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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Willi Sanabria Vargas,

Petitioner,

v.

Christopher J. LaRose, Warden, Otay Mesa Detention Center; David Venturella, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary of Homeland Security; and Todd Blanche, Acting Attorney General of the United States,

Respondents.

Case No.: '26CV4415 JAO JAC

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

INTRODUCTION

1. Petitioner is a civil immigration detainee held at the Otay Mesa Detention Center in San Diego, California, without an individualized bond hearing, based solely on the Immigration Judge's erroneous conclusion that Petitioner is subject to mandatory detention under the Laken Riley Act, INA § 236(c)(1)(E), 8 U.S.C. § 1226(c)(1)(E).

2. The Laken Riley Act's mandatory detention provision applies only to an alien who satisfies *both* (i) inadmissibility under INA § 212(a)(6)(A), (6)(C), or (7), 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7), and (ii) certain enumerated criminal conduct. The two prongs are conjunctive. Petitioner, who was lawfully inspected and admitted to the United States in 2021 on a valid nonimmigrant visa, has not been charged as inadmissible under INA § 212(a)(6)(A), (6)(C), or (7), and the record before the Immigration Judge contains no allegation, evidence, or finding that any of those grounds apply. Because Petitioner does not satisfy the inadmissibility prong of INA § 236(c)(1)(E), the Laken Riley Act's mandatory detention provision does not apply.

3. Petitioner is therefore governed by the general discretionary detention provision, INA § 236(a), 8 U.S.C. § 1226(a), under which he is entitled to an individualized custody redetermination hearing before an Immigration Judge. By declining jurisdiction to conduct that hearing, the Immigration Judge has deprived Petitioner of a statutory and constitutional right to which he is entitled, and Petitioner's

continued detention without a bond hearing violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

4. Petitioner seeks an order directing Respondents to provide him with an individualized bond hearing before an Immigration Judge within a time certain, or, in the alternative, his immediate release.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, which confers jurisdiction on federal district courts to grant habeas relief to persons held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

6. Petitioner does not challenge a final order of removal, and this petition does not implicate the jurisdiction-stripping provisions of INA § 242, 8 U.S.C. § 1252. Petitioner challenges only the statutory and constitutional basis for his continued detention without an individualized bond hearing. See *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e) because Petitioner is detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, which is located within the Southern District of

California, and because the immediate physical custodian, Respondent LaRose, resides within this district. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442–47 (2004) (proper respondent in a habeas action challenging present physical confinement is the warden of the facility where the petitioner is held).

III. PARTIES

8. Petitioner **Willi Edgardo Sanabria Vargas** is a native and citizen of Colombia, A-Number [redacted], currently detained at the Otay Mesa Detention Center in San Diego, California.

9. Respondent **Christopher LaRose** is the Warden of the Otay Mesa Detention Center and is Petitioner's immediate custodian. He is sued in his official capacity.

10. Respondent **David Venturella** is the Acting Director of U.S. Immigration and Customs Enforcement and, as such, is a legal custodian of Petitioner. He is sued in his official capacity.

11. Respondent **Markwayne Mullin** is the Secretary of the U.S. Department of Homeland Security and, as such, is a legal custodian of Petitioner. He is sued in his official capacity.

12. Respondent **Todd Blanche** is the Acting Attorney General of the United States and is named as a Respondent pursuant to 28 U.S.C. § 2243. He is sued in his official capacity.

IV. STATEMENT OF FACTS

13. Petitioner was lawfully admitted to the United States on a valid nonimmigrant visa in 2021, following inspection and authorization by immigration officials.

14. Petitioner is currently in removal proceedings and has been detained by ICE. DHS has charged Petitioner in connection with an isolated misdemeanor petit theft charge, for which adjudication was withheld.

15. On July 17, 2026, Petitioner, through counsel, filed a Motion for Bond Hearing pursuant to 8 C.F.R. § 1003.19(a), seeking a custody redetermination on the grounds that he is not subject to mandatory detention, does not present a danger to the community, and is not a flight risk. This bond motion was filed at the Krome Miami Immigration Court where the Petitioner was located at the time. He was then moved to Otay Mesa, California prior to July 22, 2026.

16. On July 22, 2026, Immigration Judge Romy Lerner of the Miami-Krome Immigration Court declined to act on the motion, finding that venue was proper before the Immigration Court with jurisdiction over Petitioner's place of detention — Otay Mesa — where a bond hearing had already been scheduled after the Petitioner had been moved from Miami to Otay Mesa.

17. On July 28, 2026, the Respondents asserted and Immigration Judge Mark Sameit agreed, during a bond hearing in the Otay Mesa Immigration Court, that "the court

lacks jurisdiction due to the respondent's conviction of larceny under the Laken Riley Act." DHS waived appeal of that order; Petitioner reserved appeal, with an appeal deadline of August 27, 2026.

18. Even accepting that the referenced disposition qualifies as a "conviction" for immigration purposes, see INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A), a larceny conviction can satisfy, at most, only the criminal-conduct prong of INA § 236(c)(1)(E)(ii). The Immigration Judge's order contains no finding, charge, or evidence that Petitioner is inadmissible under INA § 212(a)(6)(A), (6)(C), or (7), the independent and mandatory first prong of the statute. Nor does the record identify any factual or legal basis upon which Petitioner could be found inadmissible under INA § 212(a)(6)(A), (6)(C), or (7). Petitioner was inspected and lawfully admitted to the United States in 2021 on a valid nonimmigrant visa, and neither DHS nor the Immigration Judge identified any allegation or evidence satisfying the independent inadmissibility requirement incorporated into INA § 236(c)(1)(E).

19. Petitioner, through counsel, timely filed a Motion to Reconsider Denial of Jurisdiction to Redetermine Custody and Renewed Request for a Joseph Hearing, setting forth the arguments above and requesting that the Immigration Court proceed to a custody redetermination hearing on the merits. That motion remains pending with no known date of resolution.

20. Petitioner remains detained at the Otay Mesa Detention Center without any individualized determination that his continued detention is justified by danger to the community or risk of flight.

V. EXHAUSTION

21. Exhaustion of administrative remedies is not a jurisdictional prerequisite to relief under 28 U.S.C. § 2241; it is, at most, a prudential doctrine. *Jennings v. Rodriguez,* 583 U.S. 281, 296 (2018) (§ 1226(e) does not bar habeas review of "questions of law," as distinct from "discretionary judgment[s]"). Petitioner's challenge falls squarely within that category: he contests only the statutory basis on which the Immigration Judge concluded that mandatory detention applies, not any exercise of custody discretion.

22. Although the Ninth Circuit ordinarily expects noncitizens to pursue Board review of custody rulings before seeking habeas relief, see *Leonardo v. Crawford,* 646 F.3d 1157, 1161 (9th Cir. 2011), *Leonardo* involved a discretionary bond denial and held that INA § 236(c)(1)(E) does not limit habeas jurisdiction over constitutional claims or questions of law. Here, the Immigration Judge exercised no custody discretion at all; he held categorically that he lacked jurisdiction to conduct a bond hearing because Petitioner allegedly falls within INA § 236(c)(1)(E) — a threshold, purely legal question of statutory construction, not a fact-bound determination of danger or flight risk. Agency expertise adds nothing to resolving it, and Petitioner already

presented the identical argument to the Immigration Judge, so excusing further exhaustion would not invite deliberate bypass of the administrative scheme. See *Puga v. Chertoff,* 488 F.3d 812, 815 (9th Cir. 2007).

23. Nor is further exhaustion an adequate remedy. Neither a motion to reconsider nor a custody appeal to the Board provides an automatic bond hearing, stays Petitioner's detention, or guarantees a decision within any set period, and Petitioner's removal proceedings continue on a track wholly independent of any custody appeal. A remedy that may arrive only after the injury it is meant to address is not one Petitioner must exhaust first. *See Laing v. Ashcroft,* 370 F.3d 994, 1000-01 (9th Cir. 2004) (exhaustion excused where administrative remedies are "inadequate," pursuit "would be a futile gesture," or "irreparable injury will result"); *McCarthy v. Madigan,* 503 U.S. 140, 146–49 (1992); *Singh v. Holder,* 638 F.3d 1196, 1203 n.3 (9th Cir. 2011).

VI. CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act — Petitioner Is Governed by INA § 236(a), Not the Laken Riley Act's Mandatory Detention Provision

24. Petitioner realleges and incorporates by reference the allegations set forth above.

25. The Laken Riley Act amended INA § 236(c) to add a mandatory detention category at INA § 236(c)(1)(E), 8 U.S.C. § 1226(c)(1)(E), applicable only to an alien who (i)

is inadmissible under section 212(a)(6)(A), (6)(C), or (7), 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7); *and* (ii) has engaged in certain enumerated criminal conduct. The two prongs are joined by "and," not "or," and are conjunctive.

26. Sections 212(a)(6)(A), (6)(C), and (7) apply, by their plain terms, to aliens who entered without inspection, procured admission by fraud, or lacked valid entry documents at the time they sought admission. These grounds of inadmissibility concern aliens who entered without inspection, procured admission by fraud, or lacked valid entry documents when seeking admission. DHS has not alleged that Petitioner falls within any of those statutory categories.

27. Reading § 236(c)(1)(E) to reach admitted aliens would also render the Laken Riley Act's amendment largely superfluous, since aliens who are independently inadmissible for other reasons are already subject to mandatory detention under separate provisions; Congress's addition of a distinct, conjunctive test confirms that both prongs must independently be satisfied. *Cf. Cordero Pelico v. Kaiser,* No. 25-cv-07819, 2025 WL 2822876, at *12 (N.D. Cal. Oct. 3, 2025) (an interpretation that renders the Laken Riley Act's amendment meaningless is disfavored); *Escobar Salgado v. Bostock,* 809 F.Supp.3d 1123, 1136, 1151 (E.D. Cal. 2025) (same).

28. Petitioner was inspected and lawfully admitted to the United States in 2021. The custody record contains no allegation, evidence, or finding that Petitioner is inadmissible under INA § 212(a)(6)(A), (6)(C), or (7), and DHS identified no basis

before the Immigration Judge for concluding otherwise. Because the Government failed to establish the first, independent requirement of INA § 236(c)(1)(E), the Laken Riley Act's mandatory detention provision does not apply.

29. Under *Matter of Joseph,* 22 I. & N. Dec. 799, 806 (BIA 1999), and 8 C.F.R. § 1003.19(h)(2)(ii), DHS's initial classification of an alien as subject to mandatory detention does not bind the Immigration Judge, who must independently determine whether the alien is "properly included" within the mandatory detention category. Mandatory detention is inappropriate where DHS is substantially unlikely to establish the charge rendering the alien subject to mandatory detention. Here, DHS offered no evidence or argument—and the record contains none—addressing the independent inadmissibility requirement incorporated into INA § 236(c)(1)(E).

30. This case does not involve reviewing a discretionary custody determination. The Immigration Judge never reached dangerousness, flight risk, or the merits of release. Rather, the Immigration Judge concluded that he lacked jurisdiction even to decide those questions. Accordingly, this Petition presents only the antecedent legal question whether Petitioner is properly included within the mandatory detention category established by INA § 236(c)(1)(E). That pure question of statutory interpretation is squarely within this Court's habeas jurisdiction.

31. Because Petitioner is not properly included within the Laken Riley Act's mandatory detention category, his custody is governed by the general discretionary detention

provision, INA § 236(a), 8 U.S.C. § 1226(a), under which he is entitled to an individualized bond hearing. The Immigration Judge's refusal to exercise jurisdiction over Petitioner's custody redetermination request, and Petitioner's resulting continued detention without such a hearing, violates the INA and its implementing regulations.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment

32. Petitioner realleges and incorporates by reference the allegations set forth above.

33. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law, and this protection applies to all persons within the United States, including noncitizens in immigration detention. See *Zadvydas*, 533 U.S. at 693.

34. Civil immigration detention is permissible only to the extent it serves the government's legitimate interests in ensuring appearance at removal proceedings and protecting the community from danger, and only where accompanied by procedures adequate to test the necessity of that detention on an individualized basis. *See Id.* at 691.

35. Petitioner has been detained without any individualized assessment of flight risk or danger to the community, based on an erroneous and unsupported classification

under the Laken Riley Act. This deprivation of a bond hearing to which Petitioner is statutorily entitled independently violates the Due Process Clause because it denies Petitioner any meaningful opportunity to test the necessity of his continued civil detention.

36. Even if the Court reaches Petitioner's constitutional claim, the procedures afforded here fail the balancing test of *Mathews v. Eldridge.* Petitioner's interest in physical liberty is at its apex. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). The risk of erroneous deprivation is substantial because the Immigration Judge declined to determine whether Petitioner was properly included within the mandatory detention category and instead concluded that no bond jurisdiction existed. The governmental interest in denying any custody hearing is minimal where Congress has provided discretionary detention under § 1226(a) for aliens outside the mandatory detention categories. Under *Mathews,* the complete denial of any individualized custody determination based upon an erroneous statutory classification violates the Due Process Clause.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Declare that Petitioner is not subject to mandatory detention under INA § 236(c)(1)(E), 8 U.S.C. § 1226(c)(1)(E), and is instead governed by INA § 236(a), 8 U.S.C. § 1226(a);

c. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days of this Court's order, at which the government bears the burden of justifying Petitioner's continued detention;

d. In the alternative, order Petitioner's immediate release from custody, with or without conditions;

e. Award Petitioner his costs and reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

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

Respectfully submitted,

Date: August 3, 2026.

Respectfully Submitted,

/s/ Vanessa Molina
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Counsel for Petitioner

VERIFICATION

I, Bonnie Smerdon, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge and belief, the foregoing facts are true and correct based upon information available to me at this time.

Respectfully submitted,

Dated: August 3, 2026

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