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8 Counsel for Petitioner
9 Enrique Resendiz Badillo

10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 ENRIQUE RESENDIZ BADILLO,

15 Petitioner,

16 v.

17 MARKWAYNE MULLIN, Secretary, U.S.
18 Department of Homeland Security; Pamela BONDI,
19 U.S. Attorney General; Todd LYONS, Acting
20 Director, Immigration and Customs Enforcement;
21 JOSEPH FREDEN, Acting Field Office Director,
22 U.S. Immigration & Customs Enforcement (ICE),
23 CHRISTOPHER J. LAROSE, Senior Warden Otay
24 Mesa Detention Facility; EXECUTIVE OFFICE
25 FOR IMMIGRATION REVIEW; IMMIGRATION
26 AND CUSTOMS ENFORCEMENT; and U.S.
27 DEPARTMENT OF HOMELAND SECURITY,

28 Respondents.

Case No. '26CV3029 BAS JLB

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

PETITIONER'S A NO. 

I. INTRODUCTION

1. Petitioner Enrique Resendiz Badillo respectfully challenges his ongoing civil immigration detention by the Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center in San Diego County, California.
2. Petitioner was born [REDACTED] in Queretaro, Mexico, and is thirty-eight years old.
3. In approximately 2008, Petitioner entered the United States near Agua Prieta, Sonora, without inspection and has continuously resided in the United States since that time.
4. Petitioner has therefore lived in the interior of the United States for approximately eighteen years before the detention challenged here.
5. Before the detention challenged here, Petitioner lived openly in the United States community for many years while supporting his children through steady construction employment.
6. Petitioner is the father of three United States citizen daughters:
 7. a. [REDACTED] 2010;
 8. b. [REDACTED] 2016; and
 9. c. [REDACTED] 2026.
10. Petitioner is not married.
11. Petitioner has worked in the construction industry for many years and has filed most of his federal income taxes.
12. Petitioner has no criminal arrest history.

1 13. Petitioner's only known issue with law enforcement is an outstanding traffic
2 ticket.

3 14. That traffic matter is nonviolent and minor in nature and does not involve any
4 allegation of dangerous conduct or threat to public safety.

5 15. Petitioner has no violent criminal history, no aggravated felony convictions,
6 and no history suggesting danger to the community.

7 16. To Petitioner's present knowledge, he has not previously sought affirmative
8 immigration relief.

9 17. On or about May 2026, ICE arrested Petitioner during interior immigration
10 enforcement operations and placed him into immigration detention.

11 18. Petitioner was initially detained at the Broward Transitional Center in Florida.

12 19. Petitioner was thereafter transferred by ICE to the Otay Mesa Detention
13 Center in San Diego County, California.

14 20. Petitioner was originally processed for immigration proceedings before the
15 Broward Transitional Center Immigration Court and scheduled for a hearing
16 on May 14, 2026, at 8:00 a.m. before Immigration Judge Michael G. Walleisa.

17 21. Following transfer to California, Petitioner was reprocessed into proceedings
18 before the Otay Mesa Immigration Court.

19 22. Petitioner now has a hearing scheduled on May 15, 2026, at 1:00 p.m. before
20 Immigration Judge Mark Sameit.

21 23. No administratively final order of removal has been entered against Petitioner.

1 24. Petitioner does not challenge any final order of removal. He challenges only
2 the legality of his present detention and the lack of a lawful and
3 constitutionally adequate custody determination.

4
5 25. Petitioner's youngest daughter was born only weeks before the detention
6 challenged here, and Petitioner's detention deprives the newborn child of her
7 father during the earliest stages of life.

8 26. Because Petitioner was detained after living in the United States for
9 approximately eighteen years following his 2008 re-entry, the discretionary
10 detention framework of 8 U.S.C. § 1226 governs his custody, not the entry-
11 focused detention provisions of 8 U.S.C. § 1225(b) and not the post-final-
12 order detention provisions of 8 U.S.C. § 1231.

13
14 27. Petitioner's detention is unlawful for several independent reasons. First, it is
15 contrary to the Immigration and Nationality Act ("INA") because, on the facts
16 known here, § 1226 governs. Second, it violates the Fifth Amendment because
17 Petitioner was taken into civil immigration custody without any individualized
18 pre-detention process or timely constitutionally adequate custody
19 determination. Third, it is arbitrary and capricious under the Administrative
20 Procedure Act ("APA") because Respondents have provided no reasoned
21 explanation for the detention decision and no individualized findings. Fourth,
22 the detention is arbitrary civil confinement not reasonably tied to any
23 demonstrated present need.
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1 28. Immediate release is the proper primary remedy. As multiple federal courts
2 have explained, a post-detention bond hearing does not undo the injury
3 already inflicted by an unlawful deprivation of liberty.

4
5 29. Because ICE has already transferred Petitioner once during the pendency of
6 proceedings, there is a substantial risk of additional transfers absent Court
7 intervention.

8 30. In the alternative, if the Court declines to order immediate release outright,
9 Petitioner requests a prompt custody determination within five (5) days before
10 a neutral decisionmaker under the § 1226(a) framework, with the burden on
11 the government to establish by clear and convincing evidence that continued
12 detention is necessary.

13
14 31. Each additional day of detention inflicts irreparable harm.

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17 **II. JURISDICTION**

18 32. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in
19 custody under federal authority and alleges that he is in custody in violation of
20 the Constitution and laws of the United States. See 28 U.S.C. § 2241(a),
21 (c)(3); Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

22
23 33. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action
24 arises under federal law, including the Constitution, the INA, and the APA.

25 34. The Court's habeas jurisdiction extends to immigration-detention claims
26 asserting statutory error and constitutional violations. See Zadvydas v. Davis,
27 533 U.S. 678, 687–88, 699 (2001); Rodriguez Diaz v. Garland, 53 F.4th 1189,
28

1 1208–09 (9th Cir. 2022); Hernandez v. Sessions, 872 F.3d 976, 986–88 (9th
2 Cir. 2017).

3 35. Petitioner does not seek review of any final order of removal.

4 36. Jurisdiction is not barred by 8 U.S.C. § 1252(g) or § 1252(b)(9) because
5 Petitioner challenges the legality of his detention and the statutory and
6 constitutional framework governing that detention, not any decision to
7 commence proceedings, adjudicate removability, or execute a final removal
8 order. See Jennings v. Rodriguez, 583 U.S. 281, 293–95 (2018); Reno v. Am.-
9 Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999); Dep’t of
10 Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1907 (2020).

11 37. The APA independently authorizes review of final agency action that is
12 arbitrary, capricious, contrary to law, or in excess of statutory authority. 5
13 U.S.C. § 706(2).

14 38. Accordingly, this Court has jurisdiction to determine the legality of
15 Petitioner’s custody and to order appropriate habeas, declaratory, and
16 injunctive relief.

17 III. VENUE

18 39. Venue is proper in this District because Petitioner is detained within the
19 Southern District of California at the Otay Mesa Detention Center.

20 40. Venue is also proper because Petitioner’s immediate custodian is located
21 within this District. See Braden v. 30th Judicial Circuit Court, 410 U.S. 484
22 (1973); Rumsfeld v. Padilla, 542 U.S. 426, 434–35 (2004).

1 41. The detention challenged in this Petition is presently occurring within this
2 District, and this Court is therefore the proper forum to adjudicate the legality
3 of Petitioner's confinement.
4

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6 **IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**
7

8 42. Under 28 U.S.C. § 2241, federal courts may entertain petitions for habeas
9 corpus filed by persons who are in custody in violation of the Constitution or
10 laws of the United States.

11 43. This is a classic habeas case. Petitioner challenges the fact and legality of his
12 civil confinement and seeks release from allegedly unlawful detention.

13 44. Section 2243 requires prompt judicial action. The statute directs that the Court
14 shall forthwith award the writ or issue an order directing the respondent to
15 show cause why the writ should not be granted, unless it plainly appears from
16 the petition that the petitioner is not entitled to relief.
17

18 45. The urgency of habeas review is especially acute where a person is deprived
19 of physical liberty and where immigration proceedings remain pending.
20

21 46. Nothing on the face of this Petition shows that Petitioner is not entitled to
22 relief.

23 47. To the extent any form of prudential exhaustion could be argued, it should be
24 excused because Petitioner is asserting statutory and constitutional challenges
25 to detention itself, because no final administrative custody determination has
26 been provided, because a post-detention hearing cannot fully remedy the
27
28

1 injury already suffered, and because delay would cause continuing irreparable
2 harm.

3 48. Prompt intervention is warranted.
4

5 **V. PARTIES**

6 49. Petitioner Enrique Resendiz Badillo is a noncitizen currently detained by ICE
7 at the Otay Mesa Detention Center in San Diego County, California.
8

9 50. Petitioner was born [REDACTED] in Queretaro, Mexico.

10 51. In approximately 2008, Petitioner re-entered the United States near Agua
11 Prieta without inspection and has continuously resided in the United States
12 since that time.
13

14 52. Petitioner is the father of three United States citizen daughters.

15 53. Petitioner has worked in construction and has filed taxes for many years while
16 residing in the United States.

17 54. Petitioner has no criminal arrest history.

18 55. Petitioner's only known law-enforcement issue is a minor outstanding traffic
19 ticket.
20

21 56. Petitioner was initially detained at the Broward Transitional Center before
22 being transferred to Otay Mesa Detention Center.

23 57. Petitioner was originally scheduled for immigration proceedings before
24 Immigration Judge Michael G. Walleisa before transfer to California.
25

26 58. Petitioner now has proceedings pending before Immigration Judge Mark
27 Sameit in the Otay Mesa Immigration Court.
28

VI. RESPONDENTS

1 67. CHRISTOPHER J. LAROSE is the warden of Otay Mesa Detention Center and
2 has immediate physical custody over Petitioner. As the local custodian, the
3 Warden is responsible for the day-to-day administration of the detention facility
4 where Petitioner is held. The Warden is sued in his/her official capacity as a
5 representative of the entity exercising direct custody over Petitioner.
6

7 68. Respondent JOSEPH FREDEN is the Acting Field Office Director of U.S.
8 Immigration and Customs Enforcement (ICE), in San Diego California. ICE is the
9 component of the Department of Homeland Security (DHS) which is responsible
10 for detaining and removing noncitizens according to immigration law and
11 oversees custody determinations. Mr. Freden is named in his official capacity. In
12 his official capacity, he is a legal custodian of the petitioner.
13

14 69. Respondent MARKWAYNE MULLIN, in his official capacity as the Secretary of
15 the Department of Homeland Security, is the highest-ranking official in DHS. He
16 has ultimate authority over ICE and the enforcement of immigration laws,
17 including detention policy. DHS, under Respondent Noem's direction, is
18 responsible for the decision to continue Petitioner's detention and to designate
19 him as subject to mandatory custody. He is sued in his official capacity.
20

21 70. Respondent PAMELA BONDI, in her official capacity as the Attorney General of
22 the United States, oversees the U.S. Department of Justice, which includes the
23 Executive Office for Immigration Review (EOIR). EOIR encompasses the
24 nation's Immigration Courts and the Board of Immigration Appeals (BIA). The
25 Attorney General has ultimate authority over immigration court procedures,
26 including the availability of bond hearings and the interpretation of detention
27
28

1 statutes through precedent decisions. Respondent Bondi is sued in her official
2 capacity.

3 **VII. LEGAL FRAMEWORK**

4
5 71. Federal immigration law contains different detention frameworks depending on a
6 noncitizen's procedural posture.

7 72. Section 1225(b) governs detention of certain applicants for admission and recent
8 entrants.

9 73. Section 1226 governs detention of noncitizens already present in the United States
10 pending removal proceedings.

11 74. Section 1231 governs detention after a final order of removal.

12 75. The Supreme Court has recognized that § 1226(a) governs detention of
13 noncitizens "already in the country pending the outcome of removal
14 proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

15
16 76. Petitioner falls squarely into that category. He re-entered the United States in
17 approximately 2008 and was arrested by ICE in the interior after approximately
18 eighteen years of continuous residence in the United States community.

19
20 77. Although Petitioner had prior encounters with immigration authorities many years
21 ago, including being permitted to voluntarily depart the United States in
22 approximately 2004, Petitioner's present detention arises from interior
23 enforcement actions occurring approximately eighteen years after his most recent
24 entry and after many years of continuous residence in the United States
25 community.

1 78. Petitioner was not apprehended at or near the border, was not detained upon entry,
2 and was instead arrested during interior enforcement operations long after
3 establishing substantial ties to the United States.

4 79. Petitioner's present detention does not arise from an apprehension at the border or
5 near the time of entry. Rather, DHS arrested Petitioner during interior
6 enforcement operations approximately eighteen years after his most recent entry
7 and after many years of continuous community residence inside the United States.

8 80. Under Jennings and recent Southern District authority, detention in that
9 procedural posture is governed by § 1226.
10

11 81. There is no dispute that Petitioner was detained after having resided in the United
12 States for many years. Therefore, the discretionary detention procedures of § 1226
13 govern Petitioner's detention, and the Petition should be granted. See Ramirez v.
14 Noem, No. 3:26-cv-01880-RBM-VET, slip op. at 3 (S.D. Cal. Apr. 9, 2026).
15

16 82. Recent authority confirms that long-term interior residents detained years after
17 entry are governed by § 1226, not § 1225. See Beltran v. Noem, No. 25cv2650-
18 LL-DEB, 2025 WL 3078837, at *4–7 (S.D. Cal. Nov. 4, 2025).
19

20 83. On the present facts known to Petitioner, Respondents have not established that
21 Petitioner falls within any mandatory detention category under § 1226(c).
22

23 84. Petitioner has no criminal arrest history and only a minor outstanding traffic
24 ticket.

25 85. Respondents have not provided Petitioner with any individualized custody
26 determination identifying a lawful basis for mandatory detention.
27
28

1 86. In any event, whether or not Respondents may ultimately attempt to rely on some
2 detention provision, the Fifth Amendment imposes independent constitutional
3 limits on civil immigration detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690
4 (2001).

5
6 87. “Freedom from imprisonment, from government custody, detention, or other
7 forms of physical restraint, lies at the heart of the liberty that [the Due Process]
8 Clause protects.” *Id.*

9
10 88. Civil detention must bear a reasonable relation to a legitimate governmental
11 purpose and cannot be excessive in relation to that purpose. See *Foucha v.*
12 *Louisiana*, 504 U.S. 71, 80 (1992).

13 89. Immigration detention is civil, not criminal, in nature. Accordingly, detention
14 cannot be imposed as punishment and must instead bear a reasonable relation to a
15 legitimate regulatory purpose.

16
17 90. The Due Process Clause also requires procedures adequate to guard against
18 erroneous deprivation of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 334–35
19 (1976).

20 91. Courts have recognized that a later bond hearing does not necessarily cure the
21 injury from unlawful detention already imposed. See *E.A. T.-B. v. Wamsley*, 795
22 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025); *Jorge M.F. v. Jennings*, 534 F. Supp.
23 3d 1050, 1055 (N.D. Cal. 2021); *Domingo v. Kaiser*, No. 25-cv-05893-RFL, 2025
24 WL 1940179, at *3 (N.D. Cal. July 14, 2025); *Duong v. Kaiser*, 800 F. Supp. 3d
25 1030, 1043–44 (N.D. Cal. 2025); *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1119–
26 20 (E.D. Cal. 2025).
27
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1 92. In E.A. T.-B., the court explained: “Although the Government notes that
2 Petitioner may request a bond hearing while detained, such a post-deprivation
3 hearing cannot serve as an adequate procedural safeguard because it is after the
4 fact and cannot prevent an erroneous deprivation of liberty.”

5
6 93. Likewise, Jorge M.F. held that “if Petitioner is detained, he will already have
7 suffered the injury he is now seeking to avoid.”

8 94. These authorities collectively support immediate release here.

9
10 **VIII. FACTS**

11 95. In approximately 2008, Petitioner re-entered the United States near Agua Prieta
12 without inspection.

13 96. Petitioner has continuously resided in the United States since approximately 2008.

14 97. Before the detention challenged here, Petitioner lived openly in the United States
15 community for many years while supporting his children through steady
16 construction employment.

17
18 98. Petitioner is the father of three United States citizen daughters.

19 99. Petitioner has worked in construction for many years.

20 100. Petitioner has filed most of his federal income taxes.

21 101. Petitioner has no criminal arrest history.

22 102. Petitioner’s youngest daughter was born only weeks before the detention
23 challenged here, and Petitioner’s detention deprives the newborn child of her
24 father during the earliest stages of life.

25
26 103. Petitioner’s only known issue with law enforcement is a minor outstanding
27 traffic ticket.
28

1 104. That traffic matter is nonviolent and does not involve any allegation of
2 dangerous conduct or threat to public safety.

3 105. On or about May 2026, ICE arrested Petitioner during interior
4 enforcement operations.

5 106. Petitioner was initially detained at the Broward Transitional Center in
6 Florida.

7 107. ICE subsequently transferred Petitioner to the Otay Mesa Detention
8 Center in California.

9 108. Petitioner was initially scheduled for immigration proceedings before
10 Immigration Judge Michael G. Walleisa on May 14, 2026.

11 109. Following transfer to California, Petitioner was reprocessed before the
12 Otay Mesa Immigration Court.

13 110. Petitioner now has a hearing scheduled for May 15, 2026, at 1:00 p.m.
14 before Immigration Judge Mark Sameit.

15 111. No administratively final order of removal has been entered against
16 Petitioner.

17 112. Petitioner was not provided any individualized pre-detention custody
18 hearing before being taken into immigration custody.

19 113. Petitioner has not received any meaningful individualized custody
20 determination explaining why detention is necessary.

21 114. To Petitioner's knowledge, Respondents have not articulated any present
22 facts showing that he is a danger to the community or a flight risk.

1 115. Petitioner has substantial equities in the United States, including
2 approximately eighteen years of residence, stable employment history, tax
3 compliance, and three United States citizen daughters.

4
5 116. Petitioner's detention is especially harmful because one of his United
6 States citizen daughters was born only weeks before the detention challenged
7 here.

8 117. Petitioner's longstanding residence, stable employment history, tax
9 compliance, and extensive family ties strongly undermine any suggestion that he
10 presents a flight risk or danger warranting continued civil detention.

11
12 118. Petitioner's detention separates him from his children and inflicts
13 continuing irreparable harm.

14
15 **IX. FIRST CLAIM FOR RELIEF**

16
17 **Violation of the Immigration and Nationality Act (Detention Contrary to Law)**

18 Petitioner incorporates by reference the allegations of fact set forth in the preceding
19 paragraphs:

20 123. Petitioner incorporates by reference all prior allegations as if fully set forth
21 herein.

22
23 124. Petitioner is not in post-final-order detention. Section 1231 therefore does
24 not apply.

25 125. Petitioner is also not an arriving noncitizen or recent entrant within the
26 meaning contemplated by § 1225(b).

1 126. Petitioner re-entered the United States in approximately 2008 and was
2 arrested by ICE in the interior approximately eighteen years later.

3 127. Petitioner's longstanding residence, extensive family ties, stable
4 construction employment, and years of community presence strongly undermine
5 any suggestion that he presents a meaningful flight risk.

6 128. Under Jennings, Beltran, and Ramirez, detention in that posture is
7 governed by § 1226.

8 129. Thus, Respondents may not lawfully confine Petitioner under an entry-
9 focused mandatory detention theory under § 1225(b).

10 130. At minimum, Respondents are required to proceed under the discretionary
11 detention framework of § 1226(a), which requires lawful individualized custody
12 procedures.

13 131. Petitioner's continued detention outside the proper statutory framework is
14 contrary to the INA and exceeds Respondents' statutory authority.

15 132. Because Petitioner is in custody in violation of federal law, habeas relief is
16 warranted under 28 U.S.C. § 2241.

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21 **X. SECOND CLAIM FOR RELIEF**

22 **Violation of the Fifth Amendment (Procedural Due Process)**

23
24 Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

25 133. The Fifth Amendment prohibits the federal government from depriving
26 any person of liberty without due process of law.
27
28

1 134. Petitioner's interest in physical liberty is profound. Freedom from
2 detention lies at the core of due process protection.

3 135. Under Mathews v. Eldridge, the Court balances: (1) the private interest
4 affected; (2) the risk of erroneous deprivation and the probable value of additional
5 safeguards; and (3) the government's interest. All three factors favor Petitioner
6 here.

7
8 136. Petitioner was detained without any individualized pre-detention hearing
9 and without any meaningful custody determination explaining why detention was
10 necessary despite his many years in the United States, stable work history, tax
11 history, and three United States citizen children.

12
13 137. The risk of error is especially high where Respondents have not identified
14 any present facts demonstrating dangerousness or flight risk.

15 138. Any later custody process cannot erase the liberty deprivation already
16 inflicted.

17
18 139. As federal courts have explained, a post-detention bond hearing is not an
19 adequate substitute for procedures that could have prevented an erroneous
20 detention in the first place. See E.A. T.-B., 795 F. Supp. 3d at 1324; Jorge M.F.,
21 534 F. Supp. 3d at 1055; Domingo, 2025 WL 1940179, at *3.

22
23 140. Because Petitioner was deprived of liberty without constitutionally
24 sufficient procedures, his detention violates the Due Process Clause of the Fifth
25 Amendment.

26 141. Habeas relief is warranted.

27
28 **XI. THIRD CLAIM FOR RELIEF**

Violation of the Administrative Procedure Act

(5 U.S.C. § 706 – Arbitrary, Capricious, and Contrary to Law Agency Action)

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

142. To the extent Respondents' detention decision constitutes reviewable final agency action, the APA requires courts to hold unlawful and set aside agency action that is arbitrary, capricious, contrary to law, or in excess of statutory authority. 5 U.S.C. § 706(2)(A), (C).

143. DHS's decision to arrest and continue detaining Petitioner subjected him to ongoing confinement without a reasoned individualized explanation.

144. Respondents failed to account for critical facts, including Petitioner's lengthy residence in the United States, stable employment history, tax history, lack of criminal arrests, and his three United States citizen daughters.

145. Respondents also failed to articulate why alternatives short of detention would be inadequate.

146. Respondents failed to meaningfully consider alternatives to detention, including release on recognizance, reporting requirements, or other less restrictive supervisory measures.

147. By detaining Petitioner without a reasoned and individualized explanation and contrary to the proper statutory framework, Respondents acted arbitrarily, capriciously, and contrary to law.

148. Petitioner is therefore entitled to relief under the APA.

XII. FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment

(Substantive Due Process – Arbitrary Civil Detention)

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

149. Substantive due process imposes limits on the government's authority to subject persons to civil detention.

150. Civil detention is constitutionally permissible only where it is reasonably related to a legitimate governmental objective and not excessive in relation to that purpose.

151. Immigration detention is civil, not criminal, in nature and therefore cannot constitutionally function as punishment.

152. Respondents have not identified any individualized present facts showing that Petitioner poses a danger to the community or a flight risk.

153. Petitioner has no criminal arrest history.

154. Petitioner has longstanding community and family ties in the United States, including his three United States citizen daughters.

155. The current record does not show that continued detention is necessary to secure Petitioner's appearance or protect the community.

156. Civil detention based on no demonstrated present need is arbitrary.

157. Because Petitioner's detention is not shown to be reasonably related to any proven legitimate governmental objective, and is excessive in relation to any articulated objective, it violates substantive due process.

XIII. FIFTH CLAIM FOR RELIEF

Immediate Release Required; Alternatively, Prompt Custody Determination Under 8

U.S.C. § 1226(a)

Petitioner incorporates by reference all prior allegations as if fully set forth herein.

158. Recent authority confirms that immediate release is an appropriate remedy where a person is detained under the wrong statutory framework or without constitutionally adequate process.

159. In Ramirez, the court held that where the petitioner had lived in the United States for over twenty years before being detained, “the discretionary detention procedures of § 1226 govern Petitioner’s detention, and the Petition must be granted.”

160. The court further held that immediate release, rather than a bond hearing, was the appropriate remedy.

161. That reasoning applies here. Petitioner re-entered the United States in approximately 2008 and was detained after approximately eighteen years in the country.

162. Petitioner’s detention is therefore governed by § 1226.

163. Immediate release is appropriate because a later hearing would not undo the injury from detention already imposed.

164. Immediate release is especially appropriate here because:

165. a. Respondents have not provided a lawful individualized custody determination;

1 166. b. the current record does not show present danger or flight risk;

2 167. c. Petitioner has no criminal arrest history; and

3
4 168. d. Petitioner has substantial ties to the United States, including three
5 United States citizen daughters.

6
7 169. In the alternative, if the Court declines to order immediate release outright,
8 the Court should require Respondents to provide Petitioner with a prompt custody
9 determination within five (5) days before a neutral decisionmaker under the §
10 1226(a) framework.

11
12 170. At that hearing, Respondents should bear the burden of proving by clear
13 and convincing evidence that Petitioner poses a danger to the community or a risk
14 of flight.

15
16 171. If Respondents fail to provide such a hearing within the time ordered by
17 the Court, Petitioner should be immediately released.

18
19 172. The Court should also prohibit Respondents from transferring Petitioner
20 outside this District during the pendency of this action absent prior Court
21 authorization.

22
23 **XIV. PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

25 a. Assume jurisdiction over this Petition pursuant to 28 U.S.C. §§ 2241 and 1331;

26 b. Issue the writ or an order to show cause under 28 U.S.C. § 2243;

1 c. Declare that Petitioner's continued detention is unlawful and violates the INA, the
2 Fifth Amendment, and the APA;

3 d. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226 and not by 8
4 U.S.C. § 1225(b) or § 1231;

5 e. Declare that Respondents' detention of Petitioner without any constitutionally
6 adequate individualized custody determination violates procedural due process;

7 f. Declare that Respondents' continued detention without any demonstrated present
8 need violates substantive due process;

9 g. Declare that Respondents acted arbitrarily, capriciously, and contrary to law within
10 the meaning of 5 U.S.C. § 706;

11 h. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner
12 from custody, subject to reasonable conditions of supervision if the Court deems
13 appropriate;

14 i. In the alternative, order Respondents to provide Petitioner with a prompt custody
15 determination within five (5) days before a neutral decisionmaker under 8 U.S.C. §
16 1226(a);

17 j. Order that at any such custody determination the burden shall be on the government
18 to establish by clear and convincing evidence that Petitioner poses a danger to the
19 community or a risk of flight;

20 k. Order that if Respondents fail to provide such a custody determination within the
21 time specified, Petitioner shall be immediately released;

22 l. Issue appropriate injunctive relief prohibiting Respondents from continuing
23 Petitioner's unlawful detention during the pendency of this action;

- 1 m. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this
2 Court while this Petition is pending, absent prior leave of Court;
3 n. Award Petitioner reasonable attorneys' fees and costs to the extent authorized by
4 law, including under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5 o. Grant such other and further relief as the Court deems just and proper.
6

7
8
9 Respectfully submitted on:

10 Dated: May 12, 2026
11
12
13

14 /s/ Daniel S. Castaneda
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16 3065 Rosecrans Place, Suite 204 San Diego, CA 92110
17 Tel:(619)710-6095
18 Fax:(619)5664128
19 daniel@castalegal.com
20 Counsel for Petitioner-Plaintiff
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23
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25
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27
28

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Daniel S. Castaneda, submit this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Respectfully submitted on:

Dated: May 12, 2026

/s/ Daniel S. Castaneda

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