceedings on a Notice to Appear. Second, which detention regime applies turns on the noncitizen's circumstances, not merely the manner of entry. A person apprehended in the interior long after entering, and charged in § 240 proceedings, is detained under § 236(a) and is entitled to an individualized bond determination. Treating every person who ever entered

without inspection as a perpetual "applicant for admission" subject to § 235(b) mandatory detention, no matter how long ago he entered or how far from the border he was arrested, reads § 236(a) out of the statute. To the extent Respondents defend the denial of bond under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), rather than the subclause the Immigration Judge cited, that provision fares no better: the Ninth Circuit has squarely held that § 1225(b)(2)(A) does not reach noncitizens present without admission who are apprehended in the interior. See ¶ 25, infra.

24. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board held that noncitizens present without admission are applicants for admission subject to § 235(b) detention and that Immigration Judges lack authority to set bond for them. That decision built on the Board's earlier decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which addressed a recently arrived noncitizen whose parole had been terminated. Neither decision addresses a person arrested in the interior nearly two decades after entry and charged in § 240 proceedings, and both are wrongly decided. After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court owes no deference to the Board's statutory interpretation and construes §§ 1225 and 1226 independently.

25. The Ninth Circuit has now resolved the question in Petitioner's favor. In *Rodriguez Vazquez v. Bostock*, No. 25-6842, --- F.4th ---- (9th Cir. July 30, 2026), the court held that § 1225(b)(2)(A), "based on its text and context, is best construed as applying to aliens entering the United States at the border," and affirmed habeas relief entitling noncitizens who entered without inspection

and were later apprehended in the interior to individualized bond hearings under § 1226(a). That published decision is controlling in this Circuit and squarely forecloses the rationale of the Immigration Judge's order. It accords with the decisions of four other circuits. See *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026), petition for cert. filed sub nom. *Raycraft v. Lopez-Campos*, No. 25-1415 (U.S. June 22, 2026); *Santillan Quiroz v. Mullin*, 2026 WL 1876709 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026). The Fifth and Eighth Circuits have held otherwise. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). That division does not affect the outcome here: *Rodriguez Vazquez* is published, controlling authority in this Circuit.

26. *Rodriguez Vazquez* confirms the conclusion earlier reached in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), which held that noncitizens who entered without inspection and were apprehended in the interior are detained under § 1226(a) and are eligible for bond hearings. That court entered final judgment on December 18, 2025, holding that *Matter of Yajure Hurtado* was no longer controlling, *Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), and on February 18, 2026, vacated that decision under the Administrative Procedure Act. On March 31, 2026, the Ninth Circuit stayed the class-certification order and the vacatur pending appeal, leaving the December 18 judgment in effect within the Central District of California; the two appeals were consolidated, and briefing was suspended

pending the decision in *Rodriguez Vazquez. Bautista v. DHS*, Nos. 25-7958, 26-1044 (9th Cir.). None of that bears on this Petition: *Rodriguez Vazquez* is now controlling Circuit precedent, and Petitioner asserts no claim under the *Bautista* judgment. Petitioner does not rely on the *Maldonado Bautista* judgment as binding class relief; he presents his own, individual, as-applied custody challenge under the controlling authority of *Rodriguez Vazquez*.

VIII. CLAIMS FOR RELIEF

COUNT ONE

Unlawful Detention in Violation of the Immigration and Nationality Act

(Petitioner is detained under INA § 236(a) and is entitled to a bond hearing)

27. Petitioner realleges and incorporates paragraphs 1 through 26.

28. Petitioner was arrested in the interior of the United States, nearly nineteen years after entering, and was placed in ordinary removal proceedings under INA § 240. He is therefore detained under INA § 236(a), 8 U.S.C. § 1226(a), which authorizes his release on bond or conditional parole pending those proceedings. *Rodriguez Vazquez v. Bostock*, No. 25-6842, --- F.4th ---- (9th Cir. July 30, 2026).

29. By classifying Petitioner as a § 235(b) applicant for admission and denying him any bond hearing, Respondents are detaining him without statutory authority for that categorical, no-bond detention, contrary to controlling Ninth Circuit precedent. Petitioner is entitled to an individualized custody redetermination before an Immigration Judge under INA § 236(a), 8 C.F.R. § 1003.19, and 8 C.F.R. § 1236.1(d). The regulation confirms the point: 8 C.F.R. § 1003.19(h)(2)(i) enumerates the categories of noncitizens for whom

an Immigration Judge may not redetermine custody, including arriving aliens and those detained under INA §§ 236(c)(1) and 237(a)(4), and noncitizens present without admission who were apprehended in the interior appear nowhere on that list.

COUNT TWO

Violation of the Due Process Clause of the Fifth Amendment

(Detention without an individualized bond hearing)

30. Petitioner realleges and incorporates paragraphs 1 through 29.

31. The Due Process Clause applies to all persons within the United States, including noncitizens, and protects against deprivations of physical liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Freedom from imprisonment lies at the heart of the liberty the Clause protects.

32. Petitioner has lived in this country for nearly two decades, has deep ties to his community, has no criminal record, and has bona fide applications for relief from removal pending before the Immigration Court. His § 240 proceedings will continue for months, during which he faces continued and potentially prolonged detention with no opportunity to be heard on whether his confinement is justified. Detaining Petitioner without any individualized determination of flight risk or dangerousness by a neutral decisionmaker violates the Fifth Amendment as applied to him. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas*, 533 U.S. 678; accord *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026) (holding that detention without an individualized bond hearing violates due process). Petitioner acknowledges *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), which held that the procedures of §

1226(a) satisfy due process and place the burden on the noncitizen at a bond hearing. *Rodriguez Diaz* presumed the noncitizen had received a § 1226(a) bond hearing; Petitioner has received none at all, and it is that categorical denial, not the allocation of the burden, that Count Two challenges.

33. Due process entitles Petitioner to a prompt, individualized bond hearing before a neutral decisionmaker.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

(b) Issue a writ of habeas corpus and declare that Petitioner is detained under INA § 236(a), 8 U.S.C. § 1226(a), not INA § 235(b), 8 U.S.C. § 1225(b), and that he is entitled to an individualized bond hearing;

(c) Order Respondents to provide Petitioner a prompt, individualized bond hearing before an Immigration Judge, within fourteen (14) days, conducted in accordance with 8 C.F.R. §§ 1003.19 and 1236.1;

(d) In the alternative, order Petitioner released on reasonable conditions of supervision;

(e) Permit Petitioner to apply for reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A); and

(f) Grant such other and further relief as the Court deems just and proper.

Dated: August 13, 2026

Respectfully submitted,

/s/ Frank R. Sariol

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Attorney for Petitioner

VERIFICATION (28 U.S.C. § 2242)

I, Frank R. Sariol, declare: I am counsel for Petitioner and submit this verification on his behalf because he is detained at the Otay Mesa Detention Center. I have read the foregoing Petition. The factual allegations are true and correct to the best of my knowledge based on the case record and information provided by Petitioner; allegations stated on information and belief I believe to be true. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 13, 2026, at Santa Ana, California.

/s/ Frank R. Sariol

Frank R. Sariol, Esq.

EXHIBIT INDEX

Exhibit A: Form I-213, Record of Deportable/Inadmissible Alien (interior arrest; entry date; negative criminal-history checks)

Exhibit B: Notice to Appear (Form I-862), dated June 9, 2026 (§ 240 proceedings; charges)

Exhibit C: Order of the Immigration Judge denying custody redetermination, June 22, 2026

Exhibit D: Request for Parole under INA § 212(d)(5)(A), June 24, 2026, and second request, July 2026

Exhibit E: Notice of Appeal to the BIA (Form EOIR-26) from the custody ruling, submitted July 22, 2026, together with the Board's rejection notice dated August 7, 2026

Exhibit F: Evidence of continuous presence and community ties: employer letter of Las Golondrinas Mexican Food Products dated June 15, 2026, and the company's Statement of Information filed with the California Secretary of State

Note on redactions: Counsel has redacted from Exhibits A, D, and E one residential street address, one telephone number, and the name of a minor child. Each redaction is marked on the face of the page. Federal Rule of Civil Procedure 5.2(b)(2) and (b)(5) exempt this filing from the redaction requirement, and these redactions are therefore voluntary. Nothing bearing on the merits has been withheld, and unredacted copies will be provided to the Court or to Respondents on request.

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CERTIFICATE OF SERVICE

I certify that on August 13, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus, the Civil Cover Sheet, and all exhibits to be served on the following by the method indicated:

• **Christopher LaRose**, Warden, Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154, by Certified Mail, Return Receipt Requested;

• **Jesus Rocha**, Acting Field Office Director, ICE San Diego Field Office, 880 Front Street, #2242, San Diego, CA 92101, by Certified Mail, Return Receipt Requested;

• **U.S. Attorney for the Southern District of California** (Civil Process Clerk), 880 Front Street, Room 6293, San Diego, CA 92101, by Certified Mail, Return Receipt Requested;

• **Attorney General of the United States**, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, by Certified Mail, Return Receipt Requested; and

• **Otay Mesa Immigration Court,** Executive Office for Immigration Review, 7488 Calzada de la Fuente, San Diego, CA 92154, by Certified Mail, Return Receipt Requested.

/s/ Frank R. Sariol

Frank R. Sariol, Esq., Attorney for Petitioner