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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

Gabriel LOPEZ MARBAN, *Petitioner*, v. David PAULK, Warden of the Irwin County Detention Center, in his official capacity; George STERLING, Deputy Field Office Director of the Atlanta Field Office, U.S. Immigration and Customs Enforcement; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement, Markwayne MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security, Todd BLANCHE in his official capacity as Acting U.S. Attorney General; and Daren MARGOLIN, Director for Executive Office for Immigration Review, *Respondents*.	Case No.:

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Gabriel Lopez Marban (A[redacted]) is a native and citizen of Mexico who has resided in the United States for several years after being paroled into the country. He has no criminal convictions. U.S. Immigration and Customs Enforcement ("ICE") recently detained Mr. Lopez Marban. He was later transferred to the Irwin County Detention Center. Mr. Lopez Marban's wife is a U.S. citizen, and together they share eight children, five of whom are U.S. citizens and three of whom are lawful permanent residents. Mr. Lopez has an approved I-130, and he is immediately eligible to apply for permanent residence.

2. Nevertheless, DHS has determined that Mr. Lopez Marban is detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), pursuant to a July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under this interpretation, Immigration Judges are stripped of jurisdiction to conduct custody redeterminations, and individuals like Mr. Lopez Marban are categorically denied bond hearings despite decades of contrary agency and judicial practice.

3. Mr. Lopez Marban's detention under § 235(b)(2)(A) violates the text and structure of the INA and its implementing regulations. That provision applies only to individuals apprehended while "seeking admission" at the border or immediately upon arrival. For decades, noncitizens present in the interior, like Mr. Lopez Marban, have been detained—if at all—under INA § 236(a), 8 U.S.C. § 1226(a), which expressly provides for conditional release on bond.

4. Federal courts across the country have rejected DHS's new interpretation of § 235(b)(2) and have held that detention of long-time residents apprehended in the interior is governed by § 236(a). These courts recognize that applying § 235(b)(2) to people who have lived in the United States for years misreads the statute and produces absurd results.

5. Most importantly, this Court has already found that individuals like Mr. Lopez Marban are eligible for bond because they are detained pursuant to § 236(a), and thus it ordered immigration courts subject to this court's jurisdiction to hold bond hearings to determine whether such individuals are eligible for discretionary bond. *J.A.M. v. Streeval*, No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025). While Respondents may argue that *J.A.M.* does not apply to Mr. Lopez Marban because he entered on parole and not without inspection, this Court has held in several opinions that such individuals are eligible for bond under 8 U.S.C. § 1226(a)(2). *See B.A.M.A. v. Warden, Irwin Cnty. Det. Ctr.*, Case No. 7:26-cv-95, 2026 WL 1362520 (M.D. Ga. May 13, 2026); *I.A.A.M. v. Warden, Irwin Cnty. Det. Ctr.*, Case No. 7:26-cv-68, 2026 WL 1362519 (M.D. Ga. May 13, 2026); *W.C. v. Warden, Irwin Cnty. Det. Ctr.*, Case No. 7:26-cv-157 (M.D. Ga. June 4, 2026).

6. Respondents' new interpretation is arbitrary and capricious under the Administrative Procedure Act, because it abandons decades of consistent practice without explanation and was not adopted through required rulemaking procedures. Further, Mr. Lopez Marban's prolonged civil detention without access to a bond hearing violates the Due Process Clause of the Fifth Amendment.

7. Mr. Lopez Marban respectfully requests that this Court: (a) declare that his detention is governed by § 236(a) and that he is therefore eligible for bond; (b) order Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a), with the burden on the Department of Homeland Security to establish danger and flight risk by clear and convincing evidence; and (c) if Respondents fail to provide such a hearing within a reasonable time, order him released from custody under appropriate conditions of supervision.

JURISDICTION AND VENUE

8. Mr. Lopez Marban is currently in the physical custody of Respondents at the Irwin County Detention Center in Ocilla, Georgia.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331 (*federal question*), 28 U.S.C. § 1651 (*All Writs Act*), 28 U.S.C. §§ 2201–2202 (*Declaratory Judgment Act*), 5 U.S.C. § 702 (*APA*), and Article I, Section 9, Clause 2 of the United States Constitution (*Suspension Clause*). Mr. Lopez Marban is presently in custody under color of the authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

10. Federal district courts have jurisdiction under § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has repeatedly upheld such jurisdiction, most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

11. Venue is proper in the Middle District of Georgia, Valdosta, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is detained within this District at the Irwin County Detention Center.

PARTIES

12. Petitioner Lopez Marban is a native and citizen of Mexico unlawfully detained at the Irwin County Detention Center in Ocilla, Georgia. He is not subject to a final order of removal. Under DHS's July 2025 policy and the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, Immigration Judges no longer have jurisdiction to redetermine custody for individuals like Mr. Lopez Marban. As a result, he has been categorically denied access to a bond hearing.

13. Respondent David Paulk is the warden of the Irwin County Detention Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Paulk has direct physical custody of Petitioner and is his immediate custodian. Mr. Paulk is sued in his official capacity.

14. Respondent George Sterling is the Acting Director of ICE's Atlanta Field Office, which has jurisdiction over ICE detention facilities in Georgia, including the Irwin County Detention Center. He exercises authority over Petitioner's detention and is sued in his official capacity.

15. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the overall administration of ICE and for the implementation and enforcement of the immigration laws, including immigrant detention. As such, Mr. Lyons is a legal custodian of Petitioner. He is sued in his official capacity.

16. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS). DHS is responsible for the administration of ICE, a component agency, and for the implementation and enforcement of the immigration laws. As such, Secretary Mullin is a legal custodian of Petitioner. He is sued in his official capacity.

17. Respondent Todd Blanche is the Acting Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals (BIA) and the Immigration Courts. The Attorney General shares responsibility for the implementation and enforcement of the immigration laws with Respondents Lyons and Mullin. Attorney General Blanche is a legal custodian of Petitioner and is sued in his official capacity.

18. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration

courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

FACTS

19. Petitioner Lopez Marban is a native and citizen of Mexico who entered the United States via parole several years ago. Since that time, he has made his life in this country. He has a U.S. citizen wife who filed an I-130 on his behalf, making him eligible to immediately apply for lawful permanent residence. Together they have eight children, five of whom are U.S. citizens and three of which are lawful permanent residents.

20. Immigration officials recently detained Mr. Lopez Marban in a targeted operation at a traffic stop in Georgia. He was subsequently transferred to the Irwin County Detention Center in Ocilla, Georgia, where he has remained in custody since that date.

21. Mr. Lopez Marban has no criminal history. He has never been convicted of any crime that would subject him to mandatory detention under INA § 236(c). He is not subject to a final order of removal.

22. Historically, individuals like Mr. Lopez Marban —individuals apprehended in the interior of the United States and charged as inadmissible for entering without inspection—were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

23. In July 2025, however, the Department of Homeland Security (DHS) adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

24. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens

present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

25. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. Lopez Marban. He has been categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and no criminal history.

26. Federal district courts across the country, including this Court, have rejected DHS's new interpretation of § 235(b)(2), finding instead that detention of long-time residents like Mr. Lopez Marban must proceed under § 236(a). Nonetheless, ICE continues to hold him without access to a bond hearing.

LEGAL FRAMEWORK

27. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of specified crimes are subject to mandatory detention until removal proceedings are concluded under 8 U.S.C. § 1226(c).

28. By contrast, 8 U.S.C. § 1225(b) applies to noncitizens encountered at the border or immediately upon arrival. Section 1225(b)(1) governs certain individuals subject to expedited removal, while § 1225(b)(2) applies to those "seeking admission" at a port of entry or just after entry.

29. Following enactment of these statutes, the Executive Office for Immigration Review issued regulations clarifying that individuals who entered the country without inspection but who were apprehended in the interior were not detained under § 1225, but instead under § 1226(a). See 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled…will be eligible for bond and bond redetermination."). For nearly three decades, this was the consistent practice.

30. In July 2025, DHS abruptly adopted a new interpretation requiring detention under § 1225(b)(2)(A) for all noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's view and holding that noncitizens present in the United States without admission are "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A). As a result, individuals like Mr. Lopez Marban, who have lived in the United States for years, are categorically denied bond hearings.

31. The government's interpretation defies the INA's text and structure. Section 1226(a) explicitly applies to individuals charged as inadmissible after entry without inspection. Congress reinforced this point in 2025 by amending § 1226(c) through the Laken Riley Act to exclude from bond eligibility certain noncitizens who entered without inspection and committed crimes. If Congress had intended all such individuals to be subject to mandatory detention under § 1225(b)(2)(A), it would not have needed to create these specific carve-outs. Construing § 1225(b)(2)(A) as the government suggests renders § 1226(c)(1)(E) superfluous, in violation of the canon against surplusage. See *Corley v. United States*, 556 U.S. 303 (2009).

32. Section 1225(b), on the other hand, is limited to those arriving at ports of entry or apprehended immediately upon entry. In *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board explained that § 235(b) applies to individuals arrested without a warrant "while arriving in the United States." The Board distinguished between those apprehended "just inside the southern

border" on the same day they crossed, who fall under § 235(b), and those "already present in the United States" who are detained by warrant, who fall under § 236(a). *Id.* at 69–70. Mr. Lopez Marban, detained in the interior of the United States years after his entry, is plainly in the latter category.

33. This Court recently determined that individuals like Mr. Lopez Marban were detained pursuant to § 1226(a) and therefore eligible for bond, thus ordering bond hearings in those cases. *See J.A.M. v. Streeval,* No. 4:25- CV-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025). The Eleventh Circuit then followed suit, finding that § 1225 applies to individuals seeking entry at the border and § 1226 applies to individuals in the interior. *Hernandez Alvarez v. Warden*, No. 25-14065, 2026 WL 1243395, at *14 (11th Cir. May 6, 2026).

34. Based on the decisions in *J.A.M.* and *Hernandez Alvarez*, this Court has also found that individuals who were inspected and paroled into the U.S. are eligible for bond. *I.A.A.M. v. Warden*, 2026 WL 1362519, at *1-2 (M.D. Ga. May 13, 2026). This Court determined that while an individual like Mr. Lopez Marban is in the country without admission and therefore an "applicant for admission," such individuals are not "seeking admission." *Id.* at *2. Notably in that case, the petitioner, like Mr. Lopez Marban, was detained at a traffic stop within the interior of the United States, just like the petitioners in *Hernandez Alvarez*. *Id.* Such individuals were "not actively pursuing the rights and privileges of lawful entry" and therefore were not "alien[s] seeking admission under § 1225(b)(2)(A)." *Id.* (quotation marks omitted). Thus, this Court ordered that the Petitioner in *I.A.A.M.* be provided a bond hearing, with the burden being on the Department of Homeland Security to establish danger and flight risk by clear and convincing evidence. *Id.* This Court has followed the same reasoning in *B.A.M.A. v. Warden, Irwin Cnty. Det. Ctr.*, Case No. 7:26-cv-95, 2026 WL 1362520 (M.D. Ga. May 13, 2026) and *W.C. v. Warden, Irwin Cnty. Det.*

Ctr., Case No. 7:26-cv-157 (M.D. Ga. June 4, 2026).

35. Therefore, the mandatory detention provisions of § 1225(b)(2) do not apply to Mr. Lopez Marban who entered the United States years ago and was apprehended hundreds of miles from the border. He is detained under § 1226(a) and is eligible for a bond hearing.

CLAIMS FOR RELIEF

COUNT I

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

36. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

37. The mandatory detention provision of § 1225(b)(2) does not apply to noncitizens like Mr. Lopez Marban who have been residing in the United States for years, are not seeking entry at the border, and are not subject to other statutory grounds of inadmissibility. Such individuals are detained under § 1226(a) and are eligible for release on bond.

38. Respondents' decision to detain Mr. Lopez Marban under § 1225(b)(2)(A) unlawfully denies his access to a bond hearing in violation of the INA.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

39. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

40. For decades, both Congress and the agencies charged with implementing the INA have recognized that individuals who entered without inspection are detained under § 1226(a)

and eligible for bond, as reflected in implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

41. Despite this clear regulatory framework, Respondents have unlawfully detained Mr. Lopez Marban by misapplying § 1225(b)(2).

42. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires, including access to a bond hearing, his continued detention violates the INA, its implementing regulations, and the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

43. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

44. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Mr. Lopez Marban, are detained under § 1226(a) and eligible for release on bond.

45. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

COUNT IV

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

46. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

47. Under the APA, a reviewing court must set aside agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The APA requires agencies to engage in public notice-and-comment rulemaking before promulgating new rules or amending existing ones. 5 U.S.C. § 553(b), (c).

48. Respondents failed to comply with the APA by adopting and enforcing a new policy that reclassified individuals like Petitioner as subject to mandatory detention under § 1225(b)(2), without any rulemaking, notice, or opportunity to comment. This unlawful departure from prior regulations violates the APA.

COUNT V

Violation of the Fifth Amendment Due Process

49. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

50. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

51. Respondents' detention of Mr. Lopez Marban under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Gabriel Lopez Marban prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a) with the burden on the Department of Homeland Security to show flight risk and danger by clear and convincing evidence;
4. In the alternative, order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondents fail to provide such a bond hearing within a reasonable period of time;
5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;
7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
8. Declare that Petitioner's detention violates the INA;
9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
10. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;
11. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5

U.S.C. § 504 and 28 U.S.C. § 2412; and

12. Grant such further relief as this Court deems just and proper.

Dated: July 14, 2026

Respectfully submitted,

/s/ Thomas Evans

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Dated: July 14, 2026

s/ Thomas Evans
GA Bar No. 305649