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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARIO JOSE LOPEZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security (DHS); DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, Acting Executive Associate Director, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE); WARDEN, Warden for the Otay Mesa Detention Center,

Respondents.

Case No.: [Case No.]

'26CV4262 JAO JLB

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

COMES NOW Petitioner, Mario Jose Lopez, by and through undersigned counsel, and petitions this Honorable Court for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner is a native and citizen of Nicaragua who entered the United States after inspection and admission on a tourist visa and has resided in the United States since 1997. Petitioner is presently detained by the Department of Homeland Security ("DHS") at the Otay Mesa Detention Center. Respondents have unlawfully subjected Petitioner to mandatory detention as an applicant for admission even though he was previously admitted to the United States and is therefore detained, if at all, under 8 U.S.C. § 1226(a). Further, on information and belief, Petitioner was arrested without a valid administrative warrant and without the individualized findings required for a warrantless immigration arrest. This Court's intervention is necessary to remedy Petitioner's unlawful detention and protect the rights guaranteed to him under the Due Process Clause of the Fifth Amendment and federal immigration law.

INTRODUCTION

1. This is a habeas corpus petition brought by Mario Jose Lopez, a native and citizen of Nicaragua, who has been detained by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center since July 4, 2026.

2. Mr. Lopez entered the United States on June 5, 1997, after inspection and admission on a tourist visa. Although he remained in the United States beyond the period

authorized by that visa, his subsequent overstay did not erase his lawful admission or transform him into an applicant for admission.

3. The government is detaining Mr. Lopez under 8 U.S.C. § 1225(b), apparently claiming that he is subject to mandatory detention without the possibility of a bond hearing. That classification is incorrect. Section 1225 applies to noncitizens arriving in the United States or present in the United States without having been admitted. Mr. Lopez was inspected and admitted in 1997 and is therefore not a person who "has not been admitted" or who is presently "seeking admission."

4. Rather, Mr. Lopez is properly detained, if at all, under 8 U.S.C. § 1226(a), which governs the detention of noncitizens pending removal proceedings and permits an individualized custody determination and release on bond. Treating a lawfully admitted visa overstay as an applicant for admission improperly conflates the expiration of lawful status with the distinct statutory concept of admission.

5. Further, on information and belief, ICE arrested Mr. Lopez without first obtaining a valid administrative arrest warrant. Neither Mr. Lopez nor his family was provided any warrant or other arrest documentation, and no warrant is presently known to exist. If the arrest was warrantless, Respondents were required to possess individualized reason to believe that Mr. Lopez was likely to escape before a warrant could be obtained.

6. By denying Mr. Lopez access to an individualized custody determination and continuing to detain him under an inapplicable mandatory-detention provision, Respondents are violating his statutory rights under § 1226(a), his procedural and substantive due process rights under the Fifth Amendment, and federal law governing immigration arrests.

7. This Petition seeks an immediate individualized bond hearing or release from detention, together with appropriate relief from the unlawful arrest and continuing detention.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution, laws, or treaties of the United States.

9. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as 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.

10. Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking

admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

11. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

12. To the extent applicable, this Court further has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., which authorizes judicial review of final agency actions where no adequate alternative remedy exists. *See* 5 U.S.C. §§ 702, 704, and 706(2)(A); *see also Califano v. Sanders*, 430 U.S. 99, 105–07 (1977).

13. This Court may issue declaratory relief under 28 U.S.C. § 2201 and may compel agency action unlawfully withheld or unreasonably delayed under 28 U.S.C. § 1361 where appropriate.

14. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1391(e)(1)(B), because Petitioner is currently detained in this District and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

15. Petitioner, Mario Jose Lopez, is a native and citizen of Nicaragua, born on October 24, 1957. His alien registration number is A [redacted]

16. Respondent Markwayne Mullin, Secretary of the U.S. Department of Homeland Security (DHS), is the head of DHS, the federal department charged with administering and enforcing the nation's immigration laws. He has the ultimate authority over ICE and all subordinate agencies involved in Petitioner's detention. He is sued in her official capacity.

17. Respondent, David Venturella, Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for the nationwide administration and oversight of ICE, the agency charged with the enforcement of immigration detention and removal. He is sued in his official capacity.

18. Respondent Marcos Charles, Acting Executive Associate Director of Enforcement and Removal Operations (ERO), ICE, is directly responsible for the supervision and

operation of ICE's detention and removal activities. His division has direct oversight of the detention facility where Petitioner is currently held. He is sued in his official capacity.

19. Respondent, Warden of the Otay Mesa Detention Center, is responsible for the oversight of the Detention Center, as well as its detainees. He is sued in his official capacity.

LEGAL BACKGROUND

20. The Constitution of the United States enshrines liberty as a foundational principle, and any governmental deprivation of liberty must be justified by law and accompanied by procedural safeguards. As the Supreme Court has recognized, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

21. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving "any person of life, liberty, or property without due process of law." U.S. Const. amend. V. That protection applies to persons physically present within the United States, including noncitizens, regardless of whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

22. These protections are especially important where the government imposes civil immigration detention. Civil detention constitutes a substantial deprivation of liberty and must remain nonpunitive and reasonably related to a legitimate governmental purpose. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

23. Congress established separate statutory provisions governing immigration detention according to a noncitizen's legal and procedural posture. Section 1225 governs the inspection and detention of applicants for admission. Section 1226 governs arrest and detention pending a decision on whether a noncitizen is to be removed and, except in circumstances not applicable here, authorizes release on bond or conditional parole. Section 1231 governs detention during the removal period following an administratively final order of removal.

24. The statutory definition of "applicant for admission" is dispositive here. Under 8 U.S.C. § 1225(a)(1), an applicant for admission is a noncitizen who is arriving in the United States or who is present in the United States but "has not been admitted." The INA separately defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

25. Petitioner entered the United States on June 5, 1997, after inspection and authorization pursuant to a tourist visa. He was therefore admitted within the express statutory

definition. His subsequent failure to depart when his authorized period of stay expired did not retroactively nullify that admission. Rather, a noncitizen who remains in the United States beyond the period authorized following admission is removable as a visa overstay under 8 U.S.C. § 1227(a)(1)(B).

26. Accordingly, Petitioner is not an arriving noncitizen, is not presently seeking admission, and is not a person who "has not been admitted." The ongoing dispute concerning whether individuals who entered without inspection and were later arrested in the interior remain "applicants for admission" does not control this case because Petitioner did not enter without inspection. He was inspected, authorized to enter, and admitted.

27. Because Petitioner is not an applicant for admission, his detention cannot lawfully rest on the mandatory-detention provisions of 8 U.S.C. § 1225(b). His detention pending a decision in removal proceedings is governed, if at all, by 8 U.S.C. § 1226. Section 1226(a) permits an individualized custody determination and authorizes release on bond or conditional parole. By classifying Petitioner as subject to mandatory detention under § 1225 and denying him access to a custody determination, Respondents are applying the wrong statutory authority and depriving him of the process Congress provided.

FACTUAL ALLEGATIONS

28. Petitioner Mario Jose Lopez is a native and citizen of Nicaragua, born on [redacted], [redacted]

29. Petitioner entered the United States on June 5, 1997, after inspection and admission pursuant to a tourist visa. Although his authorized period of stay later expired, he has remained in the United States since that time.

30. On July 4, 2026, immigration officers detained Petitioner. According to his sister, Petitioner was not provided any paperwork at the time of his arrest.

31. Petitioner has since been detained at the Otay Mesa Detention Center in San Diego County, California.

32. Petitioner was lawfully admitted to the United States after inspection and authorization by an immigration officer. He is therefore not an "applicant for admission" within the meaning of 8 U.S.C. § 1225(a)(1), which applies to noncitizens who are arriving in the United States or who are present in the United States but have not been admitted.

33. Petitioner's subsequent overstay did not erase his prior admission. Rather, it rendered him potentially removable under the provisions governing noncitizens who remain in the United States beyond the period authorized following admission. See 8 U.S.C. § 1227(a)(1)(B).

34. Because Petitioner was admitted and is presently detained pending removal proceedings, his detention is governed, if at all, by 8 U.S.C. § 1226. Section 1226(a) authorizes an individualized custody determination and permits release on bond or conditional parole.

35. Respondents nevertheless appear to be detaining Petitioner under the purported authority of 8 U.S.C. § 1225(b)(2), under which he will not receive a bond hearing. That classification is inconsistent with Petitioner's admitted status and improperly denies him access to the individualized custody process provided under § 1226(a).

36. Petitioner has remained continuously detained since July 4, 2026, at the Otay Mesa Detention Center within the Southern District of California.

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1226(a) and Associated Regulations

37. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through thirty-six (36) as though fully set forth herein.

38. Petitioner entered the United States on June 5, 1997, after inspection and admission pursuant to a tourist visa.

39. Although Petitioner remained in the United States beyond the period authorized by his visa, the expiration of his authorized period of stay did not retroactively nullify his lawful admission.

40. The Immigration and Nationality Act defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

41. The INA separately provides that a noncitizen who was admitted but remains in the United States beyond the period authorized is removable as a visa overstay. See 8 U.S.C. § 1227(a)(1)(B).

42. Petitioner is therefore not an "applicant for admission" within the meaning of 8 U.S.C. § 1225(a)(1), because he is neither arriving in the United States nor present in the United States without having been admitted.

43. Petitioner was arrested in the interior of the United States on July 4, 2026, approximately twenty-nine years after his inspection and admission. He is presently detained at the Otay Mesa Detention Center pending a decision concerning his removal.

44. Under these circumstances, the statutory authority governing Petitioner's detention is 8 U.S.C. § 1226. Section 1226(a) authorizes discretionary detention pending a decision on removal and permits DHS to release a noncitizen "on bond" or "conditional parole."

45. The applicable regulations likewise authorize a noncitizen detained under § 1226(a) to seek an individualized custody determination and bond redetermination before an Immigration Judge. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), 1003.19(a).

46. Respondents nevertheless appear to be detaining Petitioner under 8 U.S.C. § 1225(b)(2), thereby treating him as an applicant for admission subject to mandatory detention and denying him access to an individualized bond hearing.

47. Respondents' classification is contrary to the plain text and structure of the INA. Petitioner's overstay may provide a ground of removability, but it does not erase the admission that occurred when he lawfully entered the United States after inspection and authorization in 1997.

48. By continuing to detain Petitioner under § 1225(b)(2), Respondents are invoking a detention provision that does not apply to him and depriving him of the rights and procedures available under § 1226(a), including the opportunity to seek release on bond and obtain a custody redetermination before an Immigration Judge.

49. Because Petitioner is lawfully detainable, if at all, under § 1226(a), his detention under § 1225(b) and the resulting denial of access to an individualized bond determination violate the Immigration and Nationality Act and its implementing regulations. Petitioner respectfully requests that this Court declare his detention under § 1225(b) unlawful, find that his detention is governed by § 1226(a), and order Respondents to

provide him with an individualized bond hearing before an Immigration Judge without delay.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

50. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through thirty-six (36) as though fully set forth herein.

51. The Fifth Amendment to the United States Constitution guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

52. Civil immigration detention constitutes a substantial deprivation of liberty and is therefore subject to constitutional due-process protections. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

53. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

54. Moreover, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

55. Petitioner entered the United States after inspection and lawful admission in 1997 and has resided in the United States for approximately twenty-nine years. He is therefore entitled to the protections of the Due Process Clause.

56. Procedural due process constrains governmental action that deprives an individual of liberty and requires an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

57. In determining what process is constitutionally required, courts consider: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation under the procedures used and the probable value of additional safeguards; and (3) the government's interest, including the administrative burdens associated with additional procedures. *Id.* at 335.

58. Each of the *Mathews* factors weighs in Petitioner's favor.

59. First, Petitioner's private interest is his physical liberty, an interest lying at the core of the protections afforded by the Due Process Clause.

60. Second, the risk of an erroneous deprivation is substantial because Respondents appear to have classified Petitioner as an applicant for admission under § 1225(b), despite his inspection and admission in 1997, and have provided no hearing before a neutral decision-maker at which Petitioner may challenge the necessity of his continued detention.

61. An individualized custody hearing would substantially reduce that risk by requiring the government to establish whether Petitioner's detention is necessary to address a risk of flight or danger to the community and by permitting Petitioner to present evidence supporting release.

62. Third, the government's interest does not justify denying Petitioner any individualized custody determination. Immigration Judges routinely conduct bond hearings under 8 U.S.C. § 1226(a) and its implementing regulations, and providing Petitioner access to that established process would impose no substantial additional administrative burden.

63. Petitioner has remained in civil immigration detention since July 4, 2026, without any individualized hearing before a neutral decision-maker to determine whether his detention is necessary.

64. By categorically denying Petitioner access to a custody determination based on an erroneous classification under § 1225(b), Respondents have deprived him of liberty without constitutionally adequate process.

65. Regardless of the statutory authority Respondents invoke, Petitioner's continued civil detention without any individualized determination of flight risk, danger, or the necessity of detention violates the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

66. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through thirty-six (36) as though fully set forth herein.

67. Civil immigration detention must remain nonpunitive and must bear a reasonable relation to the legitimate governmental purposes of ensuring a noncitizen's appearance in removal proceedings and protecting the community. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring).

68. Petitioner has been detained without any individualized determination that he presents a danger to the community, poses a risk of flight, or that his continued detention is otherwise necessary to advance a legitimate governmental purpose.

69. By classifying Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b), Respondents have foreclosed any meaningful consideration of whether detention remains reasonably related to its asserted purposes or whether less restrictive conditions would adequately address those purposes.

70. In the absence of any individualized assessment of necessity, Petitioner's detention is arbitrary, excessive in relation to its asserted purposes, and impermissibly punitive.

71. Petitioner's continued detention therefore violates the substantive component of the Due Process Clause of the Fifth Amendment, regardless of the statutory provision Respondents invoke as authority for his custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will:

72. Assume jurisdiction over this action and retain jurisdiction until Respondents have fully complied with the Court's orders and their obligations under federal law;

73. Order Respondents to show cause within three days why the writ should not issue, unless, for good cause, additional time not exceeding twenty (20) days is allowed pursuant to 28 U.S.C. § 2243;

74. Pending resolution of this action, order Respondents not to transfer Petitioner outside the Southern District of California absent further order of this Court;

75. Declare that Petitioner is not subject to detention under 8 U.S.C. § 1225(b) and that his detention is governed, if at all, by 8 U.S.C. § 1226(a);

76. Declare that Respondents' continued detention of Petitioner without access to an individualized custody determination violates the Immigration and Nationality Act and its implementing regulations;

77. Declare that Petitioner's continued detention without an individualized determination of flight risk, danger, or the necessity of detention violates the procedural and substantive components of the Due Process Clause of the Fifth Amendment;

78. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or, in the alternative, order Respondents to provide Petitioner with an individualized

bond hearing before an Immigration Judge within seven (7) days of the Court's order and release Petitioner if such a hearing is not timely provided;

79. Award Petitioner reasonable attorneys' fees and costs to the extent authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable provision of law; and

80. Grant such other and further relief as the Court deems just, proper, and equitable.

Respectfully Submitted,

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

I represent Petitioner, Mario Lopez, 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.

Date: July 24, 2026

/s/ Eduardo R. Soto
Eduardo R. Soto