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ALEXANDER ESAU LOPEZ MENDEZ

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALEXANDER ESAU LOPEZ MENDEZ,
Petitioner,

Case No. 26-402

v.

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

KRISTI NOEM, Acting
Secretary, United States Department of
Homeland Security; RODNEY S.
SCOTT, Commissioner, United States
Customs and Border Protection;
PATRICK DIVVER, in his official
capacity as Acting Field Office Director
for Las Vegas, U.S. Immigration and
Customs Enforcement; LESTER R.
HAYES, JR., Special Agent in Charge
for Las Vegas, Homeland Security
Investigations, U.S. Immigration and
Customs Enforcement

Respondents.

INTRODUCTION

1
2 1. ALEXANDER ESAU LOPEZ MENDEZ is a 32-year-old male
3 imprisoned by the federal government under color of the immigration laws under
4 Alien Registration number A [REDACTED] He is a resident of Las Vegas, Nevada
5 who was encountered while detained by local authorities as a result of a warrant
6 that was issued for failing to pay a traffic ticket. He was detained at the ERO Salt
7 Lake City-Las Vegas sub office processing center for 4 days before being
8 transferred to Nevada Southern Detention center. Mr. Lopez Mendez is a single
9 male with no children.

10 Through this petition he seeks immediate release from his incarceration. His
11 continued imprisonment is unlawful because of the confluence of three separate
12 unlawful government practices: First, Respondents have held Mr. Lopez Mendez
13 virtually incommunicado. He was denied contact with the outside world for the
14 first three days of his incarceration—including from family and counsel—and
15 since then has been permitted him only one four-minute phone call with his
16 attorney.

17 Second, although Respondents have ostensibly held Mr. Lopez Mendez
18 under color of the immigration laws, they have incarcerated him since on or about
19 November 11, 2025. Third, Mr. Lopez Mendez has been denied a bond due to a
20 claimed lack of jurisdiction by the Immigration Court. On December 10, 2025, Mr.
21 Lopez Mendez appeared before the Immigration Court for a bond re-determination
22 hearing. The Immigration Judge denied bond for lack of jurisdiction. However, the
23 Immigration Judge indicated that if the Court had jurisdiction the Judge would
24 order a bond in the amount of \$3000.00. (To be submitted as Exhibit A).

1 2. Petitioner Mr. Lopez Mendez has lived in the United States since
2 2016 and was arrested by ICE on November 11, 2025, and placed in custody at the
3 Nevada Southern Detention Center. The Immigration Judge denied bond
4 jurisdiction, holding that DHS classified him under 8 U.S.C. § 1225(b)(2)(A) as an
5 “arriving alien” subject to mandatory detention. This application of §
6 1225(b)(2)(A) to individuals like Petitioner—who were long-term residents
7 already present in the United States—is a new policy resulting from recent DHS
8 guidance and the BIA’s precedential decision in *Matter of Jonathan Javier Yajure*
9 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Prior to *Yajure Hurtado*, individuals in
10 Petitioner’s position were eligible for bond hearings under § 1226(a). This
11 misclassification deprives him of a bond hearing in violation of three decades of
12 settled law, the Immigration and Nationality Act’s text and structure, and the Fifth
13 Amendment’s Due Process Clause. Multiple federal courts have already rejected
14 the government’s new policy as unlawful and ultra vires. *See Guerrero Orellana v.*
15 *Moniz*, No. 25-12664-PBS (D. Mass. Sept. 22, 2025) and *Mendoza Gutierrez v.*
16 *Baltasar*, No. 25-2720-RMR (D. Colo. Oct. 17, 2025). This Court should do the
17 same and restore Respondent’s right to a bond hearing under § 236(a).

18 Federal courts and the Supreme Court have long recognized that § 235(b)
19 governs “applicants for admission at the border or port of entry,” while § 236
20 applies to those “already present in the United States.” *Jennings v. Rodriguez*, 583
21 U.S. 281, 288 (2018).

22 The Massachusetts class petition in *Guerrero-Orellana* held that DHS’s new
23 practice of applying § 235(b) to interior arrests is “contrary to almost 30 years of
24 settled law and practice.” Similarly, *Mendoza Gutierrez* found that DHS lacks
25

1 statutory authority to classify such individuals as “arriving aliens” and ordered
2 release pending a bond hearing.

3 Mr. Lopez Mendez was arrested in the Las Vegas area—hundreds of miles
4 from any port of entry—and is plainly detained under § 236(a).

5 The BIA’s decision in *Matter of Yajure Hurtado* (2025) abruptly overturned
6 decades of interpretation without reasoned analysis, violating the Administrative
7 Procedure Act and *Encino Motorcars v. Navarro*, 579 U.S. 211 (2016). Under
8 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts owe no
9 Chevron deference to such agency redefinitions.

10 The 1997 interim rule explicitly stated that EWIs “will be eligible for bond
11 and bond redetermination.” 62 Fed. Reg. 10,323 (Mar. 6, 1997). The BIA’s attempt
12 to read this history out of existence is entitled to no weight.

13 2. Under these unique circumstances, the Constitution requires his
14 immediate release from further imprisonment.

15 3. Petitioner challenges his detention as unlawful because:

16 (a) The application of § 1225(b)(2)(A) to his is ultra vires, inconsistent with
17 statutory text and longstanding regulatory practice;

18 (b) His continued detention without bond violates the Immigration and
19 Nationality Act (INA) and the Fifth Amendment’s Due Process Clause; and

20 (c) The new policy violates the Administrative Procedure Act because it was
21 adopted without notice-and-comment and in excess of statutory authority.

22 Petitioner respectfully requests an order:

23 (1) Declaring that § 1226(a), not § 1225(b)(2)(A), governs his detention; and
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1 (2) Requiring that he receive a prompt individualized bond hearing before an
2 Immigration Judge where the Government bears the burden of proving flight risk
3 or danger by clear and convincing evidence.

4 **JURISDICTION AND VENUE**

5 This Court has jurisdiction under 28 U.S.C. § 2241, § 1331, and § 1651,
6 because Petitioner is “in custody in violation of the Constitution or laws or treaties
7 of the United States.” Venue lies in the Southern District of California under 28
8 U.S.C. § 1391(e) because Petitioner is detained at Imperial and the responsible ICE
9 officials reside in this district. This petition challenges only the legality of custody,
10 not any final order of removal, and is therefore not barred by 8 U.S.C. § 1252(a)(5)
11 or § 1252(b)(9). *See Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Nielsen v. Preap*,
12 586 U.S. 392 (2019); *Crespin De Paz v. Noem*, No. 2:25-cv-06649, slip op. at 5
13 (C.D. Cal. Oct. 10, 2025).

14 **PARTIES**

15 Petitioner Mr. Lopez Mendez is a noncitizen currently detained by the U.S.
16 Department of Homeland Security (“DHS”) through U.S. Immigration and
17 Customs Enforcement (“ICE”) at the Imperial ICE Processing Center in Imperial,
18 California. Petitioner has resided in the United States for many years and is
19 seeking release from custody pending resolution of his immigration proceedings.
20

21 Respondent KRISTI NOEM is the Secretary of the United States
22 Department of Homeland Security (“DHS”). As Secretary, Respondent NOEM
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1 exercises ultimate authority over DHS and its component agencies, including U.S.
2 Customs and Border Protection (“CBP”) and U.S. Immigration and Customs
3 Enforcement (“ICE”), and is responsible for the administration and enforcement of
4 the Immigration and Nationality Act (“INA”). He is sued in his official capacity.
5

6 Respondent RODNEY S. SCOTT is the Commissioner of U.S. Customs and
7 Border Protection (“CBP”), a component agency of DHS. In this capacity,
8 Respondent SCOTT is responsible for the policies, practices, and operations of
9 CBP, including the apprehension and initial processing of individuals alleged to be
10 inadmissible under the INA. He is sued in his official capacity.
11

12 Respondent PATRICK DIVVER, is the Field Office Director for the Las
13 Vegas Field Office of U.S. Immigration and Customs Enforcement (“ICE”), a
14 component agency of DHS. In this role, Respondent DIVVER exercises direct
15 supervisory authority over ICE Enforcement and Removal Operations (“ERO”)
16 officers responsible for the detention, transfer, and release of individuals within
17 this District, including those held at the Imperial ICE Processing Center. He is the
18 immediate custodian of Petitioner and is sued in his official capacity.
19

20 Respondent LESTER R. HAYES, JR., is the Special Agent in Charge for the
21 Las Vegas office of Homeland Security Investigations (“HSI”), a component
22 division of ICE within DHS. In this capacity, Respondent HAYES, oversees
23 investigations and enforcement operations in the San Diego area that lead to the
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1 apprehension and referral of individuals to ERO for detention. He is sued in his
2 official capacity.

3
4 Each Respondent is an officer or employee of the United States acting under
5 color of federal law and within the scope of his official duties. Collectively,
6 Respondents have legal custody over Petitioner and are responsible for the
7 policies, practices, acts, and omissions giving rise to this Petition.
8

9 **FACTUAL BACKGROUND**

10 Petitioner entered the United States many years ago and has continuously
11 resided here.

12
13 On or about November 11, 2025, ICE arrested Petitioner while detained by
14 local authorities as a result of a warrant that was issued for failing to pay a traffic
15 ticket and issued a Notice to Appear charging inadmissibility under §
16 212(a)(6)(A)(i) (“present without admission”).

17
18 The Las Vegas Immigration Court has ruled that the Court lacks bond
19 jurisdiction, citing *Matter of Yajure Hurtado* and the DHS memorandum extending
20 § 1225(b)(2)(A) to “arriving aliens” already present in the U.S. The Immigration
21 Court has further ruled that it lacks jurisdiction in light of *Matter of Maldonado*
22 *Bautista v. Santacruz*, Case No. 5:25-cv-01873-SSS-BFM. As a result, Petitioner
23 has remained in custody without any opportunity for a bond determination, despite
24 strong family and community ties and no danger to the community.
25

LEGAL CLAIMS

A. This Court Has Jurisdiction

As held in *Crespin De Paz and Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024), a habeas petition seeking a bond hearing lies “within the core of habeas” jurisdiction under § 2241. The claim is collateral to removal and not barred by § 1252(g) or § 1252(b)(9).

B. Petitioner’s Detention Is Governed by § 1226(a), Not § 1225(b)(2)(A)

The statutory structure and decades of agency practice distinguish § 1225(b) (for “arriving” or “recently encountered” aliens at the border) from § 1226(a) (for arrests inside the country).

Until 2025, DHS consistently treated long-term residents arrested inside the U.S. as § 1226(a) detainees eligible for bond hearings. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“aliens present without admission ... will be eligible for bond”). The new DHS policy, endorsed in *Yajure Hurtado*, reverses nearly 30 years of practice without statutory amendment or rulemaking.

Courts addressing this precise issue in 2025 have overwhelmingly rejected DHS’s position. See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky.); *Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev.); *Crespin De Paz*, slip op. at 7–8. Each held that § 1226(a), not § 1225(b), governs detention of long-term residents.

1 Because Petitioner’s arrest occurred well inside U.S. territory after many
2 years of residence, § 1225(b)(2)(A) cannot lawfully apply. His detention under that
3 provision is therefore *ultra vires*.
4

5 **C. Mandatory Detention Under § 1225(b)(2)(A) Violates Due Process**

6 Even if § 1225(b)(2)(A) were construed to apply, its application without
7 individualized review violates the Fifth Amendment’s Due Process Clause.
8

9 “Freedom from imprisonment—from government custody, detention, or
10 other forms of physical restraint—lies at the heart of the liberty the Due Process
11 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
12

13 The government’s categorical denial of bond hearings to long-term
14 residents, based solely on its re-characterization of them as “arriving aliens,” is
15 arbitrary and disproportionate to any legitimate immigration purpose.
16

17 **D. The 2025 DHS Policy and Yajure Hurtado Decision Violate the APA**

18 The DHS policy expanding § 1225(b)(2)(A) detention to individuals long
19 present in the U.S. constitutes a substantive rule adopted without notice-and-
20 comment. It exceeds the statutory authority granted by Congress and is arbitrary
21 and capricious under 5 U.S.C. § 706(2). The BIA’s decision in *Matter of Yajure*
22 *Hurtado* (2025) abruptly overturned decades of interpretation without reasoned
23 analysis, violating the Administrative Procedure Act and *Encino Motorcars v.*
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1 *Navarro*, 579 U.S. 211 (2016). Under *Loper Bright Enterprises v. Raimondo*, 603
2 U.S. 369 (2024), courts owe no Chevron deference to such agency redefinitions.

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4 The 1997 interim rule explicitly stated that EWIs “will be eligible for bond
5 and bond redetermination.” 62 Fed. Reg. 10,323 (Mar. 6, 1997). The BIA’s attempt
6 to read this history out of existence is entitled to no weight.

7 No other court or administrative tribunal can provide Petitioner any relief.
8
9 Under ordinary circumstances, an individual detained under color of the
10 immigration laws could seek redress for unreasonable delay in the government’s
11 pursuit of removal proceedings by filing a motion to terminate before an
12 Immigration Judge. *See, e.g., In re Qayyum*, 2004 WL 848576 (B.I.A. Feb. 25,
13 2004) (considering motion to terminate based on government delay and finding, on
14 the facts of that case, no unreasonable delay).
15

16 Respondents have further demonstrated their fundamental inability to
17 provide even rudimentarily safe or humane conditions of confinement at the
18 Imperial ICE Processing Center. Conditions within the facility—overcrowding,
19 inadequate medical care, and the heightened risk of harm to detainees—have
20 rendered continued detention not merely unlawful but dangerous.
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22 Under these circumstances, any remedy short of immediate judicial
23 intervention would be insufficient. Petitioner’s continued detention violates
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1 statutory, constitutional, and humanitarian standards. Simply put, Mr. Lopez
2 Mendez cannot wait.

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5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

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8 1. Issue a Writ of Habeas Corpus declaring Petitioner's detention under 8
9 U.S.C. § 1225(b)(2)(A) unlawful;
10
11 2. Order Respondents to release Petitioner immediately
12
13 3. Order that the \$3000 bond indicated by the Immigration Judge to be the
14 bond amount to secure Mr. Lopez Mendez release, or, in the alternative,
15 4. Order that Petitioner be provided a prompt individualized bond hearing
16 before a neutral Immigration Judge within 7 days, at which:
17 (a) The government bears the burden of proving flight risk or danger by
18 clear and convincing evidence; and
19 (b) The IJ must consider less restrictive alternatives to detention;
20 5. Award any further relief this Court deems just and proper.

21 Date: 2/12/2026

Patrick Valdez

22
23 PATRICK VALDEZ
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VERIFICATION BY PETITIONER PURSUANT TO 28 U.S.C. § 2242

I, PATRICK VALDEZ am submitting this verification on behalf of ALEXANDER ESAU LOPEZ MENDEZ, who is currently detained by the U.S. Department of Homeland Security at the Nevada Southern Detention Center. Petitioner is being held under conditions that severely restrict or prevent meaningful communication with the outside world. As a result, he is unable to review or sign this petition personally or to prepare and file it on his own behalf.

I have communicated with Petitioner to the extent possible and have obtained the factual information contained in this Petition from my direct knowledge, records, and reliable sources. I hereby verify that, to the best of my knowledge and belief, the factual statements contained in the attached Petition for Writ of Habeas Corpus are true and correct, and that I could testify to those facts if called upon to do so.

Executed this 12nd day of February, 2026, at Los Angeles, California.

Patrick Valdez

PATRICK VALDEZ