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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE LEONEL LOPEZ RIVERA,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

David J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the United States, U.S. Department of Justice.

Respondents

Case No.: **'26CV4024 BJC AHG**

[redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner, Jose Leonel Lopez Rivera, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and alleges as follows:

INTRODUCTION

2. Petitioner, Jose Leonel Lopez Rivera, is a native and citizen of Honduras currently detained at the Otay Mesa Detention Center in San Diego, California.

3. Petitioner entered the United States without inspection on or about 2004 and thereafter resided continuously in the United States for approximately twenty-two years before being taken into immigration custody.

4. On or about June 27, 2026, ICE officers arrested Petitioner during an interior enforcement operation in Miami, Florida.

5. Petitioner was never encountered by immigration authorities at or near the border at the time of entry and was not subjected to inspection, expedited removal proceedings, credible fear screening, or any form of initial processing under INA § 235.

6. Petitioner's arrest did not occur at or near the border, was not connected to any inspection or admission process, and did not arise from any ongoing expedited removal proceeding or front-end border-processing detention framework under INA § 235.

7. Following his arrest, Petitioner was transferred to the Otay Mesa Detention Center in San Diego, California, where he remains in Respondents' custody.

8. During his more than twenty-two years of residence in the United States, Petitioner established substantial family and community ties, including a nine-year-old United States citizen child, and appears eligible to seek cancellation of removal under INA § 240A(b), among other forms of relief that may become available in his removal proceedings.

9. Despite these facts, DHS is treating Petitioner as subject to detention under INA § 235(b), rather than INA § 236(a), thereby denying him access to the individualized custody determination ordinarily available to noncitizens apprehended in the interior of the United States and placed in removal proceedings.

10. This habeas petition challenges that unlawful custody classification. INA § 235(b) governs front-end, border-processing detention authority and does not permit the government to invoke that authority for the first time approximately twenty-two years after entry against a noncitizen apprehended during an interior enforcement operation unrelated to any inspection or admission process.

11. Where DHS takes a noncitizen into custody under these circumstances, detention—if lawful at all—must proceed under INA § 236(a), which provides for eligibility for an individualized bond hearing before an Immigration Judge.

12. DHS's contrary position, including its reliance on *Matter of Yajure-Hurtado*, would erase the statutory distinction between INA § 235 and INA § 236(a), allowing the government to treat any noncitizen who entered without inspection—no matter how long ago—as though he were an arriving applicant for admission at the border.

13. Petitioner does not challenge the initiation of removal proceedings or the merits of removability. Rather, he challenges only the legal basis of his detention and DHS's unlawful custody classification under INA § 235(b) instead of INA § 236(a).

14. Petitioner's continued detention without access to the custody procedures available under INA § 236(a) violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

15. Petitioner therefore respectfully requests that this Court declare his detention unlawful and order his immediate release from custody or, in the alternative, order Respondents to provide Petitioner with a prompt constitutionally adequate custody hearing at which DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence.

CUSTODY

16. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

17. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

18. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is presently detained within this District under color of federal authority and challenges the legality of that detention.

19. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

20. Federal district courts possess broad authority to issue writs of habeas corpus where a person is held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention and does not challenge the merits of removability or any final order of removal. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

21. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Petitioner challenges only the statutory and constitutional basis of his detention and DHS's custody classification under INA § 235(b), not the decision to commence removal proceedings or execute a removal order.

22. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because Petitioner is detained within this District and his immediate custodian resides within this District.

PARTIES

23. Petitioner, Jose Leonel Lopez Rivera, is a native and citizen of Honduras currently detained at the Otay Mesa Detention Center in San Diego, California.

24. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego, California, Petitioner's immediate custodian, and is responsible for Petitioner's confinement. Respondent LaRose is sued in his official capacity.

25. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS).

26. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

27. Respondent Todd Blanche is the Acting Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

28. All Respondents are named in their official capacities.

STATEMENT OF FACTS

29. Petitioner, Jose Leonel Lopez Rivera, is a native and citizen of Honduras currently detained at the Otay Mesa Detention Center in San Diego, California.

30. Petitioner entered the United States without inspection on or about 2004 and thereafter resided continuously in the United States for approximately twenty-two years before being taken into immigration custody.

31. Petitioner was never encountered by immigration authorities at or near the border at the time of entry and was never subjected to inspection, expedited removal proceedings, credible fear screening, or any form of initial processing under INA § 235.

32. During his lengthy residence in the United States, Petitioner established substantial family and community ties, including a nine-year-old United States citizen child. Petitioner also appears eligible to seek cancellation of removal under INA § 240A(b), among other forms of relief that may be available in his removal proceedings.

33. On June 27, 2026, ICE officers arrested Petitioner while he was driving in Miami, Florida, during an interior enforcement operation. Petitioner's arrest occurred approximately twenty-two years after his entry into the United States and was unrelated to any inspection or admission process.

34. Petitioner was thereafter transferred to the Otay Mesa Detention Center in San Diego, California, where he remains detained.

35. DHS now appears to be treating Petitioner as subject to detention under INA § 235(b), notwithstanding that he was apprehended in the interior of the United States approximately twenty-two years after entry and was never subjected to inspection or processing under INA § 235.

36. Petitioner has not been provided with a meaningful opportunity to obtain release through an individualized custody determination under INA § 236(a).

37. Absent relief from this Court, Petitioner faces continued detention without access to the custody procedures ordinarily available under INA § 236(a).

REQUIREMENTS OF 28 U.S.C. § 2243

38. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled to relief. If an OSC is issued, the statute requires that Respondents file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

39. Federal courts have long emphasized the importance of habeas corpus as a protection against unlawful restraint. The Supreme Court has described the Great Writ as "perhaps the most important writ known to the constitutional law of England, 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).

40. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain a prompt and expeditious remedy. As the Ninth Circuit has explained, "The statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). The court cautioned that delays in habeas proceedings risk creating the impression "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

41. In habeas corpus proceedings, exhaustion of administrative remedies is prudential rather than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts may waive prudential exhaustion where administrative remedies are inadequate, futile, or incapable of providing the relief sought. *Id.*

42. Exhaustion should be excused here because, to the extent DHS classifies Petitioner as detained under INA § 235(b), Immigration Judges lack jurisdiction to conduct custody redetermination hearings. See 8 C.F.R. § 1003.19(h)(2)(i)(B). Accordingly, no meaningful administrative mechanism exists through which Petitioner may challenge DHS's custody classification or obtain a custody determination under INA § 236(a).

43. Petitioner's claims also present pure questions of law and constitutional questions concerning the statutory basis of his detention and DHS's authority to invoke INA § 235(b) under these circumstances. Such claims fall outside the agency's adjudicatory competence and remain subject to habeas review under 28 U.S.C. § 2241.

44. Petitioner further suffers irreparable harm for each additional day he remains detained without access to the custody procedures available under INA § 236(a). Under these circumstances, prudential exhaustion should be waived.

LEGAL FRAMEWORK

45. The Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1101 et seq., provides multiple detention authorities that apply at different stages of the immigration process. For decades, courts, Congress, and agencies have consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which governs applicants for admission encountered at or near the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the United States and placed in removal proceedings. The Supreme Court analyzed the interplay between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

46. Section 1225 provides that, for purposes of initial inspection at the border, "an alien who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in the United States "generally begin at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Id.* Section 1225(b) governs this inspection and admission process, applying primarily to individuals encountered at or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to detention pending a decision on admission under § 1225(b)(2). Id. at 297; see also *Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103 (2020).

47. By contrast, § 1226(a) governs the detention of individuals who entered years ago and were later apprehended in the interior, "pending a decision on whether [they are] to be removed from the United States." *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, § 1226(a) authorizes the Attorney General to detain or release such individuals on bond or conditional parole, except as provided in subsection (c), which applies only to a narrow category of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Congress further described § 1226(a) as merely a "restatement" of prior detention authority under former INA § 242(a), confirming its application to interior arrests pending removal. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

48. For decades, detention under INA § 235(b) has been understood to apply in connection with the inspection and admission process at or near the border, not to individuals apprehended in the interior of the United States who were never subjected to that process.

49. Only in 2025 did DHS and the Board of Immigration Appeals begin advancing, in certain proceedings, a contrary interpretation—asserting that noncitizens who entered without inspection could be treated as subject to detention under § 1225(b)(2). This interpretation represented a departure from longstanding agency practice and contradicted settled expectations regarding custody jurisdiction.

50. On July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE"), in coordination with the Department of Justice, issued Interim Guidance Regarding Detention Authority for Applicants for Admission. The guidance asserted that noncitizens who entered without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of when or where they were apprehended, including individuals who had resided in the United States for many years.

51. The Board of Immigration Appeals later adopted a similar statutory interpretation in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

52. The legality of this interpretation has since become the subject of ongoing federal litigation. In *Maldonado-Bautista v. Santacruz*, the United States District Court for the Central District of California issued a declaratory judgment vacating DHS's July 8, 2025 interim guidance under the Administrative Procedure Act. See *Maldonado-Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).

53. The district court subsequently granted a motion to enforce that judgment and vacated the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, concluding that the agency could not rely on that decision to continue applying the same detention interpretation previously rejected by the court.

54. The government appealed those rulings to the United States Court of Appeals for the Ninth Circuit. See *Bautista v. U.S. Department of Homeland Security*, No. 26-1044 (9th Cir.). On March 6, 2026, the Ninth Circuit issued an administrative stay pending resolution of the government's emergency motion for a stay pending appeal. The court temporarily stayed the district court's December 18, 2025 judgment insofar as it extended beyond the Central District of

California and also temporarily stayed the district court's February 18, 2026 enforcement order vacating *Matter of Yajure-Hurtado*. The appeal remains pending.

55. As a result, immigration courts within this circuit have continued to treat *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), as binding precedent when determining custody jurisdiction. In practice, noncitizens apprehended in the interior of the United States long after entry continue to be denied bond hearings based on the assertion that detention is governed by INA § 235 rather than INA § 236(a).

56. INA § 235(b) authorizes detention only in connection with the inspection and admission process. That authority is event-based, not status-based. Where a noncitizen is not apprehended at or near the border and is not placed in the inspection process, the statutory predicate for § 235 custody does not exist.

57. Separately, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General addressed detention authority for certain asylum seekers who remained in continuous custody during expedited removal proceedings. *Matter of M-S-* presumes uninterrupted detention under INA § 235(b) and does not address circumstances in which DHS seeks to apply INA § 235(b) to a noncitizen who was never subjected to inspection, expedited removal, credible fear screening, or any form of initial processing under INA § 235.

58. Applying INA § 235(b) to Petitioner despite his residence in the United States for approximately twenty-two years and his apprehension during an interior enforcement operation in Miami, Florida, unrelated to any inspection or admission process, would effectively permit DHS to subject virtually any noncitizen who entered without inspection—regardless of how many years ago—to mandatory detention without bond, thereby collapsing the distinction between INA § 235 and INA § 236(a).

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CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act

59. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs.

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens present in the United States who are subject to grounds of inadmissibility. Congress expressly limited the summary border-processing framework of INA § 235 to individuals encountered at or near the time of entry. Petitioner has been physically present in the United States for approximately twenty-two years after entry and therefore falls well outside the scope of this front-end inspection regime.

61. Petitioner was never encountered by immigration authorities at or near the border, was not subjected to inspection or expedited removal, and was not processed under INA § 235 at any point. Instead, on June 27, 2026, ICE officers arrested Petitioner while he was driving in Miami, Florida, during an interior enforcement operation. Petitioner's arrest occurred approximately twenty-two years after his entry into the United States and was wholly unrelated to any inspection, admission, or border-processing activity.

62. Under these circumstances, detention—if lawful at all—must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which governs the arrest and detention of noncitizens pending a decision on removal and provides for the possibility of release on bond or conditional parole. See *Jennings v. Rodriguez*.

63. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully mandates his continued detention in violation of the INA. By treating Petitioner as an applicant for admission rather than a respondent subject to detention under INA § 236(a), DHS has acted contrary to the statutory text and longstanding agency practice.

64. By treating Petitioner as an applicant for admission subject to INA § 235(b), rather than as a noncitizen detained under INA § 236(a), DHS has disregarded the statutory structure of the INA and collapsed the distinction between these two separate detention frameworks.

65. DHS's interpretation would permit the government to subject virtually any noncitizen who entered without inspection—regardless of how long ago—to mandatory detention without bond, thereby rendering INA § 236(a) largely meaningless for a broad class of individuals. Nothing in the text or structure of the INA supports such an expansive reading of INA § 235.

66. Accordingly, Petitioner's continued detention under INA § 235(b) is unlawful. Petitioner is entitled to immediate release. In the alternative, should the Court decline to order immediate release, Petitioner is entitled to a prompt constitutionally adequate custody hearing at which DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

67. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

68. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. U.S. CONST. amend. V.

69. The protections of the Due Process Clause apply to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

70. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Id.* at 690.

71. Immigration detention is civil in nature and is constitutionally permissible only when reasonably related to legitimate governmental objectives, such as ensuring appearance at proceedings or protecting the community. *Id.* at 690–91.

72. Petitioner—who has lived in the United States for approximately twenty-two years and was taken into immigration custody during an interior enforcement operation in Miami, Florida, on June 27, 2026—has been subjected to detention that is not meaningfully tied to any front-end inspection or admission purpose under INA § 235.

73. By classifying Petitioner's custody as governed by INA § 235(b) and thereby denying him access to the custody procedures available under INA § 236(a), Respondents have deprived Petitioner of any meaningful opportunity for an individualized custody determination before a neutral decisionmaker.

74. The continued detention of Petitioner under INA § 235(b), notwithstanding his residence in the United States for approximately twenty-two years and his apprehension during an interior enforcement operation in Miami, Florida, unrelated to any inspection or admission process, constitutes an arbitrary deprivation of liberty in violation of the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents' return, consistent with 28 U.S.C. § 2243;

C) Declare that Petitioner's continued detention under INA § 235(b) violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;

D) Declare that Respondents lack lawful authority to detain Petitioner under INA § 235(b), and that any detention must proceed, if at all, under INA § 236(a);

E) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;

F) In the alternative, order Respondents to provide Petitioner with a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which the decisionmaker considers less restrictive alternatives to detention and Petitioner's ability to pay any monetary bond imposed;

G) Enjoin Respondents from transferring Petitioner outside this District without prior approval of this Court;

H) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other basis authorized by law; and

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

Respectfully submitted,

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Dated: July 14, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information obtained from Petitioner through communications with his family members, my review of available immigration records and detention information, and other information provided in connection with my representation of Petitioner.

Based on that information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

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Dated: July 14, 2026