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6 **Diony Yordano Bastidas-Silva**

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8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Diony Yordano Bastidas-Silva,

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12 Petitioner,

13 v.

14 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
15 Diego Field Office, Immigration and Customs
Enforcement; et al,

16 Respondents.
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Case No. **'26CV3014 RMB MSB**

**WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

1 Petitioner Diony Yordano Bastidas-Silva, through counsel, petitions for a writ of habeas
2 corpus under 28 U.S.C. § 2241 and alleges:

3 **I. INTRODUCTION**

- 4 1. Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 because he is in federal
5 immigration custody at the Otay Mesa Detention Center and is being detained in
6 violation of the Constitution and laws of the United States.
- 7 2. Respondents' continued detention of Petitioner without a constitutionally adequate,
8 meaningful, and individualized custody determination violates the Immigration and
9 Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the
10 Fifth Amendment.
- 11 3. Petitioner is a Venezuelan asylum seeker who entered the United States through the CBP
12 One process on or about May 1, 2024, after fleeing Venezuela and surviving a dangerous
13 journey through the Darién jungle and multiple countries. Since entering the United
14 States, Petitioner attempted to comply with his immigration obligations, filed an asylum
15 application within one year, appeared for immigration court, pursued reopening and
16 appeal rights, and attempted to obtain release from custody.
- 17 4. Petitioner was arrested after appearing for immigration court on or about May 23, 2025,
18 despite having appeared with counsel and despite having filed asylum. Officers allegedly
19 told Petitioner he was being arrested because his Temporary Protected Status had
20 expired, but Petitioner never had TPS and never applied for TPS. His filing was an
21 asylum application. That erroneous stated basis for custody has never been meaningfully
22 corrected through a reasoned and individualized detention determination.
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- 1 5. Petitioner has now been detained for nearly one year. Although he received a bond
2 hearing on or about March 26, 2026, after partial relief in a prior habeas case, that
3 process did not cure the constitutional violation because Petitioner remains detained
4 without meaningful review of whether detention is actually necessary, and his counsel
5 apparently failed to file or confirm filing of the bond appeal after the bond denial.
- 6 6. Petitioner requests expedited issuance of an Order to Show Cause pursuant to 28 U.S.C. §
7 2243; an order directing Respondents to release Petitioner immediately; or, in the
8 alternative, an order requiring Respondents to provide a prompt constitutionally adequate
9 custody hearing before a neutral adjudicator at which the Government bears the burden of
10 justifying continued detention by clear and convincing evidence and the adjudicator must
11 consider ability to pay and less restrictive alternatives.

12 II. JURISDICTION AND VENUE

- 13 7. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is “in custody”
14 under color of federal authority within this judicial district and alleges that such custody
15 violates the Constitution and laws of the United States.
- 16 8. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 17 9. To the extent Petitioner seeks relief under the Administrative Procedure Act in addition
18 to habeas relief, this Court also has jurisdiction under 28 U.S.C. § 1331.
- 19 10. Venue is proper in this District because Petitioner is detained within the Southern District
20 of California.
- 21 11. This Petition challenges Petitioner’s present physical confinement and the legality of
22 Respondents’ continuing custody over him. Petitioner does not ask this Court to review
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1 the merits of his removal order, decide his asylum claim, or substitute its judgment for
2 the immigration courts on the merits of his protection applications.

3 III. REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

4 12. Under 28 U.S.C. § 2243, this Court must either grant the writ or issue an Order to Show
5 Cause “forthwith” unless it appears from the petition that Petitioner is not entitled to
6 relief.

7 13. Habeas corpus is a fundamental mechanism for testing the legality of executive detention
8 and provides a swift and imperative remedy for unlawful restraint of liberty. *Fay v. Noia*,
9 372 U.S. 391, 400 (1963).

10 14. The Ninth Circuit has emphasized the urgent nature of habeas review, explaining that
11 “[t]he application for the writ usurps the attention and displaces the calendar of the judge
12 or justice who entertains it and receives prompt action from him within the four corners
13 of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

14 15. Petitioner’s detention is ongoing, severe, and time-sensitive. He remains confined while
15 his immigration appeal and protection claims remain unresolved, and continued detention
16 substantially interferes with his ability to gather evidence, communicate with counsel,
17 and protect his rights.

18 IV. PARTIES

19 16. Petitioner Diony Yordano Bastidas-Silva is detained by the Department of Homeland
20 Security (“DHS”), through U.S. Immigration and Customs Enforcement (“ICE”), at the
21 Otay Mesa Detention Center (“OMDC”) in San Diego, California.

22 17. Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal
23 Operations, San Diego Field Office. In that official capacity, he is responsible for
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1 Petitioner's immigration custody and continued detention within this District. He is sued
2 in his official capacity only.

3 18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center,
4 where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued
5 in his official capacity only.

6 19. Respondent Department of Homeland Security is the federal agency responsible for
7 implementing and enforcing the Immigration and Nationality Act, including the detention
8 and removal of noncitizens.

9 20. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. §
10 2241. Respondents are the officials and agency responsible for Petitioner's custody and
11 continued detention.

12 V. FACTUAL BACKGROUND

13 21. Petitioner is a native and citizen of Venezuela. In 2024, Petitioner fled Venezuela and
14 traveled toward the United States through the Darién jungle, Colombia, Panamá, Costa
15 Rica, Nicaragua, Honduras, Guatemala, and Mexico. During that journey, Petitioner was
16 extorted, robbed of his belongings, discriminated against, kidnapped on three occasions,
17 forced to go days without food, required to walk long distances, and forced to sleep on
18 the street throughout the trip.

19 22. Petitioner eventually arrived in Mexico City, where he waited for a CBP One
20 appointment. Petitioner's CBP One appointment was approved for May 1, 2024, at
21 approximately 2:00 a.m. through San Ysidro–El Chaparral. After entering the United
22 States, Petitioner began working and attempted to comply responsibly with his
23 immigration process.

1 23. Months after entering the United States, Petitioner went to immigration court at 880 Front
2 Street, fourth floor, to submit a change of address. Petitioner relied on free legal
3 assistance available at the court because his case was connected to Rhode Island,
4 although he was located near that court at the time. Petitioner sent the correspondence as
5 instructed but did not receive a response in the following months. When he later checked
6 online, he saw that he had an order of deportation.

7 24. Petitioner filed a motion to reopen with supporting evidence. He was given a court date
8 for January 6, 2025. At that hearing, the Immigration Judge instructed Petitioner that he
9 needed to file an application for immigration relief and appear with counsel at the next
10 hearing. Petitioner thereafter filed his asylum application in April 2025, within one year
11 of entering the United States.

12 25. Petitioner's next immigration court hearing was scheduled for May 23, 2025. Petitioner
13 appeared with counsel, and his asylum application had already been filed. At that hearing,
14 DHS requested expedited deportation, but the Immigration Judge did not order expedited
15 deportation at that time and instead set another hearing for July.

16 26. After Petitioner exited the courtroom on May 23, 2025, he was arrested and taken to the
17 basement of the courthouse. Petitioner was told during that process that he was being
18 arrested because his TPS had expired. Petitioner never had TPS and never applied for
19 TPS. Petitioner explained to the officer that he had filed only asylum.

20 27. During the arrest or processing, Petitioner injured his hand. He continues to experience
21 pain. Medical staff have treated the injury as muscular and have provided only ibuprofen
22 and naproxen.
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1 28. The day after his arrest, after dinner, Petitioner was transferred to the Otay Mesa
2 Detention Center. Petitioner has remained detained in immigration custody since that
3 arrest. He is not serving a criminal sentence. He is detained solely under federal
4 immigration authority.

5 29. Petitioner was denied bond on or about June 20, 2025, in immigration court at the
6 detention center. The bond hearing was conducted via video. Petitioner has remained
7 detained despite the fact that his arrest followed an immigration court appearance, despite
8 his pending asylum application, and despite his efforts to comply with the immigration
9 process.

10 30. During the asylum process, Petitioner learned that counsel had not submitted required
11 documents or evidence within the required deadlines. Petitioner therefore changed
12 counsel.

13 31. Petitioner's Immigration Judge at that time was Judge Paula Dixon. After several months,
14 Petitioner was reassigned to Immigration Judge Amelia Anderson, who changed his final
15 hearing date from January 09, 2026, to December 22, 2025.

16 32. On or about December 19, 2025, DHS filed a safe-third-country motion. At the
17 December 22, 2025, hearing, Petitioner appeared with new counsel. New counsel
18 requested additional time to respond to DHS's motion and gather evidence. The
19 Immigration Judge gave counsel until January 17, 2026, to submit evidence.

20 33. New counsel did not submit the evidence by the deadline. Instead, counsel submitted the
21 evidence on January 23, 2026, only three days before the January 26, 2026, hearing. The
22 Immigration Judge determined that the defense had been abandoned because the evidence
23 had not been filed on time.
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1 34. Petitioner was later interviewed and was told that he should be expelled or sent to
2 Ecuador to seek asylum there. Petitioner fears Ecuador and does not believe Ecuador is
3 safe for him because criminal organizations operating throughout South America,
4 including [REDACTED]
5 [REDACTED] create a serious danger to him.

6 35. Petitioner's underlying protection claim is based on his fear of persecution and torture in
7 Venezuela. Petitioner was formerly a member [REDACTED] He
8 states that he was persecuted because he refused to comply with orders that violated the
9 fundamental rights of Venezuelans. Petitioner states that he was kidnapped, tortured,
10 persecuted, and forced into exile because of those events.

11 36. Petitioner was given until February 26, 2026, to appeal the Immigration Judge's decision.
12 New Counsel filed an appeal on February 12, 2026. The appeal remains pending before
13 the Board of Immigration Appeals.

14 37. Petitioner was given until April 28, 2026, to submit legal arguments before the Board of
15 Immigration Appeals. New counsel did not submit the legal arguments by that deadline
16 and instead requested an extension. New counsel stated to Petitioner on 05/07/2026 that
17 the extension was rejected for the legal brief.

18 38. Petitioner has lacked effective and consistent legal assistance because his prolonged
19 detention has prevented him from accessing resources and counsel.

20 39. Petitioner filed Case No. 3:26-cv-1249-TWR-DDL. That petition was granted in part, and
21 Petitioner received a bond hearing on or about March 26, 2026. At that hearing,
22 Petitioner presented bond evidence, including Casa Marianela and supporting
23 documentation, but the immigration court denied bond.
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1 40. Petitioner filed Case No. 3:26-cv-2144-RSH-MSB. That petition was dismissed because
2 Petitioner “does not address whether he has received a bond hearing from the
3 immigration court, and was denied bond; or whether he has been refused such a hearing.
4 Petitioner does not provide a basis in federal law for this Court ordering the relief he
5 seeks, and his assertions do not establish that “[h]e is in custody in violation of the
6 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).”

7 41. Petitioner filed Case No. 3:26-cv-02555-TWR-DDL. That petition was also dismissed
8 because “Petitioner has failed to exhaust his administrative remedies by appealing to the
9 Board of Immigration Appeals and has not raised any basis for waiving exhaustion, the
10 Court DENIES WITHOUT PREJUDICE the Petition. *See Leonardo v. Crawford*, 646
11 F.3d 1157, 1161 (9th Cir. 2011) (remanding with the instruction to dismiss the petition
12 without prejudice because the petitioner had not exhausted his administrative remedies or
13 demonstrated grounds for excusing exhaustion).”

14 42. This Petition discloses Petitioner’s prior habeas filings and outcomes. The prior
15 dismissals did not resolve the merits of Petitioner’s present constitutional and statutory
16 claims because they were dismissed for procedural deficiencies connected to Petitioner’s
17 incomplete disclosure of earlier habeas history. The partial grant in the first habeas case
18 also did not resolve the legality of Petitioner’s current detention because Petitioner
19 remains detained after a bond process that failed to provide meaningful relief or reliable
20 review.

21 43. On or about April 7, 2026, new counsel brought Petitioner bond appeal documents.
22 Petitioner understood that new counsel would file the bond appeal. Petitioner later
23 learned that new counsel did not file the bond appeal or did not provide him confirmation
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1 that the bond appeal had been filed. Counsel later said the available options could include
2 a motion, appeal, or habeas corpus. Petitioner then realized that new counsel had not
3 appealed the bond denial. New counsel also said she would visit Petitioner afterward, but
4 Petitioner states that she did not do so and he received no further meaningful update
5 regarding the bond appeal.

6 44. Petitioner remains detained at Otay Mesa Detention Center. His BIA appeal remains
7 pending. His detention has lasted nearly one year. He has appeared for immigration
8 proceedings, filed asylum within one year, sought reopening, pursued appeal rights,
9 presented a proposed release plan, and attempted to obtain habeas relief. Yet Respondents
10 continue to detain him without a constitutionally adequate custody determination
11 showing that detention remains necessary.

12 45. Petitioner does not pose a danger to the community or a flight risk that would justify
13 continued civil detention without constitutionally adequate process. Any legitimate
14 government interest can be addressed through less restrictive alternatives, including
15 release on bond, supervision, reporting requirements, electronic monitoring, compliance
16 with all immigration-court conditions, and placement at Casa Marianela or another
17 approved residence.

18 19 VI. LEGAL FRAMEWORK

20 46. Immigration detention is civil and nonpunitive in nature and may be imposed only to
21 serve legitimate regulatory purposes, such as ensuring appearance at immigration
22 proceedings or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001);
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1 Reno v. Flores, 507 U.S. 292, 306 (1993). Detention that is excessive in relation to these
2 purposes, or that lacks adequate procedural safeguards, violates due process.

3 47. Noncitizens in removal proceedings are entitled to the protections of the Due Process

4 Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 693; *Demore v. Kim*, 538 U.S.
5 510, 523 (2003). At minimum, due process requires a meaningful opportunity to contest
6 the factual and legal basis for continued civil confinement before a neutral
7 decisionmaker. Due process is not satisfied by the mere existence of a hearing if the
8 hearing does not meaningfully test whether continued detention is necessary as applied to
9 the individual.

10 48. The Supreme Court has held that the INA may not be rewritten by statutory interpretation
11 to impose automatic periodic bond hearings. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).
12 *Jennings*, however, did not foreclose as-applied constitutional challenges to immigration
13 detention. A detained person may still seek habeas relief where the length, circumstances,
14 and procedures surrounding detention render continued confinement unconstitutional.

15 49. The Ninth Circuit has recognized that as-applied challenges to prolonged immigration
16 detention require a fact-specific due process analysis. *Rodriguez Diaz v. Garland*, 53
17 F.4th 1189 (9th Cir. 2022). *Rodriguez Diaz* rejected a categorical constitutional rule
18 requiring new bond hearings at a fixed time interval, but it reaffirmed that courts must
19 consider the actual circumstances of the detention, including the length of confinement,
20 likely future duration, reasons for delay, and adequacy of the procedures already
21 provided.

22 50. The controlling constitutional framework is *Mathews v. Eldridge*, 424 U.S. 319 (1976).

23 Under *Mathews*, the Court balances the private interest affected, the risk of erroneous
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1 deprivation under the procedures used and the probable value of additional safeguards,
2 and the Government's interest. Here, Petitioner's private interest is the most basic liberty
3 interest: freedom from physical confinement. That interest is especially weighty because
4 Petitioner has been detained for nearly one year, has a pending appeal, and remains
5 confined while attempting to litigate serious protection claims.

6 51. The risk of erroneous deprivation is high because Petitioner's detention began after he
7 appeared for immigration court and was allegedly justified by an erroneous TPS
8 rationale. Petitioner never had TPS and never applied for TPS; he filed asylum. The risk
9 of error increased when Petitioner's prior attorneys failed to timely submit evidence,
10 failed to timely submit or complete briefing before the Board, and apparently failed to
11 file or confirm filing of a bond appeal after Petitioner's March 26, 2026 bond denial. The
12 value of additional safeguards is substantial because a new constitutionally adequate
13 custody hearing would require the Government to explain the factual and legal basis for
14 continued detention, address the erroneous TPS rationale, and show why bond or less
15 restrictive alternatives are insufficient.

16 52. The Government's interests do not justify continued detention without adequate process.
17 The Government has legitimate interests in ensuring appearance and protecting the
18 community, but those interests can often be served through bond, reporting, supervision,
19 electronic monitoring, and other conditions short of detention. *Hernandez v. Sessions*,
20 872 F.3d 976 (9th Cir. 2017), recognizes that immigration custody determinations must
21 meaningfully consider ability to pay and alternatives to detention where bond is used as
22 the mechanism for release. *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), recognized
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1 the importance of a meaningful burden of proof in immigration bond proceedings to
2 protect against erroneous deprivation of liberty.

3 53. Custody determinations under 8 U.S.C. § 1226(a) must be individualized. The statute
4 authorizes release on bond or conditional parole and does not require detention as the
5 default outcome. 8 U.S.C. § 1226(a). Implementing regulations provide for custody
6 redetermination before an Immigration Judge. 8 C.F.R. §§ 1236.1(d), 1003.19. Under
7 *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), custody determinations require
8 consideration of individualized factors, including fixed address, family and community
9 ties, immigration history, record of appearances, criminal history, manner of entry, and
10 eligibility for relief. Under *Matter of Urena*, 25 I. & N. Dec. 140 (BIA 2009), where
11 danger is alleged, the agency must make a threshold danger assessment before reaching
12 other custody considerations.

13 54. Because Petitioner is not serving a criminal sentence and remains in active immigration
14 proceedings with a pending BIA appeal, his continued detention must remain tied to
15 legitimate civil regulatory purposes and must be supported by meaningful process. A
16 bond hearing that does not meaningfully address the individual's actual circumstances,
17 release plan, ability to comply with conditions, and less restrictive alternatives does not
18 automatically satisfy due process. Nor does a bond hearing cure the constitutional
19 violation where meaningful review of the denial is lost through counsel's failure to file or
20 confirm the appeal.

21 55. The Administrative Procedure Act provides an independent basis for relief where agency
22 action is arbitrary, capricious, an abuse of discretion, contrary to constitutional right, not
23 in accordance with law, in excess of statutory authority, or taken without observance of
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1 required procedure. 5 U.S.C. § 706(2). Agency action is arbitrary and capricious where
2 the agency fails to consider an important aspect of the problem, offers an explanation that
3 runs counter to the evidence, or reaches a decision that is implausible in light of the
4 record. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
5 U.S. 29 (1983). The agency must provide a reasoned explanation reflecting a rational
6 connection between the facts found and the choice made. *Dep't of Com. v. New York*, 139
7 S. Ct. 2551 (2019).

8 56. Respondents' continuing custody of Petitioner is arbitrary and unlawful because
9 Petitioner's detention allegedly began with a materially incorrect TPS explanation;
10 Respondents have not provided a reasoned individualized decision showing why
11 detention remains necessary; and the custody process has failed to meaningfully consider
12 Petitioner's pending appeal, appearance history, proposed residence, protection claims,
13 counsel-related procedural prejudice, ability to comply with conditions, and less
14 restrictive alternatives.

15 VII. CLAIMS FOR RELIEF (HABEAS GROUNDS)

16 **Ground One: Violation of the Administrative Procedure Act — Abuse of Discretion** 17 **and Arbitrary and Capricious Continued Detention.**

18 57. Petitioner incorporates by reference all preceding paragraphs.

19 58. This Court has jurisdiction under 28 U.S.C. § 2241 to remedy unlawful federal custody,
20 including immigration custody maintained in violation of the Constitution or laws of the
21 United States. Petitioner also seeks relief under the Administrative Procedure Act, 5
22 U.S.C. § 701 et seq., to the extent Respondents' custody decision constitutes reviewable
23 agency action and no other adequate remedy provides complete relief.
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59. Under the APA, a reviewing court must “hold unlawful and set aside agency action” found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious where the agency fails to consider an important aspect of the problem, offers an explanation contrary to the evidence, or fails to provide a rational connection between the facts found and the choice made. *State Farm*, 463 U.S. 29; *Dep’t of Com.*, 139 S. Ct. 2551.

60. Respondents have detained and continued to detain Petitioner without a reasoned, individualized assessment of his actual circumstances. Petitioner entered the United States through CBP One, attempted to comply with his immigration obligations, filed asylum within one year, appeared in immigration court with counsel, pursued reopening and appeal rights, and presented a proposed release plan. These facts bear directly on whether detention is actually necessary, yet Respondents continue to detain him without a reasoned explanation demonstrating that confinement is required to serve any legitimate regulatory purpose.

61. Respondents’ custody action is especially arbitrary because Petitioner alleges that officers told him he was being arrested because his TPS had expired, even though Petitioner never had TPS and never applied for TPS. A custody action that begins from a materially incorrect factual premise cannot satisfy reasoned decision-making unless Respondents provide a lawful, individualized, and evidence-based explanation for the detention. On information and belief, Respondents have not provided Petitioner with such an explanation.

62. Respondents have also failed to meaningfully consider whether any legitimate governmental interest could be satisfied through less restrictive alternatives to detention,

1 including release on recognizance, bond, supervision, reporting requirements, electronic
2 monitoring, or placement at Casa Marianela or another approved residence. This failure is
3 unreasonable given Petitioner's appearance at immigration court, pending BIA appeal,
4 timely filed asylum application, asserted fear-based claims, proposed release plan, and
5 lack of any meaningful individualized finding that continued detention is necessary.

6 63. The March 26, 2026 bond hearing did not cure the arbitrary nature of Respondents'
7 continued custody. Petitioner received that hearing only after partial relief in a prior
8 habeas case. Although Petitioner presented bond evidence, including Casa Marianela and
9 supporting documentation, bond was denied. Petitioner then apparently lost meaningful
10 review of the bond denial because counsel did not file or confirm filing of the bond
11 appeal. A custody process that denies release and then leaves Petitioner without
12 meaningful review does not constitute reasoned agency action.

13 64. By maintaining Petitioner's custody without a reasoned, individualized decision and
14 without procedures adequate to test the necessity of confinement as applied, Respondents
15 acted arbitrarily and capriciously and abused their discretion in violation of 5 U.S.C. §
16 706(2)(A).

17 65. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
18 custody decision as applied and ordering his immediate release.

19 **Ground Two: Violation of the Administrative Procedure Act — Not in Accordance**
20 **with Law, In Excess of Statutory Authority, and Without Observance of Required**
21 **Procedure.**

22 66. Petitioner realleges and incorporates all preceding paragraphs.
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1 67. The APA requires a court to set aside agency action that is “not in accordance with law,”
2 “in excess of statutory jurisdiction, authority, or limitations,” or “without observance of
3 procedure required by law.” 5 U.S.C. § 706(2)(A), (C), (D).

4 68. Petitioner is not serving a criminal sentence and remains in active immigration
5 proceedings, including a pending appeal before the Board of Immigration Appeals.
6 Respondents have not identified a valid individualized basis requiring mandatory
7 detention as applied to Petitioner. His custody must therefore be justified through a
8 lawful detention framework and constitutionally adequate procedures.

9 69. To the extent Petitioner’s detention is governed by 8 U.S.C. § 1226(a), detention is
10 discretionary rather than automatic. Section 1226(a) authorizes DHS either to detain the
11 person or to release the person on bond or conditional parole. That authority must be
12 exercised within statutory limits and through a lawful, individualized decision that
13 accounts for the person’s actual circumstances and available alternatives to detention.

14 70. Respondents have maintained Petitioner’s detention without providing a lawful custody
15 process consistent with the discretionary detention framework. Petitioner’s continued
16 confinement has not been supported by a constitutionally adequate individualized
17 determination that he presents a danger or flight risk that cannot be addressed through
18 bond, supervision, reporting, electronic monitoring, or other noncustodial conditions.

19 71. The custody process also failed to observe required procedure because Petitioner’s
20 continued detention has proceeded despite a materially erroneous stated basis for arrest
21 and despite counsel-related failures that deprived him of meaningful review of the March
22 26, 2026 bond denial. Petitioner was told his TPS had expired, but he never had TPS. He
23 was later denied bond, and counsel apparently failed to file or confirm filing of the bond
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1 appeal. The result is ongoing detention without a lawful and reliable mechanism for
2 testing whether detention remains necessary.

3 72. Respondents' continued detention of Petitioner without a lawful individualized custody
4 determination is not in accordance with law, exceeds the lawful limits of discretionary
5 civil detention, and/or was taken without observance of procedure required by law, in
6 violation of 5 U.S.C. § 706(2)(A), (C), and (D).

7 73. Petitioner is entitled to habeas and APA relief setting aside Respondents' unlawful
8 custody decision as applied and ordering his immediate release.

9 **Ground Three: Violation of the Fifth Amendment Procedural Due Process Clause**
10 **— As-Applied Challenge to Prolonged Civil Detention Without a Constitutionally**
11 **Adequate Custody Determination.**

12 74. Petitioner realleges and incorporates all preceding paragraphs.

13 75. The Due Process Clause prohibits the federal government from depriving any person of
14 liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S.
15 678 (2001); *Reno v. Flores*, 507 U.S. 292 (1993). Noncitizens in removal proceedings are
16 entitled to due process, and immigration detention remains civil and nonpunitive.

17 Because civil detention may be imposed only to serve legitimate regulatory purposes,
18 continued confinement violates due process when it becomes excessive, arbitrary, or
19 unsupported by procedures adequate to test whether detention remains necessary.

20 76. Petitioner brings this claim as an as-applied constitutional challenge to his continued civil
21 detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), held that the INA may not be
22 rewritten by statutory interpretation to impose automatic bond hearings, but Jennings did
23 not foreclose individualized constitutional challenges to prolonged immigration
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1 detention. The Ninth Circuit has likewise recognized that prolonged detention claims
2 require a practical, fact-specific due process analysis considering the length of detention,
3 the likely future duration, the reasons for delay, and the adequacy of the custody
4 procedures already provided. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

5 77. Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's private liberty interest
6 is substantial. Petitioner has been detained since on or about May 23, 2025. As of May 9,
7 2026, his detention has lasted nearly one year. He remains physically confined at Otay
8 Mesa Detention Center while his BIA appeal remains pending and while he continues to
9 pursue serious protection claims arising from persecution, torture, and exile from
10 Venezuela. Continued detention separates him from the community, restricts his ability to
11 assist in his own defense, limits his communication with counsel, and impairs his ability
12 to gather evidence and protect his appellate rights.

13 78. The risk of erroneous deprivation is high because Petitioner's detention began after he
14 appeared for immigration court and was allegedly justified by the erroneous statement
15 that his TPS had expired, even though Petitioner never had TPS and never applied for
16 TPS. Petitioner had filed asylum. The risk of error was compounded by the later
17 procedural history: prior counsel failed to timely submit evidence in response to DHS's
18 safe-third-country motion; the Immigration Judge found abandonment of the defense
19 based on late evidence; counsel did not timely submit legal arguments to the BIA and
20 instead requested an extension; and counsel apparently failed to file or confirm filing of a
21 bond appeal after the March 26, 2026 bond denial. These circumstances create a serious
22 risk that Petitioner remains detained through mistake, incomplete review, and procedural
23 failure rather than through a lawful and reliable determination that detention is necessary.

1 79. The bond hearing Petitioner received on or about March 26, 2026 did not cure the
2 constitutional defect. Petitioner received that hearing only after partial relief in a prior
3 habeas case. At the hearing, Petitioner presented bond evidence, including Casa
4 Marianela and supporting documentation, but bond was denied. Petitioner later received
5 bond appeal paperwork from counsel and understood that counsel would file the appeal,
6 but counsel apparently did not file it or did not confirm that it had been filed. A bond
7 hearing does not satisfy due process merely because it occurred. The hearing must
8 meaningfully test whether continued confinement is necessary, and the process as a
9 whole must provide reliable safeguards against erroneous detention. Here, Petitioner
10 remains detained without meaningful review of the bond denial.

11 80. The probable value of additional safeguards is substantial. A constitutionally adequate
12 custody hearing would require Respondents to identify the lawful basis for custody,
13 correct or explain the erroneous TPS rationale, present evidence supporting any alleged
14 danger or flight risk, and address whether bond or less restrictive alternatives would
15 reasonably serve the Government's interests. Such safeguards would materially reduce
16 the risk that Petitioner remains detained by default, mistake, or incomplete review.

17 81. The Government's interests do not justify continued detention without adequate process.
18 The Government may have legitimate interests in ensuring appearance and protecting the
19 community, but those interests can be addressed through less restrictive alternatives,
20 including release on bond, supervision, reporting requirements, electronic monitoring,
21 and placement at Casa Marianela or another approved residence. The Government has no
22 legitimate interest in maintaining civil detention through procedures that fail to account
23 for Petitioner's actual circumstances and the availability of noncustodial conditions.
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1 82. Petitioner has not caused the relevant delay through bad faith. He attempted to comply
2 with his immigration process, filed asylum within one year, appeared for court, filed a
3 motion to reopen, pursued appeal, and sought habeas relief. Much of the procedural
4 prejudice arose from attorney failures and the practical limitations of detention, including
5 late evidence submission, missed or delayed briefing, and the apparent failure to file a
6 bond appeal. Petitioner should not remain civilly confined for an extended period because
7 counsel failed to protect his procedural rights.

8 83. Petitioner's continued detention has also impaired his ability to litigate his protection
9 claims and pending appeal. His underlying case involves serious fear-based claims: he
10 states that he was formerly a member of [REDACTED]
11 refused to comply with orders that violated the fundamental rights of Venezuelans, and
12 was kidnapped, tortured, persecuted, and forced into exile. He also fears transfer or
13 removal to Ecuador because he believes Ecuador is not safe for him [REDACTED]

14 [REDACTED]

15 [REDACTED] Continued detention has made it substantially harder for him to communicate
16 with counsel, gather evidence, monitor deadlines, and protect his appellate rights.

17 84. Because Petitioner's detention is prolonged, rests on an erroneous stated basis, continues
18 after a bond process that failed to provide meaningful review, and substantially interferes
19 with his ability to litigate his protection claims and pending appeal, continued
20 confinement violates the Fifth Amendment as applied to him.

21 85. Petitioner is entitled to habeas relief ordering his immediate release or, in the alternative,
22 a prompt constitutionally adequate custody hearing before a neutral adjudicator at which
23 the Government bears the burden of proving by clear and convincing evidence that
24

1 continued detention is necessary and that no less restrictive alternative would reasonably
2 address its interests.

3 VII. CUSTODY AUTHORITY AND EXHAUSTION

4 86. On information and belief, Respondents are detaining Petitioner pursuant to 8 U.S.C. §
5 1226(a), which governs discretionary detention during removal proceedings. Section
6 1226(a) permits detention or release on bond or conditional parole; it does not mandate
7 detention in the ordinary case. See 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1); 8 C.F.R.
8 § 1003.19.

9 87. Petitioner previously received a bond hearing on or about March 26, 2026 after partial
10 relief in a prior habeas action. Bond was denied. Petitioner understood that counsel would
11 appeal that denial, but he later learned that counsel apparently did not file the bond
12 appeal, or at minimum did not confirm that any appeal had been filed.

13 88. To the extent exhaustion of administrative review of the bond denial ordinarily is
14 expected, exhaustion should be excused here. In immigration habeas cases, exhaustion is
15 prudential rather than jurisdictional, and may be excused where administrative remedies
16 are inadequate or pursuit of those remedies would cause irreparable prejudice. *Leonardo*
17 *v. Crawford*, 646 F.3d 1157, 1160-61 (9th Cir. 2011). That standard is met here for at
18 least three reasons.

19 89. First, Petitioner's injury is ongoing physical confinement, resulting in irreparable harm.
20 Second, his present claim is not merely that the Immigration Judge abused discretion on a
21 routine bond record; it is that, as applied to the facts here, prolonged detention has
22 become unconstitutional because the process has not reliably tested whether detention
23 remains necessary. Third, any failure to complete administrative review resulted from
24

1 counsel's apparent omission rather than by Petitioner, and further delay would prolong
2 detention that has already lasted nearly one year

3 **VIII. REQUEST FOR RELIEF**

4 90. Petitioner respectfully requests that the Court:

- 5 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 requiring Respondents to
6 respond forthwith;
7 B. Grant a writ of habeas corpus under 28 U.S.C. § 2241;
8 C. Order Petitioner released immediately;
9 D. Award Petitioner attorneys' fees and costs to the extent permitted by law; and
10 E. Grant such other and further relief as the Court deems just and proper.

11 DATED this May 09, 2026.

12 /s/ Jose Torres

13 Jose Torres

14 *Counsel for Petitioner*
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