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8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 **TRESOR TIDO-NGOUMTSOP,**

12 Petitioner,

13 v.

14 **Warden, Otay Mesa Detention Center;**

15 **Markwayne MULLIN, Secretary, U.S.**

16 Department of Homeland Security;

17 **Todd LYONS, Acting Director, U.S.**

18 Immigration and Customs Enforcement;

19 **Todd BLANCHE, Acting Attorney General of the**

20 United States, U.S. Department of Justice.

21 Respondents
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Case No.: '26CV2913 LL VET



**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 1. Petitioner, Tresor Tido-Ngoumtsop, petitions this Court for a writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and
3 alleges as follows:

4 **INTRODUCTION**

5 2. Petitioner, Tresor Tido-Ngoumtsop, is a native and citizen of Cameroon currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his
8 continued immigration detention following his re-arrest in the interior of the United States after
9 years of authorized liberty in the community.

10 4. Petitioner entered the United States without inspection on or about March 06, 2022,
11 and was subsequently released into the United States on or about April 07, 2022, pursuant to an
12 Order of Release on Recognizance (Form I-220A) under Section 236 of the Immigration and
13 Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations.
14 Following that grant, Petitioner was released into the United States and permitted to reside at
15 liberty in the community.

16 5. Petitioner remained at liberty for a substantial period of time following his release. He
17 complied with his immigration-related obligations and resided in the community without any
18 indication that he posed a danger to the community or a risk of flight during that period. On
19 March 13, 2024, Petitioner was granted Temporary Protected Status pursuant to INA § 244.

20 6. Petitioner was arrested on May 03, 2026, near Camp Pendleton in Oceanside,
21 California while working as an Uber driver. Following that arrest, Immigration and Customs
22 Enforcement took Petitioner into custody.

23 7. At no point following Petitioner's re-detention did Respondents provide Petitioner with
24 an individualized custody determination before a neutral decisionmaker or otherwise provide
25 constitutionally adequate custody review.

26 8. Respondents' continued detention of Petitioner is unlawful. Once the government
27 exercised its discretion to release Petitioner into the United States and permit him to reside at

1 liberty for years, Petitioner acquired significant liberty interests protected by the Due Process
2 Clause.

3 9. Although the government may seek to detain Petitioner based on subsequent events, it
4 may not bypass the procedural safeguards required before depriving him of his liberty. The
5 Constitution does not permit the government to detain first and justify later.

6 10. By continuing to detain Petitioner without an individualized custody determination or
7 constitutionally adequate custody review, Respondents have deprived Petitioner of his liberty in
8 violation of the Due Process Clause of the Fifth Amendment.

9 11. Absent intervention by this Court, no neutral adjudicator will review the legality of
10 Petitioner's detention. Petitioner therefore respectfully requests that this Court declare his
11 detention unlawful and order his immediate release, or, in the alternative, require Respondents to
12 provide a constitutionally adequate custody hearing.

13 CUSTODY

14 12. Petitioner is currently in the legal and physical custody of Respondents and is
15 detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of
16 this Court.

17 JURISDICTION AND VENUE

18 13. This action arises under the United States Constitution and the Immigration and
19 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner's detention
20 under the INA and any inherent or plenary powers the government may claim to continue
21 holding him.

22 14. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
23 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody
24 under the United States' color of authority, and such custody violates the Constitution, laws, or
25 treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality,
26 status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747

1 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends.
2 V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

3 15. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's
4 detention. Federal district courts possess broad authority to issue writs of habeas corpus when a
5 person is held "in custody in violation of the Constitution or laws or treaties of the United States"
6 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that
7 survived the REAL ID Act's jurisdictional restrictions.

8 16. Because Petitioner seeks the traditional habeas remedy of release from allegedly
9 unlawful detention rather than additional administrative review of his underlying claims, his
10 petition presents precisely the type of threshold legality-of-detention question that § 2241 was
11 designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v.*
12 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12). A prior habeas
13 petition challenging Petitioner's detention was filed in another jurisdiction. This petition is filed
14 in a different district and challenges Petitioner's current detention under a materially different
15 factual and legal posture.

16 17. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
17 substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner
18 is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243
19 because Petitioner's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542
20 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

21 18. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction
22 because Petitioner challenges only the legality of his detention, not the validity of removal
23 proceedings or any removal order. Federal courts have consistently recognized that habeas
24 corpus remains available to review the statutory and constitutional basis of immigration
25 detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under
26 28 U.S.C. § 2241.

PARTIES

19. Petitioner, Tresor Tido-Ngoumtsop, is a native and citizen of Cameroon currently detained at the Otay Mesa Detention Center in San Diego, California.

20. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego, California, is Petitioner's immediate custodian, and is responsible for Petitioner's confinement.

21. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS).

22. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE).

23. Respondent Todd Blanche is the Acting Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

24. All Respondents are named in their official capacities.

STATEMENT OF FACTS

25. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Cameroon, who entered the United States without inspection on or about March 06, 2022, and was subsequently released into the United States on or about April 07, 2022.

26. Petitioner was granted an Order of Release on Recognizance (Form I-220A) on April 07, 2022, pursuant to Section 236 of the Immigration and Nationality Act and the provisions of Title 8 of the Code of Federal Regulations. (Ex. 1.) Petitioner was also issued an Arrival-Departure Record (Form I-94). (Ex. 2.) In addition, on March 13, 2024, Petitioner was granted Temporary Protected Status pursuant to Section 244 of the Immigration and Nationality Act. (Ex. 3.)

27. Following his release, Petitioner resided at liberty in the United States for a substantial period of time and complied with his immigration-related obligations while living in the community.

1 28. Petitioner was later arrested on May 03, 2026, near Camp Pendleton in Oceanside,
2 California while working as an Uber driver.

3 29. Following that arrest, Immigration and Customs Enforcement took Petitioner into
4 custody. Respondents provided no explanation identifying any individualized basis for
5 Petitioner's continued detention and did not provide Petitioner with any individualized custody
6 determination before a neutral decisionmaker.

7 30. Following his arrest, Petitioner was transferred through multiple ICE detention
8 facilities, including facilities in Florida and Arizona, before ultimately being transferred to the
9 Otay Mesa Detention Center in San Diego, California, where he is currently detained.

10 31. At no point following Petitioner's re-detention did DHS provide Petitioner with an
11 individualized custody hearing or any constitutionally adequate custody review.

12 32. Despite Petitioner's prior release into the community and subsequent grant of
13 Temporary Protected Status, Respondents continue to detain Petitioner without any
14 individualized determination regarding danger, flight risk, or the necessity of continued
15 detention.

16 33. Respondents have not provided any individualized immigration custody
17 determination or afforded Petitioner any opportunity to be heard regarding whether continued
18 detention is necessary, notwithstanding the fact that Petitioner was taken into custody following
19 his arrest.

20 **REQUIREMENTS OF 28 U.S.C. § 2243**

21 34. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas
22 corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled
23 to relief. If an OSC is issued, the statute requires that Respondents file a return "within three
24 days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
25 (emphasis added).

26 35. Federal courts have long emphasized the importance of habeas corpus as a
27 protection against unlawful restraint. The Supreme Court has described the Great Writ as

1 “perhaps the most important writ known to the constitutional law of England, affording as it
2 does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
3 *Noia*, 372 U.S. 391, 400 (1963).

4 36. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain
5 a prompt and expeditious remedy. As the Ninth Circuit has explained, “The statute itself directs
6 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
7 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000)
8 (citation omitted). The court cautioned that delays in habeas proceedings risk creating the
9 impression “that courts are more concerned with efficient trial management than with the
10 vindication of constitutional rights.” *Id.*

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 37. In habeas corpus proceedings, exhaustion of administrative remedies is prudential,
13 not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
14 prudential exhaustion where “administrative remedies are inadequate or not efficacious, pursuit
15 of administrative remedies would be a futile gesture, irreparable injury will result, or the
16 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
17 (9th Cir. 2004)). Here, exhaustion should be excused because administrative remedies are (1)
18 futile and (2) Petitioner's continued detention results in irreparable harm.

19 38. Exhaustion would be futile because, to the extent DHS treats Petitioner as subject to
20 detention under 8 U.S.C. § 1225(b), Immigration Judges lack jurisdiction to conduct custody
21 redetermination hearings for individuals DHS classifies as subject to § 235(b) or otherwise treats
22 as applicants for admission under that provision. See 8 C.F.R. § 1003.19(h)(2)(i)(B). In this
23 District, Immigration Judges routinely state on the record that they lack authority to review
24 custody where DHS invokes § 235(b). If Petitioner were to request a bond hearing, DHS would
25 rely on that statutory classification to block review, and the Immigration Judge would be
26 required to decline jurisdiction. Because no administrative mechanism exists to obtain custody
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1 review under DHS's asserted detention authority, any attempt to exhaust administrative remedies
2 would be futile.

3 39. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his
4 detention violates the Constitution and the INA. Constitutional claims and pure questions of law
5 —such as whether DHS has statutory authority to detain Petitioner and whether detention under
6 § 1225(b) is lawful in these circumstances—fall outside the agency's adjudicatory competence.

7 See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
8 (exhaustion excused where the agency “does not have jurisdiction to review” constitutional
9 claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

10 There is no administrative forum that can determine whether DHS may lawfully invoke §
11 1225(b)(2) to detain Petitioner under these circumstances.

12 40. Petitioner suffers irreparable harm for each additional day he remains unlawfully
13 detained. Even brief periods of unlawful civil detention inflict significant deprivation of liberty
14 and emotional distress. Petitioner's continued detention following years of authorized liberty in
15 the community further magnifies these ongoing harms. Courts routinely excuse exhaustion where
16 unlawful detention results in irreparable injury. Petitioner's ongoing detention therefore warrants
17 waiver of prudential exhaustion.

18 **LEGAL FRAMEWORK**

19 41. The Immigration and Nationality Act distinguishes between detention at the time of
20 entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225,
21 1226.

22 42. Section 235 governs inspection-stage detention of individuals encountered at or near
23 the time of entry while their admissibility is being determined. By contrast, Section 236(a)
24 governs the arrest and detention of noncitizens who have already entered the United States and
25 are later taken into custody pending removal proceedings.

26 43. Once the Department of Homeland Security releases a noncitizen into the United
27 States pursuant to its custody authority under 8 U.S.C. § 1226 and permits that individual to

1 reside at liberty in the community for a prolonged period of time, the inspection-stage detention
2 framework no longer applies in the same manner as it would to a noncitizen detained
3 immediately upon entry. Any subsequent detention following a later interior arrest must comply
4 with the constitutional requirements governing civil immigration detention, including
5 individualized custody review consistent with due process

6 44. Federal courts have repeatedly recognized that individuals who were released from
7 custody and later re-detained in the interior of the United States are not subject to mandatory
8 detention under § 1225(b), but are instead entitled to custody review under § 1226(a).

9 45. The Due Process Clause protects all persons within the United States from arbitrary
10 detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Freedom from physical restraint lies
11 at the core of the liberty protected by the Constitution.

12 46. Immigration detention is civil in nature and is permissible only when justified by
13 legitimate governmental interests, such as ensuring appearance at proceedings or protecting the
14 community. *Id.* at 690–91.

15 47. Where the government has previously released a noncitizen from custody and
16 permitted him to reside at liberty in the community, that release reflects a determination that
17 detention was not necessary to serve the purposes of civil immigration detention. Once that
18 liberty has been granted, continued detention must comport with the requirements of due
19 process. The existence of any subsequent arrest does not relieve Respondents of their
20 constitutional obligation to provide constitutionally adequate process and an individualized
21 custody determination before a neutral decisionmaker. Continued detention without any
22 individualized determination and without constitutionally adequate process violates the Due
23 Process Clause.

24 48. The Administrative Procedure Act prohibits agency action that is arbitrary,
25 capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must provide a
26 reasoned explanation for its actions based on the relevant facts and circumstances.

1 49. Re-detaining a noncitizen after a prolonged period of liberty—without providing an
2 individualized justification, without constitutionally adequate process, and without applying the
3 proper statutory framework—constitutes arbitrary, capricious, and unlawful agency action.

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

6 **Violation of Due Process U.S. Constitution Amendment V**

7 50. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all
8 preceding paragraphs.

9 51. The Due Process Clause of the Fifth Amendment prohibits the federal government
10 from depriving any person of “life, liberty, or property, without due process of law.” U.S.
11 CONST. amend. V. This protection applies to all persons within the United States, including
12 noncitizens, “whether their presence here is lawful, unlawful, temporary, or permanent.”
13 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

14 52. Petitioner entered the United States without inspection on or about March 06, 2022,
15 and was subsequently released into the United States on or about April 07, 2022, pursuant to an
16 Order of Release on Recognizance (Form I-220A). Petitioner thereafter resided at liberty in the
17 United States for a substantial period of time and was later granted Temporary Protected Status
18 pursuant to INA § 244. Following his later arrest in the interior of the United States, Respondents
19 took Petitioner into immigration custody without providing any individualized custody
20 determination or constitutionally adequate custody review.

21 53. Having previously been released into the community and permitted to reside at liberty
22 in the United States for years, Petitioner acquired substantial liberty interests protected by the
23 Due Process Clause. Continued detention without an individualized determination and without
24 constitutionally adequate process constitutes an arbitrary deprivation of liberty in violation of the
25 Fifth Amendment. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533
26 U.S. 678, 690 (2001).

1 54. Although the government may seek to detain Petitioner based on subsequent events,
2 continued civil immigration detention must comply with the requirements of due process and
3 must be supported by an individualized custody determination consistent with the governing
4 statutory framework. The Constitution does not permit the government to detain first and justify
5 later.

6 55. By continuing to detain Petitioner without an individualized custody determination
7 and without constitutionally adequate custody review, Respondents have violated the Due
8 Process Clause of the Fifth Amendment.

9 **COUNT 2**

10 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Not**
11 **in Accordance with Law and in Excess of Statutory Authority)**

12 56. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
13 allegations in the paragraphs above.

14 57. Under the Administrative Procedure Act, a court shall “hold unlawful and set aside
15 agency action” that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
16 with law. 5 U.S.C. § 706(2)(A).

17 58. Agency action is arbitrary and capricious where the agency fails to consider relevant
18 factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational
19 connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass’n v. State*
20 *Farm*, 463 U.S. 29, 43 (1983).

21 59. An agency must provide a reasoned explanation for its actions based on the facts and
22 circumstances of the individual case. *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019).

23 60. Here, Respondents re-detained Petitioner after previously releasing him into the
24 United States pursuant to an Order of Release on Recognizance and permitting him to reside at
25 liberty in the community for a substantial period of time. Respondents have provided no
26 reasoned explanation for Petitioner’s continued detention and have failed to provide any
27 individualized custody determination or constitutionally adequate custody review.

61. Respondents have further failed to articulate any reasoned basis for subjecting Petitioner to continued detention under an inspection-stage detention framework after years of authorized liberty in the community and a subsequent grant of Temporary Protected Status.

62. By continuing to detain Petitioner without a reasoned explanation, without individualized custody review, and without applying the proper constitutional and statutory framework, Respondents have acted arbitrarily, capriciously, and contrary to law.

63. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents' return, consistent with 28 U.S.C. § 2243;

C) Declare that Petitioner's continued detention without an individualized custody determination or constitutionally adequate custody review violates the Due Process Clause of the Fifth Amendment;

D) Declare that Respondents' continued detention of Petitioner without individualized custody review is unlawful under the Constitution and governing immigration detention framework;

E) Declare that Respondents' actions detaining Petitioner without a reasoned explanation, without an individualized justification, and without complying with governing procedures were arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2);

F) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to 5 U.S.C. § 706(2)(A);

1 G) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
2 custody;

3 H) Order Respondents to return Petitioner's personal property and identity documents, including
4 his driver's license, employment authorization document, and any other personal belongings
5 confiscated in connection with his detention.

6 I) In the alternative, order a constitutionally adequate custody hearing at which DHS bears the
7 burden of justifying Petitioner's continued detention by clear and convincing evidence, and the
8 neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any
9 bond imposed;

10 J) Enjoin Respondents from transferring Petitioner outside this District without prior approval of
11 this Court;

12 K) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
13 2412, and any other basis authorized by law; and

14 L) Grant such other and further relief as the Court deems just and proper.

15 Respectfully submitted,

16
17 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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23 Counsel for Petitioner

24 Dated: May 08, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and Petitioner's relatives, as well as my review of available immigration and court records. Those records include documentation issued by the Department of Homeland Security, including Petitioner's Order of Release on Recognizance (Form I-220A) and Temporary Protected Status documentation. I have also personally communicated with Petitioner's relatives regarding the circumstances of his detention and personally visited Petitioner at the Otay Mesa Detention Center on or about May 07, 2026, during which I reviewed the relevant documentation with him.

Based on my review of this information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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Counsel for Petitioner

Dated: May 08, 2026