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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Marcos Absalon Mendez Vazquez,

15 Petitioner,

16 v.

17 Chief Council for the District of
18 Nevada, *et al.*,

19 Respondents.

Case No. 2:26-cv-00262-RFB-BNW

First Amended § 2241 Petition

20 INTRODUCTION

21 Marcos Absalon Mendez Vazquez is a 35 year-old father, who came to the
22 United States from Mexico to reunite with his mother and siblings nearly twenty-
23 one years ago. He is currently detained at the Nevada Southern Detention Center
24 (NSDC).¹ He has been detained for approximately eight months without a bond
25 hearing in violation of his constitutional rights. His continued detention by ICE is
26 also a violation of ICE's own policies, which favor the release of detainees with
27 serious medical issues. Mr. Mendez Vazquez suffers from seizures and has had at
least two during the course of his detention. This Court should grant the petition

¹ ECF No. 1 at 2.

1 and order Mr. Medez Vazquez's release or, at a minimum, order a bond hearing in
2 immigration court.

3 JURISDICTION AND VENUE

4 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general
5 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
6 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.
7 § 2201, 2202 (Declaratory Judgment Act).

8 Federal district courts have jurisdiction to hear habeas claims by non-citizens
9 challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S.
10 678 (2001). Federal courts also have federal question jurisdiction, through the APA
11 to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an
12 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
13 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of
14 review to a person who is "adversely affected or aggrieved by agency action." 5
15 U.S.C. § 702. Petitioner's continued detention violates his constitutional due process
16 rights, and constitutes arbitrary and capricious agency action, and is an abuse of
17 discretion.

18 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28
19 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at
20 Nevada Southern Detention Center.

21 Accordingly, Petitioner's habeas petition is properly before this court.

22 PARTIES

23 Marcos Absalon Mendez Vazquez is a native of Mexico who is currently
24 detained at the NSDC in Pahrump, Nevada.

25 James Mattos is the Warden of NSDC. Mattos, in his official capacity, is the
26 immediate custodian of Mr. Mendez Vazquez.

27 Michael Bernacke is the Field Director of the West Valley City Office of
Immigration and Customs Enforcement (ICE) Enforcement and Removal
Operations, which has jurisdiction of enforcement and removal operations over
detention facilities in Nevada, including Nevada Southern Detention Center where

1 Mr. Mendez Vazquez is detained. Bernacke, in his official capacity, is a legal
2 custodian of Mr. Mendez Vazquez.

3 Todd Lyons is the Acting Director of ICE, which is responsible for
4 administering and enforcing immigration laws, including the detention and removal
5 of immigrants. Lyons, in his official capacity, is a legal custodian of Mr. Mendez
6 Vazquez.

7 Kristi Noem is the Secretary of the Department of Homeland Security (DHS)
8 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
9 Mr. Mendez Vazquez.

10 Pamela Bondi is the Attorney General of the United States. She oversees the
11 immigration court system, which is housed within the Executive Office for
12 Immigration Review (EOIR) and includes all immigration courts and the Board of
13 Immigration Appeals (BIA). She is named in her official capacity.

14 STATEMENT OF FACTS²

15 Mr. Mendez Vazquez is a citizen of Mexico. He
16 has lived in the United States for nearly 21 years, after entering without inspection
17 when he was approximately 15 years old. He has resided in Pahrump, Nevada for
18 over eight years.

19 On June 24, 2025, he was taken into ICE custody. He has been continuously
20 detained since that date.³ On information and belief, Mr. Mendez Vazquez did not
21 receive any individualized custody determination prior to his detention.

22 On August 26, 2025, an Immigration Judge ordered his removal. A BIA
23 appeal was filed on September 8, 2025 and is presently pending.

24
25
26 ² Any factual allegations that do not cite to an attached exhibit are made on
27 the basis of information and belief.

³ ECF No. 1-1 at 4.

1 Mr. Mendez Vazquez is entitled to a proper bond hearing under both the INA
2 and the Fifth Amendment's due process, and in the interim months he has suffered
3 hardship while in ICE custody by being deprived of medical treatment.⁴

4 On January 30, 2026, Mr. Mendez Vazquez filed a pro se petition for a writ of
5 habeas corpus under 28 U.S.C. § 2241.⁵ On February 10, 2026, the Court issued an
6 order appointing the Office of the Federal Defender for the District of Nevada.⁶

7 GROUND FOR RELIEF

8 I. Ground One: Mr. Mendez Vazquez's detention without a bond 9 hearing violates the Immigration and Nationality Act as well as his 10 right to due process under the Fifth Amendment of the United States 11 Constitution.

12 The Fifth Amendment prohibits the government from depriving a person of
13 liberty without due process of law. U.S. Const. amend. V. This constitutional
14 guarantee applies with equal force to noncitizens within the United States. *See*
15 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to
16 all 'persons' within the United States, including aliens, whether their presence here
17 is lawful, unlawful, temporary, or permanent.").

18 As this Court indicated in the Court's February 4, 2026, transfer order,⁷ Mr.
19 Mendez Vazquez's case falls under this Court's decision in *Escobar Salgado v.*
20 *Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356 (D. Nev. Nov. 17, 2025).
21 Mr. Mendez Vazquez was detained by ICE for the first and only time approximately
22 20 years after he entered the United States without inspection. Moreover, he was
23 detained in Las Vegas, Nevada—not at or near the United States border. When he
24 was detained, Mr. Mendez Vasquez was not an applicant for admission to the

24 ⁴ Contemporaneously with this petition, Mr. Mendez Vazquez is filing a
25 supplement under seal to provide further information about these allegations.

26 ⁵ ECF No. 1-1.

27 ⁶ ECF No. 5.

⁷ ECF No. 3.

1 United States, nor were the ICE officers who arrested him inspecting Mr. Mendez
2 Vazquez upon an application for admission. *See* 8 U.S.C. §§ 1225(a)(3), (b)(1)(B)(ii),
3 (b)(2)(A). Hence, Mr. Mendez Vazquez cannot lawfully be subjected to mandatory
4 detention as an “arriving alien” under 8 U.S.C. § 1225(b). *See Escobar Salgado*,
5 2025 WL 3205356, at *14 (“[T]he notion that an ICE officer conducting removal
6 operations within the continental United States, far from any port of entry, is
7 engaging in ‘Inspection of Applicants for Admission’ as contemplated in § 1225(b)
8 contradicts the plain meaning of the [statutory] text[.]”). “This distinction is critical
9 because ‘aliens who have established connections in this country’ have greater due
10 process rights than ‘an alien at the threshold of initial entry.’” *Id.* (quoting *Dep’t of*
Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020)).

11 Accordingly, subjecting Mr. Mendez Vazquez to mandatory detention
12 pursuant to § 1225(b) violates the Immigration and Nationality Act and his due
13 process rights. Mr. Mendez Vazquez may be lawfully detained only pursuant to 8
14 U.S.C. § 1226(a).

15 **II. Ground Two: Mr. Mendez Vazquez’s prolonged detention without a**
16 **proper bond hearing violates his right to due process under the Fifth**
Amendment of the United States Constitution.

17 A preliminary question this Court must answer in evaluating the procedural
18 due process protections to which an individual is entitled is which statute provides
19 the detention authority. This Court should find that Mr. Mendez Vazquez is subject
20 to detention under 8 U.S.C. § 1226(a). Thus, his continued detention in ICE custody
21 without a proper bond hearing violates his procedural due process rights under the
Fifth Amendment to the United States Constitution.

22 “The Fifth Amendment’s Due Process Clause forbids the Government to
23 ‘depriv[e] any ‘person ... of ... liberty ... without due process of law.’ Freedom from
24 imprisonment—from government custody, detention, or other forms of physical
25 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S.
26 at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). “Arbitrary civil detention
27 is not a feature of our American government. ‘[L]iberty is the norm, and detention

1 prior to trial or without trial is the carefully limited exception.” *Rodriguez v. Marin*,
2 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting *United States v. Salerno*, 481 U.S. 739,
3 755 (1987)).

4 In considering the issue of prolonged detention in ICE custody pursuant to
5 mandatory detention under 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c), the Ninth
6 Circuit has expressed “grave doubts that any statute that allows for arbitrary
7 prolonged detention without any process is constitutional or that those who founded
8 our democracy precisely to protect against the government’s arbitrary deprivation of
9 liberty would have thought so.” *Rodriguez*, 909 F.3d at 256. Addressing a similar
10 issue, Justice Kennedy, concurring in *Demore v. Kim*, 538 U.S. 510, 532 (2003),
11 pronounced that “since the Due Process Clause prohibits arbitrary deprivations of
12 liberty, a lawful permanent resident alien such as respondent could be entitled to an
13 individualized determination as to his risk of flight and dangerousness if the
14 continued detention became unreasonable or unjustified.” Other circuits have
15 similarly determined that unreasonably prolonged detention violates a noncitizen’s
16 due process rights. *See Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Reid v. Donelan*,
17 17 F.4th 1, 7 (1st Cir. 2021).

18 Mr. Mendez Vazquez’s continued mandatory detention without a proper bond
19 hearing is the type of arbitrary deprivation of liberty the Due Process Clause of the
20 Constitution protects against. *See Rodriguez*, 909 F.3d at 257 (“The Fifth Amendment
21 says that ‘[n]o person shall be . . . deprived of life, liberty, or property without due
22 process of law.’ An alien is a ‘person.’ To hold him without bail is to deprive him of
23 bodily ‘liberty.’ And, where there is no bail proceeding, there has been no bail-related
24 ‘process’ at all. The Due Process Clause—itsself reflecting the language of the Magna
25 Carta—prevents arbitrary detention.” (quoting *Jennings v. Rodriguez*, 583 U.S. 281,
26 330 (2018) (Breyer, J., dissenting) (internal citations omitted)).
27

A. Mr. Mendez Vazquez was entitled to a pre-deprivation bond hearing.

Detention under 8 U.S.C. § 1226(a) is discretionary, not mandatory. 8 U.S.C. § 1226(a) (“[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”) “[T]he discretionary authority in § 1226(a) requires an individualized bond determination before a noncitizen may be taken into custody.” *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *8 (E.D.N.Y. Oct. 6, 2025) (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“the government does not dispute that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”) (internal quotations omitted.)) Under the implementing regulations, the factors that should be considered under § 1226(a) *prior to detention* are whether the noncitizen poses a “danger to property or persons” and whether he is “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8). Here, Mr. Mendez Vazquez did not receive any such process, so his detention violates his procedural due process rights. Any bond hearing that Mr. Mendez Vazquez received was either fictitious or did not occur in connection with his ICE detention on or about June 24, 2025, and he is entitled to immediate release.

B. This Court should order Mr. Mendez Vazquez be immediately released, or alternatively, order he receive a constitutionally adequate bond hearing.

As this Court has noted, the federal habeas statute’s “mandate is broad with respect to the relief that may be granted.” *Aguirre Solis v. Noem*, No. 2:26-CV-00053-RFB-EJY, 2026 WL 396432, at *7 (D. Nev. Feb. 12, 2026) (quoting *Carafas v. LaVallee*, 391 U.S. 234, 239 (1968)). Federal courts are authorized to dispose of habeas matters “as law and justice require.” *Id.* (quoting *Carafas*, 391 U.S. at 239).

In light of the due process violations that Mr. Mendez Vazquez has suffered, Mr. Mendez Vazquez respectfully requests that this Court order his immediate release. As set forth above, Mr. Mendez Vazquez may only be lawfully detained under 8 U.S.C. § 1226(a). Pursuant to the regulations implementing this statutory

1 provision, the Department of Homeland Security must assess whether a noncitizen
2 “pose[s] a danger to property or person” and whether he “is likely to appear for any
3 future proceeding.” 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If the Department
4 determines that detention is warranted, the noncitizen may seek review of that
5 determination by an immigration judge. 8 C.F.R. § 1003.19(a). Thus, “the
6 [government’s] discretionary authority in § 1226(a) requires an individualized bond
7 determination *before* a noncitizen may be taken into custody.” *Hyppolite v. Noem*,
8 No. 25-CV-4304 (NRM), 2025 WL 2829511, at *8 (E.D.N.Y. Oct. 6, 2025) (emphasis
9 added).

10 Mr. Mendez Vazquez has been deprived of the process established by the
11 governing statutory and regulatory scheme: he did not receive an initial custody
12 determination prior to his detention, and he has not received any subsequent
13 custody determination or redetermination by an immigration judge. To remedy this
14 egregious deprivation of his due process rights, Mr. Mendez Vazquez requests that
15 this Court order his immediate release.

16 In the alternative, Mr. Mendez Vasquez requests that this Court order the
17 government to provide him with a constitutionally adequate bond hearing, with the
18 government bearing the burden of proving by clear and convincing evidence that
19 Mr. Mendez Vazquez’s detention is warranted because he presents a risk of flight or
20 danger to the community. If Mr. Mendez Vazquez is not promptly granted such a
21 hearing, he must be released from his unconstitutional detention. *See, e.g., Lopez*
22 *Reyes v. Bonnar*, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019) (granting relief and
23 ordering the government to hold a timely bond hearing or release the petitioner);
24 *E.C. v. Noem*, No. 2:25-cv-01789-RFB-BNW, 2025 WL 2916264, at *13 (D. Nev. Oct.
25 14, 2025) (same); *Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 WL
26 5207589, at *1 (D. Nev. Aug. 11, 2023) (ordering the government to provide the
27 petition with a timely bond hearing, with the burden on the government to
“establish[] by clear and convincing evidence that [petitioner] is a flight risk or a
danger to the community”).

PRAYER FOR RELIEF

Accordingly, Marcos Absalon Mendez Vazquez respectfully requests that this Court:

1. Declare that Mr. Mendez Vazquez's continued detention without a bond hearing violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment to the United States Constitution; and

2. Order Mr. Mendez Vazquez be immediately released; or

3. Order that Mr. Mendez Vazquez be promptly granted a bond hearing before an immigration judge at which the judge must order his release unless the government establishes by clear and convincing evidence that he presents a risk of flight or danger to the community; and

4. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated February 27, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Brooke Dobbins

Brooke Dobbins
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on February 27, 2026. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

Sigal Chattah US Attorney for the District of Nevada 501 Las Vegas Blvd, Ste 1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov	
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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Marcos Absalon Mendez Vasquez Nevada Southern Detention Center 2190 E. Mesquite Ave Pahrump, NV 89060	John Mattos, Warden Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89048
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