IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOSE MARCOS, Petitioner, v. CHRISTOPHER LaROSE, Warden, Otay Mesa Detention Center; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; GREGORY J. ARCHAMBEAULT, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, U.S. Attorney General, U.S. Department of Justice, Respondents.	CIVIL ACTION NO. '26CV4640 BAS DEB JUDGE Cynthia A. Bashant

PETITION FOR WRIT OF HABEAS CORPUS

AND NOW, comes Petitioner, Jose Marcos, by and through his attorneys, and files the within Petition for Writ of Habeas Corpus, stating as follows:

A. INTRODUCTION

1. Petitioner, Jose Marcos, [redacted], is in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego, California. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR") have taken the position that Petitioner is subject to mandatory detention as an applicant for admission and is therefore ineligible for a bond hearing before an Immigration Judge.

2. Petitioner challenges his ongoing immigration detention as unlawful under the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. Although Petitioner entered the United States without inspection in or about 2007 and has resided continuously in the United States for approximately nineteen years, Respondents have improperly subjected him to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b), thereby denying him any opportunity for a bond hearing. That classification is contrary to governing law. Noncitizens who entered without inspection but were not apprehended at or near the border are not subject to mandatory detention under § 235; they are detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for individualized custody determinations and bond hearings.

3. On September 5, 2025, the Board of Immigration Appeals ("BIA") adopted the government's position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens who entered the United States without admission or parole are "applicants for admission" subject to detention under § 1225(b)(2)(A) and ineligible for bond hearings before an Immigration Judge. Dozens of federal district courts have rejected that interpretation as contrary to the plain text of the INA.

4. The principal class action challenging this policy, *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), resulted in a declaratory judgment that noncitizens who entered without inspection are detained under § 1226(a), not § 1225(b)(2), and are entitled to bond consideration. The government appealed, and on March 31, 2026, the United States Court of Appeals for the Ninth Circuit stayed that judgment pending appeal insofar as it extends beyond the Central District of California. As a result, the class judgment is presently operative only within the Central District of California. Petitioner is detained in the Southern District of California and is not covered by that relief.

5. In staying the class judgment, the Ninth Circuit relied on *Trump v. J.G.G.*, 604 U.S. 670 (2025), reasoning that challenges to detention of this kind necessarily imply the invalidity of confinement and therefore must be pursued through individual petitions for writ of habeas corpus in the district of confinement, rather than through nationwide classwide relief. Petitioner brings this individual petition in the district of his confinement, as that guidance contemplates.

6. Pursuant to nationwide EOIR guidance issued on January 13, 2026, Immigration Judges have been instructed that *Matter of Yajure Hurtado* remains binding precedent. Petitioner therefore cannot obtain a bond hearing before the Immigration Court, and his only avenue for relief is this Court.

B. JURISDICTION

7. Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center in San Diego, California.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. The proper respondent in a habeas action challenging present physical confinement is the petitioner's immediate custodian, and jurisdiction lies in the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 443 (2004). Petitioner's immediate custodian is the Warden of the Otay Mesa Detention Center, who is located within this District.

C. VENUE

11. Venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is detained. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). The Otay Mesa Detention Center is located in San Diego, San Diego County, California, which lies within the Southern District of California. 28 U.S.C. § 84(d).

12. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers and employees of the United States acting in their official capacities, and because a substantial part of the events or omissions giving rise to the claims, including Petitioner's continued detention, is occurring in the Southern District of California.

D. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must award the writ or order Respondents to show cause "forthwith," unless it appears from the application that the petitioner is not entitled thereto. 28 U.S.C. § 2243. If an order to show cause issues, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

14. 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).

E. PARTIES

15. Petitioner Jose Marcos, [redacted], is a native and citizen of Guatemala who has been in immigration detention at the Otay Mesa Detention Center since on or about August 10, 2026.

16. Respondent Christopher LaRose is the Warden and Facility Administrator of the Otay Mesa Detention Center, where Petitioner is detained. As the on-site official responsible for the facility, the Warden has immediate physical custody of Petitioner. The Warden is sued in an official capacity.

17. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. In that capacity he oversees ICE operations nationwide, including detention and removal decisions, and is responsible for setting and enforcing ICE policy. He is sued in an official capacity.

18. Respondent Gregory J. Archambeault is the Field Office Director of the San Diego Field Office of ICE Enforcement and Removal Operations, which exercises jurisdiction over immigration detention in the area of Petitioner's confinement, including the Otay Mesa Detention Center. In that capacity the Field Office Director is responsible for the administration and management of ICE detention affecting Petitioner and exercises legal control over Petitioner's custody. The Field Office Director is sued in an official capacity.

19. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. He is sued in an official capacity. DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

20. 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 is a

component. He is sued in an official capacity. EOIR operates the immigration courts, including custody redeterminations in bond hearings.

F. LEGAL FRAMEWORK

21. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while those who have been arrested for, charged with, or convicted of certain crimes are subject to mandatory detention under § 1226(c).

23. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for certain other recent arrivals seeking admission under § 1225(b)(2).

24. Third, the INA provides for detention of noncitizens who have been ordered removed. 8 U.S.C. § 1231(a).

25. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

26. Following enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, EOIR and the legacy Immigration and Naturalization Service promulgated regulations explaining that persons who entered without inspection generally are not detained under § 1225 but instead under § 1226(a). The agencies stated that, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who

entered without inspection) will be eligible for bond and bond redetermination." 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).

27. For the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings unless their criminal history rendered them ineligible under § 1226(c).

28. On July 8, 2025, ICE announced interim guidance reversing that longstanding practice and asserting that all persons who entered the United States without inspection are subject to the mandatory detention provision of § 1225(b)(2)(A), regardless of when or where they were apprehended and regardless of how long they have resided in the United States.

29. On September 5, 2025, the BIA adopted the same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens who entered without admission or parole are applicants for admission subject to detention under § 1225(b)(2)(A) and ineligible for bond hearings before an Immigration Judge.

30. Dozens of federal courts have rejected this interpretation as contrary to the INA. The seminal decision, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025), held that § 1226(a), not § 1225(b), applies to noncitizens who were not apprehended upon arrival. Courts across the country, including within the Ninth Circuit and this District, have agreed. *See, e.g.*, *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July

7, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025). The United States Court of Appeals for the Seventh Circuit likewise declined to endorse the government's broad mandatory-detention theory. *Castanon Nava v. Department of Homeland Security* (7th Cir. Dec. 11, 2025).

31. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), a federal court independently interprets the meaning of § 1225(b) using the traditional tools of statutory construction and owes no deference to the BIA's contrary reading in *Matter of Yajure Hurtado*.

32. Section 1226(a) applies by default to all persons "pending a decision on whether the alien is to be removed from the United States," and § 1226 expressly reaches persons charged as inadmissible, including those present without admission. *See* 8 U.S.C. § 1226(c)(1)(E). By creating specific exceptions for certain such persons, Congress confirmed that, absent those exceptions, § 1226(a), with its bond hearing, generally applies. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257.

33. By contrast, § 1225(b) applies to persons arriving at United States ports of entry or who recently entered and are "seeking admission." As the Supreme Court has explained, that mandatory detention scheme operates "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It does not apply to persons like Petitioner, who had already entered and were residing in the United States when apprehended.

34. There is no statutory exhaustion requirement applicable to Petitioner's claims, and any request for a bond hearing before the Immigration Judge would be futile because, under *Matter of Yajure Hurtado* and the January 13, 2026 EOIR guidance, the Immigration Judge lacks authority to consider Petitioner's release on bond. Exhaustion is therefore excused.

G. FACTS

35. Petitioner is a native and citizen of Guatemala. Petitioner first entered the United States in or about 2004 and departed in or about 2006. He re-entered the United States without inspection in or about 2007 and has resided continuously in the United States since that time, a period of approximately nineteen years.

36. Petitioner has no criminal history. He has never been arrested, charged, or convicted of any crime in the United States or elsewhere. He was steadily self-employed at the time of his arrest, pays taxes and files tax returns, and has established substantial ties in the United States.

37. Petitioner is married to Sabina Cedillo, and is the father of a United States citizen son. He has significant family and community ties in the United States.

38. On or about August 10, 2026, Petitioner was arrested by ICE in the interior of the United States while driving to work. He was thereafter transferred to and detained at the Otay Mesa Detention Center in San Diego, California, where he has been held since on or about August 10, 2026.

39. On information and belief, DHS has charged, or will charge, Petitioner as a noncitizen present in the United States without admission or parole under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and has placed, or will place, him in removal proceedings under 8 U.S.C. § 1229a.

40. Consistent with *Matter of Yajure Hurtado* and the July 8, 2025 ICE guidance, Respondents have classified Petitioner as an applicant for admission subject to mandatory detention under § 1225(b)(2)(A) and have refused to afford him an individualized custody determination or a bond hearing before an Immigration Judge.

41. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), as he has no criminal history. On information and belief, Petitioner has never been ordered removed from the United States and is not detained pursuant to a reinstated order of removal under 8 U.S.C. § 1231(a)(5).

42. Petitioner is detained in the Southern District of California and is not a beneficiary of the operative class relief in *Maldonado Bautista*, which is presently confined to the Central District of California. Absent relief from this Court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his United States citizen son, his spouse, and his community, without ever receiving an individualized determination of whether his detention is justified.

H. CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

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

44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who previously entered the country and were residing in the United States before being apprehended and placed in removal proceedings. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

45. Petitioner entered the United States without inspection in or about 2007 and resided here for approximately nineteen years before his apprehension. He is detained under § 1226(a) and is

entitled to an individualized custody determination and a bond hearing. Respondents' application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of the Bond Regulations

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

47. By regulation, noncitizens who are present without having been admitted or paroled are eligible for bond and bond redetermination before an Immigration Judge under 8 U.S.C. § 1226 and its implementing regulations. 62 Fed. Reg. at 10323; *see* 8 C.F.R. §§ 236.1, 1236.1, 1003.19.

48. Respondents' refusal to afford Petitioner a bond hearing, and their application of § 1225(b)(2) to him, violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

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

50. The government may not deprive a person 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

51. Petitioner has a fundamental liberty interest in freedom from physical detention. Respondents' detention of Petitioner without any bond hearing to determine whether he is a flight risk or a danger to the community violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Jose Marcos respectfully requests that this Honorable Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioner not be transferred outside the Southern District of California while this Petition is pending;

c. Issue an Order to Show Cause directing Respondents to show cause, within three days, why the Petition should not be granted;

d. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner or, in the alternative, to provide Petitioner an individualized bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention without a bond hearing is unlawful; and

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

Respectfully submitted, Dated: August 14, 2026

/s/ Brad Thornton
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VERIFICATION

On this 14th day of August, 2026, I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge. I make this verification on behalf of Petitioner, Jose Marcos, because Petitioner is currently detained and because of the urgent nature of the relief requested, and I am authorized to make this verification as a member of the legal team representing Petitioner.

/s/ Brad Thornton DATED 8-14-26
Brad Thornton, Esq.