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DETAINED

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

KEVIN RODRIGUES MACEDO

Case No.: 3:26-cv-02544-JO-MSB

Petitioner,

vs.

CHRISTOPHER J. LAROSE, et al.,
Respondents.

**PETITIONER'S TRAVERSE IN
SUPPORT OF HIS PETITION FOR
WRIT OF HABEAS CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

Petitioner, Kevin Rodrigues Macedo, through undersigned counsel,
respectfully submit this Traverse to Respondent's Return and in support of his
Petition for the Writ of Habeas Corpus.

PETITIONER'S Traverse
In the Matter of Kevin Rodrigues Macedo

I. INTRODUCTION

Petitioner, by and through undersigned counsel, respectfully submits this Traverse to Respondents' Return and in further support of his Petition for Writ of Habeas Corpus.

Respondents' Return rests on two central premises: first, that this Court lacks jurisdiction under 8 U.S.C. § 1252 to review Petitioner's claims, and second, that Petitioner's detention is lawful because it is mandated under 8 U.S.C. § 1225(b)(2). Both premises are incorrect. Respondents' jurisdictional arguments improperly recast this case as a challenge to the commencement of removal proceedings, while their statutory arguments rely on a categorical reading of § 1225 that ignores the constitutional limitations governing immigration detention.

Petitioner does not challenge the government's authority to initiate removal proceedings. Nor does he seek review of any discretionary decision to prosecute those proceedings. Rather, Petitioner challenges the legality of his continued detention following his release on parole, including his subsequent redetention without any individualized justification, without adequate process, and without a meaningful opportunity to contest his confinement. Respondents' attempt to collapse these claims into a jurisdictionally barred challenge fails because it

1 mischaracterizes the Petition's nature. On April 8, 2026, the Immigration Judge
2 (IJ) found that the court lacked jurisdiction at the custody redetermination hearing,
3 and the petition for release was withdrawn.
4

5 Similarly, Respondents' reliance on § 1225(b)(2) is incomplete. While
6 Respondents assert that Petitioner is subject to mandatory detention as an
7 "applicant for admission," they do not address whether the Constitution permits
8 the government to revoke a previously granted liberty interest and re-detain an
9 individual without any individualized determination of danger or flight risk. They
10 further fail to meaningfully respond to Petitioner's core allegations that his
11 detention is arbitrary, lacks factual justification, and is the product of procedurally
12 deficient agency action. Respondents' parole revocation and detention was illegal.
13 Mr. Rodriguez Macedo believed he complied with all the conditions of his parole
14 and was not engaging in criminal activity at the time of his arrest. This was the
15 epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C.
16 § 706(2)(A)
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21 At bottom, this case is not about whether Respondents can invoke a
22 statutory detention provision. It is about whether the government may deprive a
23 person of liberty without due process of law. Respondents' Return does not
24 answer that question.
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II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Brazil who fled his home country after suffering persecution on account of his political opinion and religious beliefs. As detailed in the Petition, Petitioner was targeted by Brazilian authorities after refusing to participate in corrupt governmental activities and for speaking out against such conduct. He was subjected to threats, harassment, and violence, and reasonably feared further persecution if returned.

Petitioner entered the United States on or about August 7, 2023, where he sought protection. Following his entry, immigration authorities initiated removal proceedings against him, and he was subsequently granted humanitarian parole. While on release, Petitioner complied with all requirements imposed upon him, appeared in his immigration proceedings, and actively pursued relief, including filing applications for asylum, withholding of removal, and protection under the Convention Against Torture.

On or about October 30, 2025, Petitioner appeared for a scheduled appointment with immigration authorities. At that time, Respondents took Petitioner into custody, revoked his parole, and detained him. Respondents now assert that this redetention was based on a previously undisclosed arrest warrant in Brazil. However, Respondents do not identify any individualized findings that

1 Petitioner poses a danger to the community or a risk of flight, nor do they explain
2 why this information justifies continued detention without a hearing. Here, the
3 preliminary arrest warrant and proceedings were initiated after the Petitioner
4 entered the U.S. Thus, the alleged legality of the alleged previously undisclosed
5 arrest warrant in Brazil is questionable and in violation of the Respondents' parole
6 decision.
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9 Since his redetention, Petitioner has remained in immigration custody at the
10 Otay Mesa Detention Center. He sought a custody redetermination hearing on
11 April 8, 2026, before the Immigration Court, but the Immigration Judge
12 determined that the Court lacked jurisdiction to review his custody status. As a
13 result, Petitioner remains detained without any meaningful opportunity to
14 challenge the basis for his detention.
15
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17 Respondents now contend that Petitioner's detention is mandated under 8
18 U.S.C. § 1225(b)(2), and that this Court lacks jurisdiction to review his claims.
19 However, Petitioner's detention arises not merely from his statutory classification,
20 but from his redetention without individualized justification and the denial of
21 procedural protections required by the Constitution.
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24 III. ARGUMENT

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1 **A. ICE failed to comply with its own regulations in revoking Mr.**
2 **Rodriguez Macedo's parole under 8 C.F.R. § 212.5, violating the**
3 **Administrative Procedures Act and Due Process.**

4 When ICE detained Mr. Rodriguez Macedo on or about October 30, 2025, it
5 did not say that it was revoking his parole, so it is unclear whether a revocation
6 occurred. Either way, the government's actions violate the Administrative
7 Procedures Act and Due Process.

8 Under the Administrative Procedures Act (APA), an agency action may be
9 held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
10 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse
11 of discretion if the agency "entirely failed to consider an important aspect of the
12 problem, offered an explanation for its decision that runs counter to the evidence
13 before the agency, or is so implausible that it could not be ascribed to a difference
14 in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs.*
15 *of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S.,*
16 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged
17 agency action to be upheld, the agency "must explain the evidence which is
18 available, and must offer a rational connection between the facts found and the
19 choice made." *Motor Vehicle Mfrs.*, 463 U.S. at 52 (1983) (internal quotations
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omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Here, regardless of whether the agency formally revoked Mr. Rodriguez Macedo's parole, it violated the APA. If the agency did *not* revoke his parole, then it inexplicably violated its own parole decision by detaining Petitioner. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Mr. Rodriguez Macedo was still on parole, yet the agency decided to detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a "rational" reason for this choice, given that Mr. Rodriguez Macedo believed he had filed an asylum application and complied with all the conditions of his parole and was not engaging in criminal activity at the time of his arrest. This was the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

But assuming the agency *had* revoked his parole, it also violated the APA. Per ICE regulations, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation

1 of parole when “neither humanitarian reasons nor public benefit warrants the
2 [noncitizen’s] continued presence.” 8 C.F.R. § 212.5(e)(2)(i). But under either
3
4 scenario, parole shall only be “terminated upon written notice to the alien.” 8
5 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may
6 only revoke parole and re-detain a noncitizen when the parole’s purpose is served
7
8 or no humanitarian reasons warrant it *and* the noncitizen receives written notice.

9 None of this occurred here. Because “the purpose of Mr. Rodriguez
10 Macedo’s parole” was to allow him to apply for asylum, that purpose has not yet
11
12 “been served” because his asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A).
13 And the humanitarian reasons for parole—to avoid unnecessary detention when an
14 asylum seeker poses no danger or flight risk—remain the same. Put differently,
15
16 “upon Petitioner’s entry into the United States, Respondents determined that
17 Petitioner was suitable for parole. Respondents have not provided a reasoned
18 explanation or any changed circumstances that would justify their current
19 departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,
20 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to provide a
21 reasoned explanation for their action,” which they will not be able to do. *Id.*

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23
24 What’s more, Mr. Rodriguez Macedo never received any written notification
25 of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole, this
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1 decision violated both the statute and the regulation and was “not in accordance
2 with law” under the APA. 5 U.S.C. § 706(2)(A).

3
4 Several courts have released parolees on this basis. *See Arias v. Larose*, No.
5 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025);
6 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1,
7 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal.
8 Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742
9 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL
10 1898025, at *13 (D. Or. July 9, 2025).

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13 **B. Respondents Mischaracterize the Petition, and 8 U.S.C. § 1252 Does**
14 **Not Bar Habeas Review**

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16 Respondents’ jurisdictional argument rests on a fundamental
17 mischaracterization of Petitioner’s claims. They assert that this Court lacks
18 jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9) because Petitioner’s claims
19 arise from the government’s decision to commence removal proceedings. That is
20 incorrect.

21
22 Petitioner does not challenge the commencement of removal proceedings,
23 nor does he seek review of any discretionary decision to initiate or adjudicate
24 those proceedings. Instead, he challenges the legality of his continued detention
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1 following his release on parole, including his redetention without individualized
2 justification and without a meaningful opportunity to contest his confinement.
3 Those claims are independent of the removal process and therefore fall outside the
4 scope of § 1252.
5

6 The Supreme Court has made clear that § 1252(b)(9) does not bar
7 challenges to detention that are distinct from the removal proceedings themselves.
8 See *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018). Likewise, § 1252(g) is
9 limited to three discrete actions, commencing proceedings, adjudicating cases, and
10 executing removal orders, and does not extend to challenges to the legality of
11 detention.
12

13 This is not a case in which Petitioner seeks to channel review of his
14 removal proceedings through habeas. It is a straightforward challenge to the
15 lawfulness of his physical detention, which remains independently reviewable.
16

17 Respondents' argument would collapse all detention into the removal
18 process and, in doing so, eliminate habeas review altogether. That is not the law.
19 Habeas corpus remains available to test the legality of executive detention. *See*
20 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
21

22 As set forth in the Petition, no other neutral adjudicator is available to
23 review the legality of Petitioner's detention. The Immigration Judge has already
24

1 determined that the court lacks jurisdiction over his custody, leaving habeas as the
2 only avenue to vindicate his constitutional rights.

3
4 Respondents' reliance on cases applying § 1252(g) is misplaced because
5 those cases involved challenges tied to the government's discretionary decision to
6 initiate or pursue removal proceedings. Petitioner's claim is different. He does not
7 seek to stop removal proceedings, challenge the Notice to Appear, or obtain
8 review of the decision to place him in proceedings. He challenges the legality of
9 his continued physical custody after release, where Respondents have failed to
10 provide individualized justification or a meaningful opportunity to contest
11 detention. Treating that claim as barred would expand § 1252(g) beyond its
12 narrow text and would effectively foreclose habeas review of immigration
13 detention altogether.
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17 Because Petitioner challenges the lawfulness of his detention, not the
18 decision to initiate removal proceedings, this Court retains jurisdiction under 28
19 U.S.C. § 2241. Respondents' jurisdictional argument should be rejected.
20

21 **C. Respondents Fail to Justify Petitioner's Redetention**

22 Respondents fail to address one of Petitioner's central claims: that he was
23 released from custody and subsequently redetained without any individualized
24 justification or materially changed circumstances. That failure alone is fatal to
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1 their position, as it leaves Respondents without any lawful basis to justify
2 Petitioner's continued detention.

3
4 Petitioner was granted humanitarian parole and released after immigration
5 authorities determined that detention was not necessary. While on release, he
6 complied with all requirements, appeared for his proceedings, and pursued relief.
7
8 Respondents do not dispute these facts, nor do they identify any conduct
9 suggesting that Petitioner poses a danger to the community or a flight risk. Nor do
10 Respondents contend that Petitioner violated any condition of his release.

11
12 As set forth in the Petition, once the government has exercised its discretion to
13 release an individual from custody, that individual possesses a protected liberty
14 interest in remaining out of detention absent a lawful, individualized justification
15 for re-arrest.

16
17 Instead, Respondents rely on the existence of an alleged arrest warrant in
18 Brazil. But they do not explain how that information, regardless of its existence,
19 establishes that Petitioner presently poses a danger or a flight risk. Nor do they
20 identify when the warrant was issued, whether it was verified, or whether it
21 reflects current circumstances. Most importantly, they do not point to any
22 individualized determination supporting continued detention.

23
24 That omission is dispositive. Civil immigration detention is permissible only
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1 for limited purposes, including ensuring appearance at proceedings and protecting
2 the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690. Detention that is not
3 tied to those purposes, through an individualized determination of danger or flight
4 risk, is arbitrary and therefore unlawful.

6 Once the government has determined that an individual may be released, a
7 subsequent decision to re-detain that individual must be supported by
8 individualized, fact-based reasoning demonstrating that detention is now
9 necessary to serve those purposes.
10

12 Respondents provide no such reasoning. They do not identify changed
13 circumstances, and they do not articulate any finding that Petitioner poses a
14 danger or a flight risk. Their failure to justify Petitioner's redetention renders his
15 continued detention arbitrary, unsupported, and in violation of due process.
16

17 **D. Alleged Mandatory Detention Under 8 U.S.C. § 1225 Does Not Resolve**
18 **the Constitutional Question**
19

20 Respondents argue that Petitioner's detention is lawful because he is subject
21 to mandatory detention under 8 U.S.C. § 1225(b)(2). That argument assumes that
22 a statutory label alone resolves the legality of detention. It does not.
23

24 Respondents' reliance on § 1225 also fails under their own framework. In
25 *Jennings v. Rodriguez*, the Supreme Court addressed the statutory scope of
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1 detention provisions but did not hold that such provisions eliminate constitutional
2 constraints on detention. Respondents, therefore, cannot rely on *Jennings* to avoid
3 the constitutional question presented here.
4

5 Respondents' reliance on authorities recognizing § 1225(b)(2) detention
6 authority does not resolve the issue presented here. Those authorities may address
7 statutory classification, but they do not answer whether due process permits
8 Respondents to re-detain a previously released individual without an
9 individualized determination or a meaningful opportunity to contest the factual
10 basis for detention. Likewise, Respondents' reliance on parole-termination
11 authority does not cure the constitutional defect. The question is not merely
12 whether parole could be revoked; it is whether Respondents may use that
13 revocation to impose continued detention without process.
14
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17 Even where a statute authorizes detention, the Constitution imposes
18 independent limitations on the government's ability to deprive an individual of
19 liberty. A categorical assertion that detention is "mandatory" does not satisfy that
20 requirement. That requirement necessarily demands an individualized
21 determination that detention is needed to address flight risk or danger to the
22 community, not a categorical assertion that detention is mandatory.
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25 Respondents' failure to engage with the constitutional question is
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1 dispositive. Their reliance on a statutory label cannot substitute for the
2 individualized and procedural safeguards the Constitution requires. They do not
3 contend that Petitioner has been found to pose a danger to the community or a risk
4 of flight. And they do not identify any process through which such a
5 determination has been made or could be challenged. Their reliance on § 1225
6 substitutes a statutory conclusion for the analysis the Constitution requires.
7

8
9 That omission is particularly significant in this case. Petitioner was
10 previously released from custody after the government determined that detention
11 was not necessary. Respondents now seek to justify his continued detention
12 without identifying any materially changed circumstances or providing any
13 individualized explanation for reversing that determination. Section 1225 does not
14 authorize that result. [timing of warrant is after entry]
15
16

17 Respondents' own briefing underscores the weakness of their position.
18 They acknowledge that courts in this District have repeatedly rejected their
19 interpretation of § 1225 under materially similar circumstances. Their attempt to
20 distinguish those cases on the basis of newly discovered evidence does not cure
21 the constitutional defect. Even assuming such information exists, due process
22 requires a meaningful opportunity for Petitioner to challenge it through an
23 individualized determination. Respondents have provided no such opportunity.
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1 [check info received from Brazil]

2 At bottom, the respondents' argument collapses into a single proposition:
3
4 that the invocation of § 1225 is sufficient to justify detention. That proposition is
5 inconsistent with the fundamental principle that liberty may not be deprived
6 arbitrarily. Section 1225 does not authorize detention untethered to individualized
7 justification, nor does it permit the government to dispense with the procedural
8 protections required by due process.
9

10 **E. The Alleged Criminal Warrant Does Not Provide a Lawful Basis for**
11 **Continued Detention**
12

13 Respondents' reliance on an alleged arrest warrant in Brazil does not establish
14 a lawful basis for Petitioner's continued detention. At most, Respondents have
15 identified an untested allegation, not a lawful basis for detention, and have failed
16 to provide the individualized basis required to deprive Petitioner of his liberty.
17

18 Even accepting the Respondents' assertion that Petitioner was aware of the
19 alleged warrant, that fact does not establish that he presently poses a danger to the
20 community or a risk of flight. Awareness of an allegation is not a substitute for an
21 individualized determination that detention is necessary to serve the purposes of
22 civil immigration detention.
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25 Respondents do not identify any determination that Petitioner presently
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1 poses a danger to the community or a risk of flight. They do not explain when the
2 warrant was issued, whether it was independently verified, or how it reflects
3 Petitioner's current circumstances. Nor do they articulate any reasoning
4 connecting the existence of the warrant to the permissible purposes of civil
5 immigration detention.
6

7
8 The existence of an unexamined allegation, standing alone, does not satisfy
9 the requirement that detention be supported by a fact-specific determination that
10 Petitioner poses a danger to the community or a risk of flight. Respondents cannot
11 substitute a conclusory reference to a warrant for the reasoned analysis that due
12 process requires.
13

14 Equally significant, Respondents offer no process through which Petitioner
15 may challenge the allegation they now rely upon to justify his detention. Petitioner
16 has not been afforded any forum in which to dispute or rebut the existence,
17 validity, or relevance of the alleged warrant. The government cannot rely on
18 untested assertions to justify ongoing detention while simultaneously denying the
19 individual any opportunity to contest them.
20
21

22 In short, Respondents have not shown that Petitioner's detention serves a
23 legitimate, individualized purpose. Instead, they have offered a *post hoc*
24 justification untethered from any actual determination of risk. That is insufficient
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26

1 under the Constitution and does not provide a lawful basis for continued
2 detention.

3
4 **F. Respondents' Alternative Request for a Bond Hearing Undermines**
5 **Their Position**

6 Respondents' alternative request for a bond hearing underscores the central
7 defect in their position: they have not established a lawful basis for Petitioner's
8 detention. That is, Respondents now seek the very determination, whether
9 Petitioner presents a danger or a flight risk, that they have failed to make.
10

11
12 Respondents maintain that Petitioner is subject to mandatory detention under 8
13 U.S.C. § 1225(b)(2), a framework that, by their own argument, does not
14 contemplate individualized custody determinations. Yet they simultaneously
15 request that this Court order a bond hearing to assess whether Petitioner poses a
16 danger to the community or a flight risk. Those positions cannot be reconciled. If
17 detention were truly mandatory, no such inquiry would be necessary.
18 Respondents' request, therefore, concedes that Petitioner's continued detention
19 turns on precisely the type of individualized determination they have failed to
20 make.
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23
24 More importantly, Respondents do not contend that any such determination has
25 already occurred. They do not assert that Petitioner has been found to be a danger
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1 to the community or a flight risk. Instead, they seek an opportunity to make that
2 determination only after months of detention. That approach reverses the
3 constitutional framework governing deprivation of liberty.
4

5 Respondents cannot justify detention by detaining first and attempting to
6 establish a basis later. This case is not about whether Respondents might be able
7 to justify Petitioner's detention in the future. It is about whether they have done
8 so. They have not. Their request for a bond hearing, therefore, confirms that
9 Petitioner's current detention lacks a lawful, individualized basis.
10

11 **IV. CONCLUSION AND PRAYER FOR RELIEF**

12
13 Respondents' Return fails to establish a lawful basis for Petitioner's
14 continued detention. Their jurisdictional arguments mischaracterize the Petition
15 and are inconsistent with governing law. Their reliance on 8 U.S.C. § 1225(b)(2)
16 ignores the constitutional limitations on detention and fails to address Petitioner's
17 central claim: that he was redetained without individualized justification and
18 without due process.
19

20
21 Petitioner challenges the legality of his detention, not the commencement of
22 removal proceedings. He need not remain in custody where Respondents have
23 failed to provide any lawful, individualized basis for that detention.
24

25 Accordingly, the Court should reject Respondents' request to dismiss the
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1 Petition, grant the relief requested, and order Petitioner's release or, at a
2 minimum, provide him with a prompt and meaningful opportunity to challenge his
3 detention before a neutral adjudicator.
4

5
6 Respectfully submitted,

7 Dated: May 4, 2026
8

9 //s// Mario Portugal

10 Mario Portugal

11 Pro Bono Counsel for Petitioner,

12 Kevin Rodrigues Macedo
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