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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **MILTON OMAR LOPEZ-PINEDA,**



12 *Petitioner,*

13 vs.

14 **MARKWAYNE MULLIN**, Secretary, U.S.  
15 Department of Homeland Security;  
16 **TODD LYONS**, Acting Director, U.S.  
17 Immigration and Customs Enforcement;  
18 **PATRICK DIVVER**, San Diego Field Office  
19 Director, ICE;  
20 **WARDEN, OTAY MESA DETENTION**  
21 **CENTER; and**  
22 **TODD BLANCHE**, Attorney General of the  
23 United States

24 *Respondents.*

Case No. '26CV2374 CAB AHG

Agency No.

**PETITION FOR WRIT OF HABEAS  
CORPUS and MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**


**Expedited Hearing Requested**

25 **PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS**  
26 **AND AUTHORITIES IN SUPPORT THEREOF PURSUANT TO 28 U.S.C. § 2241**  
27  
28



1 that the petitioner is not entitled thereto. If an OSC is issued, the statute requires  
2 Respondents to file a return within **three (3) days** unless, for good cause, additional  
3 time—not exceeding twenty days—is allowed.  
4

### 5 **III. PARTIES**

- 6 7. **Petitioner Milton Omar Lopez Pineda**  is a native and citizen of  
7 Honduras currently in the custody of ICE at the Otay Mesa Detention Center.  
8 8. **Respondent Markwayne Mullin** is the Secretary of the U.S. Department of  
9 Homeland Security (DHS) and has ultimate authority over ICE and the enforcement  
10 of immigration laws. He is sued in his official capacity.  
11 9. **Respondent Todd Lyons** is the Acting Director of ICE and shares responsibility for  
12 Petitioner's continued detention. He is sued in his official capacity.  
13 10. **Respondent Patrick Divver** is the ICE Field Office Director for the San Diego Field  
14 Office, which maintains direct operational control over Petitioner's detention. He is  
15 sued in his official capacity.  
16 11. **Respondent Warden of the Otay Mesa Detention Center** is the immediate  
17 physical custodian of Petitioner. He is sued in his official capacity.  
18 12. **Respondent Todd Blanche** is the Attorney General of the United States, and as  
19 such, has authority over the Department of Justice and is charged with faithfully  
20 administering the immigration laws of the United States.  
21

### 22 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

- 23  
24 9. Petitioner has exhausted all available administrative remedies.  
25 10. On March 2, 2026, the IJ issued a final order denying jurisdiction for a bond hearing.  
26 11. An appeal to the Board of Immigration Appeals (BIA) would be futile because the IJ  
27 explicitly relied on binding BIA precedent (*Matter of Q-Li-*) to deny the hearing. The  
28

1 BIA cannot overturn its own binding precedent in an individual appeal, nor does it  
2 have jurisdiction to rule on the constitutionality of the statutes it administers.


3  
4 **V. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

5 11. Petitioner entered the United States near Rio Grande City, Texas, on or about March  
6 24, 2018. (See Exhibit F).


7 12. At the time of entry, Petitioner was a minor child (age 13) who had been abandoned  
8 by his father.

9 13. Petitioner has resided continuously in the interior of the United States for seven  
10 years, establishing deep community ties.

11 14. Petitioner is married to Jovanna Alejandra Sandoval Ramirez, a Lawful Permanent  
12 Resident (LPR). (See Exhibit B).

13 15. Petitioner is the father of three minor United States citizen children: 

14  (See Exhibit C).

15 16. In August 2024, Petitioner's wife filed a Form I-130 Petition for Alien Relative on  
16 his behalf (Receipt #: , which is currently pending. (See Exhibit D).

17 17. On February 22, 2026, ICE Fugitive Operations re-arrested Petitioner at-large in the  
18 interior (Escondido, CA). (See Exhibit E).

19 18. On March 2, 2026, IJ Mark Sameit denied Petitioner's request for custody  
20 redetermination, finding the court lacked jurisdiction under *Matter of Q-Li*.

21  
22 **VI. CAUSES OF ACTION**

23 **COUNT I: Violation of the Immigration and Nationality Act**

24 (Statutory Misclassification)

25 19. Petitioner incorporates by reference the allegations in the preceding paragraphs.

26 20. Respondents have classified Petitioner as ineligible for bond under the "arriving  
27 alien" framework or jurisdictional bars related to initial entry.  
28

1 21. Because Petitioner has resided in the U.S. interior for seven years, he is not subject to  
2 a jurisdictional bar intended for those at the threshold of entry.

3 22. Petitioner is legally subject to detention under INA § 236(a), which mandates an  
4 individualized custody redetermination (bond) hearing.

5 23. Respondents' continued detention of Petitioner without a bond hearing is  
6 unauthorized by statute and contrary to law.

7  
8 **COUNT II: Violation of the Fifth Amendment**

9 (Substantive and Procedural Due Process)

10 24. Petitioner incorporates by reference the allegations in the preceding paragraphs.

11 25. The Fifth Amendment guarantees that no person shall be deprived of liberty without  
12 due process.

13 26. Mandatory detention of a long-term resident with deep familial ties, without an  
14 individualized determination of flight risk or danger, constitutes arbitrary and  
15 oppressive imprisonment.

16 27. The Immigration Judge's refusal to grant a bond hearing deprives Petitioner of his  
17 fundamental right to liberty without providing the procedural safeguards demanded  
18 by the Constitution.

19 28. Due Process requires that Petitioner be afforded a bond hearing where the  
20 Government bears the burden of proving justification for detention by clear and  
21 convincing evidence.  
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**VII. PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

25. **Assume Jurisdiction** over this matter;

26. **Issue a Writ of Habeas Corpus** directing Respondents to immediately release Petitioner, or, in the alternative, order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days;

27. **Order** that at said bond hearing, the Government must bear the burden to prove by clear and convincing evidence that Petitioner presents a flight risk or a danger to the community.

28. **Declare** that Petitioner is not subject to mandatory detention under INA § 235(b);

29. **Award** reasonable attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, and any other applicable statute; and

30. **Grant** any other and further relief as this Court deems just and proper.

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1 **PART II: MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. PRELIMINARY STATEMENT**

4  
5 Petitioner Milton Omar Lopez Pineda is not a stranger at the gates. He is a twenty-one-year-  
6 old who has resided in the interior of the United States for seven years, having entered the  
7 country as a thirteen-year-old minor. Since his arrival, Petitioner has established deep  
8 community and familial roots, including fathering three United States citizen children and  
9 marrying a Lawful Permanent Resident who has filed an immigrant petition on his behalf.  
10 Despite his entrenched presence, the Department of Homeland Security ("DHS") has  
11 utilized a flawed interpretation of Board of Immigration Appeals ("BIA") precedent to  
12 classify him as an "applicant for admission" subject to mandatory, no-bond detention under  
13 a legal fiction of "arrival".

14  
15 On March 2, 2026, an Immigration Judge ("IJ") denied Petitioner's request for a bond  
16 redetermination, claiming a lack of jurisdiction under *Matter of Q-Li* because Petitioner  
17 was "detained upon entry and subsequently released" seven years ago. This categorical  
18 denial of an individualized bond hearing to a long-term resident violates the Fifth  
19 Amendment's Due Process Clause. This Court must issue a Writ of Habeas Corpus to  
20 correct this statutory misclassification and order an immediate bond hearing.

21  
22 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

23  
24 Petitioner Milton Omar Lopez Pineda, a native and citizen of Honduras, entered the United  
25 States on March 24, 2018, near Rio Grande City, Texas, as a thirteen-year-old  
26 unaccompanied minor. Following his initial encounter, Petitioner was released into the  
27 interior, where he has resided continuously for seven years.

1 During his residency, Petitioner married Jovanna Sandoval, a Lawful Permanent Resident.

2 Together they have three United States citizen children: [REDACTED]

3 [REDACTED] In August 2024, his wife filed a Form I-130 Petition for Alien  
4 Relative on his behalf (Receipt #: [REDACTED]), which remains pending. Petitioner has  
5 no criminal history and has been a dedicated provider for his family, working as a Plaster  
6 Foreman.

7 On February 22, 2026, DHS re-arrested Petitioner during an at-large administrative action in  
8 Escondido, California. He is currently detained at the Otay Mesa Detention Center. On  
9 March 2, 2026, IJ Mark Sameit denied Petitioner's request for a custody redetermination.  
10 The IJ concluded that because Petitioner was "detained upon entry and subsequently  
11 released," the court lacked jurisdiction to redetermine bond under *Matter of Q-Li-*. The IJ's  
12 decision also alluded to the Ninth Circuit's March 6, 2026, stay in *Maldonado Bautista v.*  
13 *DHS*—a nationwide class action challenging these detention frameworks.

14  
15 **III. LEGAL STANDARD AND JURISDICTION**

16  
17 The federal habeas statute, **28 U.S.C. § 2241**, provides the bedrock remedy against unlawful  
18 executive detention. To ensure the efficiency of this remedy, 28 U.S.C. § 2243 mandates an  
19 expedited timeline, requiring a return to the writ within three days of service.

20  
21 This Court has subject matter jurisdiction to hear this petition under 28 U.S.C. § 2241.

22 While 8 U.S.C. § 1226(e) restricts judicial review of the discretionary judgments of  
23 immigration judges regarding bond, it does not strip federal courts of jurisdiction to review  
24 constitutional claims or pure questions of law—such as whether a noncitizen is legally  
25 subject to a mandatory detention or jurisdictional bar in the first place. *See Singh v. Holder*,  
26 638 F.3d 1196, 1200 (9th Cir. 2011).

27 Due process in the context of removal proceedings requires, at minimum, notice and an  
28 opportunity to be heard appropriate to the nature of the case.

1 **IV. ARGUMENT**

2 **A. This Court Retains Habeas Jurisdiction to Review Statutory Misclassification**  
3 **Under *Garcia v. Noem* (2025)**

4 The government's refusal to grant a bond hearing rests on a severe statutory  
5 misclassification. As the Southern District of California recently affirmed in *Garcia v.*  
6 *Noem*, No. 25-CV-2180-DMS-MMP (S.D. Cal. 2025), district courts possess the authority  
7 to review DHS's misapplication of detention frameworks. DHS cannot unilaterally bypass  
8 the bond hearing requirements of INA § 236(a) simply by labeling a seven-year resident as  
9 being under a jurisdictional bar based on a brief, years-old border encounter. Because  
10 Petitioner challenges his statutory classification, this Court has full jurisdiction to correct the  
11 agency's error.

12 **B. Applying Jurisdictional Bars to a Seven-Year Resident Violates the Doctrine of**  
13 **Constitutional Avoidance**

14 The Supreme Court has long held that when a statute raises serious constitutional doubts,  
15 courts must construe the statute to avoid those problems. *Zadvydas v. Davis*, 533 U.S. 678,  
16 689 (2001). There is a stark constitutional line between individuals seeking initial admission  
17 and those who have entered and developed ties to the country. *See Clark v. Martinez*, 543  
18 U.S. 371 (2005). Applying mandatory, no-bond detention to a seven-year resident with three  
19 U.S. citizen children and a pending I-130 is "arbitrary and oppressive". To avoid a Fifth  
20 Amendment violation, this Court must construe Petitioner's detention as falling under the  
21 discretionary framework of INA § 236(a), which guarantees a bond hearing.

22 **C. The Ninth Circuit's Stay of Class-Wide Relief in *Maldonado Bautista* Does Not**  
23 **Preclude Individual Habeas Relief**

24 In denying bond, the IJ relied on the Ninth Circuit's March 6, 2026, stay of the district  
25 court's orders in *Maldonado Bautista v. DHS*. This reliance is legally flawed.

26 A stay of a class-wide injunction pending appeal merely halts the universal mandate against  
27 the agency; it does not constitute a binding ruling on the constitutional merits, nor does it  
28 strip district courts of their duty to adjudicate individual habeas petitions. The District Court

1 in *Maldonado Bautista* (C.D. Cal.) correctly recognized that the BIA's holding in *Yajure*  
2 *Hurtado* violates the Due Process rights of established interior residents. The procedural  
3 stay of that nationwide injunction does not prevent this Court from adopting the same sound  
4 constitutional analysis to grant relief to Mr. Lopez-Pineda individually.

5 Individual habeas corpus remains the bedrock remedy against unlawful executive detention,  
6 independent of class-action procedural postures.

7 **D. Due Process Demands a Bond Hearing Where the Government Bears the Burden of**  
8 **Proof by Clear and Convincing Evidence**

9 Because Petitioner's detention is constitutionally governed by INA § 236(a), he is entitled to  
10 a bond hearing where the Government must justify continued detention by clear and  
11 convincing evidence. Petitioner has resided peacefully in the United States since 2018 and is  
12 a dedicated father and breadwinner. Under the *Guerra* factors—including length of  
13 residence, family ties, and prospects for relief—Petitioner is an ideal candidate for release.

14 The existence of his pending I-130 provides a substantial motivation to comply with all  
15 future proceedings. The IJ's refusal to grant a hearing effectively created an irrebuttable  
16 presumption of detention, which constitutes a structural due process error.

17 District courts possess authority to review DHS's misapplication of detention frameworks.  
18 DHS cannot unilaterally bypass INA § 236(a) bond hearing requirements by labeling a long-  
19 term resident as being under a jurisdictional bar. Petitioner challenges his statutory  
20 classification—a pure question of law over which this Court has full habeas jurisdiction.

21  
22 **V. PETITIONER MERITS RELEASE**

23 Under *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), Petitioner is an ideal candidate for  
24 release:

- 25 • **No Danger:** Petitioner has no criminal history whatsoever. He is a graduate of a  
26 "Positive Parenting Program."
- 27 • **No Flight Risk:** Petitioner has lived here since he was 13. He is the primary  
28 breadwinner for his LPR wife and three USC children.

- **Incentives to Appear:** The existence of potential relief (pending I-130 and asylum claims) provides substantial motivation to comply with proceedings. (*See Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003)).

**VI. CONCLUSION AND PRAYER FOR RELIEF**

Ongoing detention without an individualized process is constitutionally impermissible. The IJ's refusal to grant a hearing constitutes a structural due process error.

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. **Issue a Writ of Habeas Corpus** directing Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within 7 days or immediate release from detention.
2. **Order** that at said hearing, the Government must bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.
3. **Declare** that INA § 235(b) cannot constitutionally be applied to mandate the detention of a ten-year resident of the United States.
4. **Grant** any other relief the Court deems just and proper.

Dated: April 14, 2026

Respectfully submitted,

/s/Hernando De Cima  
**Hernando De Cima, Esq**  
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858-525-5578  
*Attorney for Petitioner*

1 **VI. VERIFICATION**

2  
3 I, Hernando De Cima, declare under penalty of perjury under the laws of the United States  
4 of America that the foregoing Petition for Writ of Habeas Corpus is true and correct to the  
5 best of my knowledge, information, and belief, based on the records and documents  
6 provided in Petitioner's immigration proceedings.

7  
8  
9 Executed on this 14th day of April 2026, in Escondido, California.

10  
11  
12 Respectfully submitted,

13 /s/Hernando De Cima  
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