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15 UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
17

18 MANUEL ALEXANDER FUENTES

19 GUEVARA

20 Plaintiff and Petitioner,

21 vs.

22
23 CHRISTOPHER LAROSE, Warden of the

24 Otay Mesa Detention Center; GREGORY

25 ARCHAMBEAULT, Director of the San

26 Diego Field Office, United States

27 Immigration and Customs Enforcement;

28 MARKWAYNE MULLIN, Attorney

General, United States Department of Justice;

KRISTI NOEM, Secretary, United States

Department of Homeland Security; TODD

LYONS, Acting Director of the United States

Immigration and Customs Enforcement; and

DOES 1-5

Defendants-Respondents

Case No.: '26CV3540 GPC MSB

**VERIFIED PETITION FOR
WRITS OF HABEAS CORPUS
AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 1

JURISDICTION AND VENUE

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2
3 1. This action arises under the Constitution of the United States; the Immigration
4 and Nationality Act, 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration
5 Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208,
6
7 110 Stat. 1570 [hereinafter ‘INA’]; and Administrative Procedure Act, 5 U.S.C. §§ 701
8
9 *et seq* [hereinafter “APA”].
10

11
12 2. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9,
13
14 cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. §
15
16 1331, as Petitioner is presently in the physical custody of Respondents at the Otay
17
18 Mesa Detention Facility under color of the authority of the United States and such
19
20 custody is in violation of the Constitution, laws, or treaties of the United States.
21

22
23 3. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. §
24
25 702, and the All Writs Act, 28 U.S.C. § 1651.
26

27 4. This court has further remedial authority pursuant to the Declaratory
28 Judgment Act, 28 U.S.C. § 2201 et seq..

5. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention or the denial of constitutional rights. *See INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) (“The writ of habeas corpus has always been available to review the legality of executive detention.”).

1 6. This Court has the ability to enjoin federal officials pursuant to *Ex Parte*
2
3 *Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619–
4
5 21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S.
6
7 536, 545 (1926) (same).
8

9 7. Plaintiff-Petitioner has exhausted all administrative remedies to the extent
10
11 available and required by law.
12

13 8. Venue properly lies within the Southern District of California, because each
14
15 named Defendant-Respondent is present in this district and a substantial part of the
16
17 events or omissions giving rise to this action occurred and continue to occur in this
18
19 District. *See* 28 U.S.C. §1391(b). Petitioner, MANUEL ALEXANDER FUENTES
20
21 GUEVARA [hereinafter “Petitioner” or “Manuel”] is currently detained within this
22
23 district to wit, the Otay Mesa Detention Facility located at 7488 Calzada De La
24
25 Fuente, San Diego, CA 92154. Accordingly, the “restraint complained of” is
26
27 occurring within the Court’s territorial jurisdiction. *See* 28 U.S.C. § 2241(a)
28

9. This Court denied Petitioner’s previous petition for habeas corpus in case
no. 3:26-cv-00342-BAS-DDL. The current Petitioner asserts new claims and
claims based on new legal developments since said decision.

PARTIES

10. Plaintiff-Petitioner MANUEL ALEXANDER FUENTES GUEVARA is an
36-year-old national and citizen of El Salvador who was arrested by ICE on or
about 7 November 2025. Manuel entered the United States without inspection on
or about 14 April 2005 as an unaccompanied minor aged 16. He was released by

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RELIEF - 3

1 Office of Refugee Resettlement (ORR) into the custody of his mother and he has
2
3 resided in the United States ever since until he was arrested and detained by U.S.
4
5 Immigration and Customs Enforcement (“ICE”) without cause or justification.
6
7 Manuel has no criminal or prior immigration history. He is married and has two
8
9 daughters who are United States citizens. He is has been detained at the Otay Mesa
10
11 Detention Center since 7 November 2026.

12
13 11. The U.S. Department of Homeland Security (“DHS”) is a cabinet
14
15 department of the United States federal government with the primary mission of
16
17 securing the United States.

18
19 12. ICE is an agency within DHS with the primary mission of arresting,
20
21 detaining, and removing non-citizens physically present within the territory of the
22
23 United States. ICE is also responsible for the custody and care of all detained non-
24
25 citizens awaiting resolution of their immigration cases or removal after a final
26
27 order of removal had been entered.

28
13. Defendant Markwayne Mullin is the Secretary for DHS. In this capacity, Mr.
Mullin has responsibility for the administration of immigration laws pursuant to 8
U.S.C. §1103(a), has authority over ICE and its field offices, and has authority to
order the release of Plaintiff-Petitioner. At all times relevant to this Complaint,
Defendant Mullin was acting within the scope and course of her position as the
Secretary for DHS. Defendant Noem is sued in his official capacity.

14. Defendant-Respondent Todd Lyons is the Acting Director and Senior
Official Performing the Duties of the Director of ICE. Defendant Lyons is

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RELIEF - 4

1 responsible for the implementation of all ICE's policies, practices, and procedures,
2 including those relating to detention of non-citizens. Defendant Lyons is a legal
3 and immediate custodian of Plaintiff. At all times relevant to this Complaint,
4 Defendant Lyons was acting within the scope and course of his position as an ICE
5 official. He is sued in his official capacity.
6
7

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11 15. Defendant-Respondent Gregory Archambeault is the Director of the San
12 Diego Field Office of ICE, which has immediate custody of Plaintiff-Petitioner. He
13 is sued in his official capacity.
14

15
16
17 16. Defendant Christopher LaRose is the warden of Otay Mesa Detention
18 Facility in San Diego County, where Plaintiff-Petitioner is currently detained.
19 Defendant LaRose is the immediate, physical custodian of Plaintiff. He is named in
20 his official capacity.
21

22
23
24 17. The true names or capacities, whether individual, corporate, associate or
25 otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are
26 unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such
27 fictitious names, and Plaintiff will amend this Complaint to show their true names
28 and capacities when ascertained. Does 1 through 5 are the immediate, physical
custodians of Plaintiff.

FACTS RELEVANT TO ALL CAUSES OF ACTIONS

18. Plaintiff-Petitioner MANUEL ALEXANDER FUENTES GUEVARA is a
36-year-old national and citizen of El Salvador who entered the United States
without inspection on or about 14 April 2005 as an unaccompanied minor aged 16
VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
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RELIEF - 5

1 together with his younger sister and their aunt. See Exhibit B. He was released by
2
3 Office of Refugee Resettlement (ORR) into the custody of his mother and he has
4
5 resided in the United States ever since until he was arrested and detained by U.S.
6
7 Immigration and Customs Enforcement ("ICE") without cause or justification.
8
9

10 Manuel has no criminal or prior immigration history. See Exhibit D.
11

12 19. Petitioner is married and has two daughters, ages 14 and 10, who are United
13
14 States citizens. See Exhibit A.
15

16 20. Upon release from ORR custody Petitioner was served with a putative
17
18 Notice to Appear, charging him as present without admission or parole. See
19
20 Exhibit B at page 1-2.
21

22 21. ORR imposed no restrictions of Petitioner's liberty upon paroling him out of
23
24 custody pursuant to section 212(d)(5). Manuel was told that he would receive a
25
26 notice from the immigration court with the date, time, and place of his next
27
28 hearing. He and his mother never received one.

22. Whether or not a notice to master hearing was ever issued on 7 November
2005 an Immigration Judge sitting in Harlingen, Tx ordered Petitioner removed in
absentia. See Exhibit E.

23. Petitioner has no criminal or prior immigration record.

24. Petitioner is married and has two daughters, ages 14 and 10, who are United
States Citizens. See Exhibit A. Petitioner and his wife own and run their small
business and provide for their family.

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RELIEF - 6

1 25. Petitioner's mother is a TPS beneficiary.
2

3 26. Petitioner was arrested during an ICE/PB raid at a local Walgreens as
4
5 Petitioner and his wife were waiting for a customer to come and pick up a car they
6
7 had just finished detailing. See Exhibit A.
8

9 27. The officers did not identify themselves in any way, did not present a warrant,
10
11 or ask any questions of Petitioner to ascertain probable cause as to his flight risk.
12
13 Petitioner believes and hereby alleges that the arresting individuals were Border Patrol
14
15 officers engaged in an at large raid sanctioned by Respondents and had no reason to
16
17 believe that Petitioner was unlawfully present in the United States other than his
18
19 occupation and Latino appearance when they first approached him.
20

21 28. Once they ascertained his identity Respondents forcibly dragged Petitioner
22
23 to their car and use unnecessary and unreasonable force on Petitioner who was not
24
25 armed, engaged in any illegal activities nor was he resisting arrest. See Exhibit A.
26

27 29. Plaintiff-Petitioner was not interviewed and the deportation officer who
28
"revoked" his section 212(d)(5) parole and order of recognizance provided no
reason for the revocation nor did he allow Petitioner to contact his counsel of
record, or to provide a response and rebut the grounds for his re-detention.

30. Based on information and belief the officer who revoked Petitioner's order
of own recognizance was not the Executive Associate Director of ICE and did not
have a lawfully delegated authority to revoke orders of supervision nor the
212(d)(5) parole; did not first refer the case to the ICE Executive Associate
Director, did not make findings that revocation was in the public interest and that

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RELIEF - 7

1 circumstances did not reasonably permit referral to the Executive Associate
2
3 Director.
4

5 31. Upon his arrest Manuel was sent to and he is currently detained at the Otay
6
7 Mesa Detention Center, Otay Mesa, CA.
8

9 32. Petitioner filed a Motion to Reopen his removal proceedings but the motion
10
11 was denied by the Immigration Judge. See Exhibit E. Petitioner timely filed an
12
13 appeal with the Board of Immigration Appeals (BIA) which remains pending. See
14
15 Exhibit F.

16 33. On 28 May 2026 Petitioner was scheduled for a *Rodriguez* bond. See Exhibit
17
18 F.
19

20 34. On 28 May 2026 the Immigration Judge declined to conduct an
21
22 individualized bond hearing finding lack of jurisdiction. See Exhibit G.
23

24 //

25 //

26 //

27 //

28 //

RELEVANT IMMIGRATION STATUTORY SCHEME

Immigration Detention

35. The INA governs the use of immigration detention both pre- and post-final order. Post-final-order immigration detention is governed by 8 U.S.C. § 1231(a); pre-final-order detention by 8 U.S.C. § 1226.

36. In 8 U.S.C. §§ 1226 and 1231 Congress created different, but interrelated, comprehensive frameworks for detaining criminal and non-criminal non-citizens.

37. Section 1226 authorizes the detention of non-citizens during removal proceedings: section 1226(a) controls non-criminal aliens' detentions, while section 1226(c) controls criminal aliens' detentions. *See* 8 U.S.C. § 1226(a)&(c). Once a non-citizen's removal proceedings are completed ICE's detention authority is controlled by section 1231, which also distinguishes between non-criminal and criminal non-citizens. *See* 8 U.S.C. § 1231.

Detention Pursuant 8 U.S.C. §1231

38. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. §§ 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. §§ 1231(a)(1)-(2). Here the removal period

1 ended on 6 February 2006 and Respondents did not seek to detain Petitioner during
2
3 the “mandatory” detention period.
4

5 39. If ICE does not remove the noncitizen within the 90-day removal period, the
6
7 noncitizen “may be detained beyond the removal period” if they meet certain
8
9 criteria, such as being inadmissible or deportable under specified statutory
10
11 categories. 8 U.S.C. § 1231(a)(6).
12

13 40. To avoid “indefinite detention” that would raise “serious constitutional
14
15 concerns,” the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit
16
17 time limit. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens who could not be
18
19 removed to their home country or country of citizenship due to bureaucratic and
20
21 diplomatic barriers. The Court held that § 1231 authorizes detention only for “a
22
23 period reasonably necessary to bring about the [noncitizen]’s removal from the
24
25 United States.” *Id.* at 689. Six months of post-removal order detention is
26
27 considered “presumptively reasonable.” *Id.* at 701. 42. The Court underscored that
28
civil detention is thus only constitutionally permissible in “special and narrow
nonpunitive circumstances, where a special justification . . . outweighs the
individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at
690 (citations omitted) (internal quotations omitted). The Court thus concluded
that, “[a] statute permitting indefinite detention of [a noncitizen] would raise a
serious constitutional problem.” *Id.*; *see id.* at 701 (“We do have reason to believe,
however, that Congress previously doubted the constitutionality of detention for
more than six months.”).

1 41. Respondents refused to place and release Petitioner on an order of
2
3 supervision without a good cause or justification. Petitioner has no criminal record
4
5 of any kind. He is not a danger to himself or anyone else, is gainfully employed,
6
7 and has a wife and children who rely upon him for support. See Exhibit A. He has
8
9 resided in the United States for over twenty one years and has no prior immigration
10
11 record.

12 42. The Supreme Court has instructed that the passage of time while a
13
14 noncitizen is detained, particularly delay in the absence of any steps being taken to
15
16 effectuate or even advance the process of removal, itself is important evidence
17
18 relevant to whether continued detention is statutorily authorized. In *Zadvydas*, the
19
20 Supreme Court explained that a “habeas court,” in “ask[ing] whether the detention
21
22 in question exceeds a period reasonably necessary to secure removal . . . should
23
24 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
25
26 assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at
27
28 699.

43. “A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry[.]” *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984). “[I]mmigration proceedings are ‘civil, not criminal, and . . . nonpunitive in purpose and effect.’” *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 713 (D. Md. 2016) (alteration in original) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

1 44. As the Supreme Court explained civil detention may not “become a
2
3 ‘mechanism for retribution or general deterrence’—functions properly those of
4
5 criminal law, not civil commitment.” *Kansas v. Crane*, 534 U.S. 407, 412 (2002)
6
7 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 372–74 (1997) (Kennedy, J.,
8
9 concurring)); see also *Hendricks*, 521 U.S. at 373 (Kennedy, J., concurring)
10
11 (“[W]hile incapacitation is a goal common to both the criminal and civil systems of
12
13 confinement, retribution and general deterrence are reserved for the criminal
14
15 system alone.”); *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 189–90 (D.D.C. 2015).

16
17
18
19 *Section 212(d)(5) Parole and Revocation of Parole*

20
21 45. Respondents paroled Petitioner under section 212(d)(5). See Exhibit B & C.
22
23 The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined
24
25 “on a case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A). Then, “when the purpose of
26
27 the parole has been served,” § 1182(d)(5)(A) provides that “the alien shall
28
forthwith return or be returned to the custody from which he was paroled and
thereafter his case shall continue to be dealt with in the same manner as that of any
other applicant for admission to the United States.” *Jennings*, 583 U.S. at 288
(quoting 8 U.S.C. § 1182(d)(5)(A)).

46. To terminate the previously granted parole, the agency must comply with the
applicable regulatory and statutory requirements. As set forth in 8 C.F.R. §
212.5(e)(2)(i), which governs the “[t]ermination of parole,” “[i]n cases not covered
by paragraph (e)(1) of this section, upon accomplishment of the purpose for which

1 parole was authorized or when in the opinion of one of the officials listed in
2
3 paragraph (a) of this section, neither humanitarian reasons nor public benefit
4
5 warrants the continued presence of the alien in the United States, parole shall be
6
7 terminated upon written notice to the alien and he or she shall be restored to the
8
9 status that he or she had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i). That is,
10
11 “[u]nder the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated
12
13 only if the purpose of parole is accomplished, or humanitarian reasons and the
14
15 public benefit no longer warrant parole.” *See Loaiza Arias v. LaRose*, No. 3:25-cv-
16
17 02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8
18
19 C.F.R. § 212.5(e)). In the present case, Respondents have failed to follow the
20
21 applicable statutory and regulatory provisions to terminate Petitioner’s parole. *See*
22
23 *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), 2025 WL
24
25 2192986, at *2 (D.D.C. Aug. 1, 2025) (holding that the government failed to
26
27 follow the applicable statutory and regulatory provisions and that paroled
28
noncitizens cannot be subject to expedited removal proceedings); *see also Salgado*
Bustos v. Raycraft, No. 25-13202, 2025 WL 3022294, at *5–7 (E.D. Mich. Oct. 29,
2025).

47. District courts to have addressed the termination of § 1182(d)(5)(A) parole
“have found that just as a grant of parole requires an individualized review,
revocation of parole requires a case-by-case assessment to comply with the
statute.” *See Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y.
2025) (citations omitted) (addressing this issue and granting the petitioner’s motion

1 for preliminary injunction and ordering that the petitioner be released); *Y-Z-L-H v.*
2
3 *Bostock*, 792 F. Supp. 3d 1123, 1145–47 (D. Or. 2025) (finding parolee must
4
5 receive written notice of impending revocation with reasons for revocation)
6

7 48. Even if the statutory requirements are meant, any revocation of parole must
8
9 be in compliance with the 5th Amendment of the U.S. Constitution. *See Padilla v.*
10 *U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)
11
12 (“The Supreme Court has consistently held that non-punitive detention violates the
13
14 Constitution unless it is strictly limited, and, typically, accompanied by a prompt
15
16 individualized hearing before a neutral decisionmaker to ensure that the
17
18 imprisonment serves the government's legitimate goals.”); *Castellon v. Kaiser*, No.
19
20 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *6 (E.D. Cal. Aug. 14, 2025)
21
22 (finding a case-by-case analysis is needed to revoke parole); *Garcia v. Andrews*,
23
24 No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *12 (E.D. Cal. Aug. 21,
25
26 2025); *but see Doe v. Noem*, 152 F.4th 272, 286–88 (1st Cir. 2025) (finding an
27
28 individualized termination of parole en masse is not required).

49. Respondents must provide at minimum some explanation or support why
Petitioner – under the circumstances of this case -- would now be considered a
flight risk or danger to the community justifying the summary revocation of his
parole and OREC. *See Castellon*, 2025 WL 2373425, at *12; *Pinchi v. Noem*, 792
F.Supp.3d 1025, 1033–35 (N.D. Cal. 2025). Here Respondents never even
attempted to perform a review much less justify the revocation of Petitioner’s

1 parole prior to his summary re-detention as part of an at large enforcement raid.

2
3 See Exhibit A.

4
5 50. Moreover, Respondents did not follow the applicable statutory and
6
7 regulatory requirements to revoke Petitioner's parole, they did not have the
8
9 authority to arrest and re-detain Petitioner, unless there was some other valid
10
11 reason to arrest her. *See Mata Velasquez*, 794 F. Supp. 3d at 145, and *see Norfolk*
12
13 *S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir.
14
15 2022) (discussing that "an agency's action that fails to observe the procedures
16
17 required by its own regulations should be set aside" (citation omitted)); *Wilson v.*
18
19 *Comm'r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004) ("It is an elemental
20
21 principle of administrative law that agencies are bound to follow their own
22
23 regulations[,] . . . [and] '[a]n agency's failure to follow its own regulations tends to
24
25 cause unjust discrimination and deny adequate notice and consequently may result
26
27 in a violation of an individual's constitutional right to due process.'" (additional
28
internal quotation marks omitted) (quoting *Sameena, Inc. v. U.S. Air Force*, 147
F.3d 1148, 1153 (9th Cir. 1998))).

51. Respondents did not provide Petitioner the reasons for his re-detention nor an opportunity to respond and rebut.

Revocation of Conditions of Release

52. Any "[r]elease" of a noncitizen "reflects a determination by Respondents that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*

1 *Sessions*, 905 F.3d 1137 (9th Cir. 2018). Here Respondents made the requisite
2
3 determination and released Petitioner on a 212(d)(5) humanitarian parole and order of
4
5 recognizance.

6
7 53. When a non-citizen is placed on parole status after having been detained, a
8
9 protected liberty interest may arise. *Young v. Harper*, 520 U.S. 143, 147-149 (1997).

10
11 54. The Due Process Clause may protect this liberty interest even where a statute
12
13 allows the immigrant's arrest and detention and does not provide for procedural
14
15 protections. *Id.* (Due Process requires pre deprivation hearing before revocation of
16
17 parole); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). *Morrissey* observed that
18
19 parole allows the parolee to enjoy the same activities as those who have not been
20
21 arrested and held in custody including, living at home, having a job, and "be[ing] with
22
23 family and friends and to form the other enduring attachments of normal life."
24
25 *Morrissey*, 408 U.S. at 482. "Though the [government] properly subjects [the parolee]
26
27 to many restrictions not applicable to other citizens," such as monitoring and seeking
28
authorization to work and travel, "his condition is very different from that of
confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise
that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The
revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.*
(quotations omitted). Therefore, a parolee possesses a protected liberty interest in his
"continued liberty." *Id.* at 481-84.

55. The protected liberty is even greater when a person is placed on release on
order of recognizance.

1 56. In *Pinchi*, the Court explained:

2
3 . . . even when ICE has the initial discretion to detain or release a noncitizen
4 pending removal proceedings, after that individual is released from custody she
5 has a protected liberty interest in remaining out of custody. See *Romero v.*
6 *Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022)
7 (“[T]his Court joins other courts of this district facing facts similar to the
8 present case and finds Petitioner raised serious questions going to the merits of
9 his claim that due process requires a hearing before an IJ prior to re-
10 detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at
11 *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020
12 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969
13 (“Just as people on preparole, parole, and probation status have a liberty
14 interest, so too does [a noncitizen released from immigration detention] have a
15 liberty interest in remaining out of custody on bond.”).
16 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July
17 24, 2025); *accord Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017);
18 *Kamalpreet v. Singh*, No. 26-cv-1211-LL-JLB, 2026 WL 622687, at *1 (S.D. Cal.
19 Mar. 5, 2026) (“Although the initial decision to detain or release an individual may be
20 within the government’s discretion, ‘the government’s decision to release an
21 individual from custody creates an implicit promise upon which that individual may
22 rely, that their liberty will be revoked only if [they] fail [] to live up to the . . .
23 conditions of release.’” (quoting *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D.
24 Cal. 2025))).

25
26 57. Under substantive due process doctrine, a restraint on liberty like revocation
27 of a non-citizen’s order of supervision and/or parole is only permissible if it serves
28 a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363
(1997). The Supreme Court has only recognized two legitimate objectives of

1 immigration detention: *preventing danger to the community or preventing flight*
2
3 *prior to removal. See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing
4
5 constitutional limitations on civil detention).
6

7 58. On the other hand, “[p]rocedural due process imposes constraints on
8
9 governmental decisions which deprive individuals of liberty,” like the decision to
10
11 revoke a non-citizen’s order of supervision. *Mathews v. Eldridge*, 424 U.S. 319,
12
13 332 (1976) (citation modified). “The fundamental requirement of [procedural] due
14
15 process is the opportunity to be heard at a meaningful time and in a meaningful
16
17 manner.” *Id.* at 333 (citation modified).
18

19 59. By regulation, revocations of release may only be carried out in the “discretion
20
21 of the district director, acting district director, deputy director, assistant district
22
23 director for investigations, assistant district director for detention and deportation, or
24
25 officer in charge (except foreign).” 8 C.F.R. § 236.1(c)(9).
26

27 60. The Supreme Court has repeatedly recognized that re-detention after some form
28
of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S.
143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v.*
Scarpelli, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v.*
Brewer, 408 U.S. 471 (1972) (same, in parole context). The same protection applies to
people like Petitioner who were released from civil immigration detention. See *Ortega*
v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (observing that “[g]iven the
civil context [of immigration detention], [the] liberty interest [of noncitizens released
from custody] is arguably greater than the interest of parolees.”)

COUNT ONE

***Zadvydas* Violation of Section 1231
Against all Defendants**

61. Once a non-citizen is subject to a final order of removal, detention authority shifts to 8 U.S.C. § 1231(a). *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) (“[Section] 1231(a) . . . governs the detention, release, and removal of individuals ‘ordered removed.’”).

62. The INA directs that “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” *See* 8 U.S.C. § 1231(a)(1)(A). Section 1231(a)(6) of the INA provides, in turn, that an alien “may be detained beyond the removal period” but only if the alien “has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal” or in certain circumstances that are not relevant here. *See* 8 U.S.C. § 1231(a)(6). Otherwise, “[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, *shall be subject to supervision* under regulations prescribed by the Attorney General.” *See* 8 U.S.C. § 1231(a)(3) (emphasis added).

63. Indeed, in *Zadvydas*, the Supreme Court explained that section 1231 provides a “choice . . . not between imprisonment and the alien ‘living at large,’” but “between imprisonment and supervision under release conditions that may not be violated.” *See Zadvydas*, 533 U.S. at 696. Thus, *Zadvydas* establishes a

1 presumption of *continuing* release on supervision after the removal period expires
2
3 unless conditions imposed are violated by the non-citizen or the order of removal is
4
5 executed. *Id.*

6
7 64. By enacting 8 C.F.R. §241.4(l)(2) however, Respondents have turned this
8
9 continuing “supervision under release conditions that may not be violated” into a
10
11 *discretionary* decision at the whim of deportation officers regardless of any condition
12
13 violation.

14
15 65. But Congress in section 1231(a) spoke in unambiguous terms in setting a
16
17 temporal removal period and a direction of release on supervision after the expiration
18
19 of the 90-day removal period unless specific findings are made by the AG making
20
21 release not reasonable. By providing “authority” to the agency to enact regulations for
22
23 the statutory mandated “supervision” and a fill-gap authority to establish “reasonable
24
25 written restrictions on the alien’s conduct or activities that the Attorney
26
27 General prescribes for the alien” Congress did not, however, provide unfettered
28
discretion to the agency to revoke the statutory mandated release on supervision for
reasons unrelated to violations of conditions of release. Since section 241.4(l)(2)(i) &
(iv) are inconsistent with the specific statutory authority delegated to the agency by
section 1231(a)(3) and violate the presumption of continuing release on supervision
without violation of the “written conditions” on which the supervision was granted,
the regulation is violative of the unambiguous language of the statute. Defendants
cannot by regulation circumvent the clear and unambiguous language of the statute.
See Pereira v. Sessions, 138 S. Ct. 210, 214 (2018) (“If the intent of Congress is clear,

1 that is the end of the matter; for the court, as well as the agency, must give effect to
2
3 the unambiguously expressed intent of Congress”).
4

5 **COUNT TWO**

6 7 **Detention in Violation of the Fifth Amendment** 8 **(substantive due process)** 9 **Against all Defendants**

10 66. The Fifth Amendment guarantees that no person shall be deprived of liberty
11 without due process of law. U.S. Const. Amend. V. “Freedom from
12 imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S.
14 at 690.
15
16
17
18
19

20 67. Substantive due process prohibits civil detention that is punitive in purpose
21 or in effect, including civil detention that is excessively prolonged in relation to its
22 purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise, “due
23 process requires that the nature and duration of commitment bear some reasonable
24 relation to the purpose for which the individual is committed”; otherwise, the
25 commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir.
26 2004) (quoting *Jackson*, 406 U.S. at 738).
27
28

68. Moreover, even while the Constitution permits mandatory detention for
certain categories of noncitizens in removal proceedings, such confinement may
become punitive when it is “excessively prolonged.” *United States v. Salerno*, 481
U.S. 739, 474 n.4 (1987). Thus, as a detained person’s time in custody increases,
so too does their liberty interest. *See Zadvydas*, 533 U.S. at 699–700. “[F]or

1 detention to remain reasonable,” greater justification is needed “as the period of
2
3 confinement grows.” *Id.* at 701. 64. Accordingly, “at some point, regardless of the
4
5 risks, due process will require that [a person subject to prolonged civil
6
7 confinement] be released.” *United States v. Torres*, 995 F.3d 695, 709–10 (9th Cir.
8
9 2021) (noting that federal government had conceded this point); *see also United*
10
11 *States v. Briggs*, 697 F.3d 98, 103 (2d Cir. 2012) (stating that “for every set of
12
13 circumstances, due process does impose some limit” on civil confinement)

14
15 69. Respondents cannot show any “special justification” or compelling
16
17 governmental interest which would outweigh Petitioner’s constitutional liberty.

18
19 70. Respondents already determined upon the examination of the administrative
20
21 record, that Petitioner was not a danger or flight risk, and paroled him under
22
23 section 212(d)(5). No material changes in circumstances pertaining to danger and
24
25 flight risk have occurred.

26
27 71. Applying these principles, the Ninth Circuit has held that civil detention
28
violates substantive due process (1) when it is “expressly intended to punish,” or
(2) when “the challenged restrictions serve an alternative, non-punitive purpose but
are nonetheless excessive in relation to the alternative purpose, . . . or are
employed to achieve objectives that could be accomplished in so many alternative
and less harsh methods.” *Jones*, 393 F.3d at 932 (citation modified). Here
Petitioner’s detention is punitive of both counts.

72. The governmental interest in the continued detention of these least-
dangerous individuals does not and cannot outweigh the liberty interest at stake.

1 73. Courts within the Ninth Circuit regularly issue writs of habeas corpus
2
3 releasing immigrants whose ongoing custody violates the Constitution when the
4
5 government cannot justify their prolonged detention. *See, e.g., Doe v. Becerra*, 732
6
7 F. Supp. 3d 1071, 1090 (N.D. Cal. 2024); *Judulang v. Chertoff*, 562 F. Supp. 2d
8
9 1119, 1127 (S.D. Cal. 2008) (ordering petitioner's release on a motion to enforce a
10
11 habeas order after an IJ denied bond at a prolonged detention hearing); *Mau v.*
12
13 *Chertoff*, 562 F. Supp. 2d 1107, 1118–19 (S.D. Cal. 2008) (same); *Jimenez v. Wolf*,
14
15 No. 19-cv-07996-NC, 2020 WL 1082648, at *4 (N.D. Cal. Mar. 6, 2020) (same);
16
17 *Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised
18
19 release pursuant to *Zadvydas*); *Nguyen*, 84 F. Supp. 2d at 1113 (issuing order to
20
21 show cause why petitioner should not be released pursuant to *Zadvydas*).
22

23 74. Courts also issue writs of habeas corpus releasing detained noncitizens when
24
25 conditions of confinement are excessive in relation to the person's flight risk or
26
27 danger to the community. *See, e.g., Doe v. Becerra*, 732 F. Supp. 3d at 1089–90;
28
Bent v. Barr, 445 F. Supp. 3d 408, 414–15, 421 (N.D. Cal. 2020); Doe v. Barr, No.
20-cv-02141-LB, 2020 WL 1820667, at *8–10 (N.D. Cal. Apr. 12, 2020); Ortuño
v. Jennings, No. 20-cv-02064-MMC, 2020 WL 1701724, at *3–5 (N.D. Cal. Apr.
8, 2020); Doe v. Barr, No. 20-cv-02263-RMI, 2020 WL 1984266, at *6–7 (N.D.
Cal. Apr. 27, 2020).

COUNT THREE

Detention in Violation of the Fifth Amendment (procedural due process) Against all Defendants

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 23

1 75. Prolonged and/or punitive detention without individualized review is
2
3 violative of procedural due process. *See Rodriguez v. Marin*, 909 F.3d 252, 256
4
5 (9th Cir. 2018) (registering “grave doubts that any statute that allows for arbitrary
6
7 prolonged detention without any process is constitutional”); *German Santos v.*
8
9 *Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (holding that “§
10
11 1226(c) is unconstitutional when applied to detain an alien unreasonably long
12
13 without a bond hearing”).

14
15 76. As a result, where the government detains a noncitizen for a prolonged
16
17 period while the noncitizen pursues a substantial defense to removal, due process
18
19 requires an individualized hearing before a neutral decisionmaker to determine
20
21 whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at
22
23 532 (Kennedy, J., concurring) (stating that an “individualized determination as to
24
25 [a noncitizen’s] risk of flight and dangerousness” may be warranted “if the
26
27 continued detention became unreasonable or unjustified”); cf. *Jackson*, 406 U.S. at
28
733 (detention beyond the “initial commitment” requires additional safeguards);
McNeil v. Dir., Patuxent Inst., 407 U.S. 245, 249–50 (1972) (noting that “lesser
safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*,
437 U.S. 678, 685–86 (1978) (observing, in Eighth Amendment context, that “the
length of confinement cannot be ignored in deciding whether [a] confinement
meets constitutional standards”).

77. The recognition that six months constitutes a substantial period of
confinement that qualifies as prolonged detention is deeply rooted in our legal

1 tradition. With only a few exceptions, “in the late 18th century in America crimes
2 triable without a jury were for the most part punishable by no more than a six-
3 month prison term.” *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968).
4

5
6
7 78. Consistent with this tradition, the Supreme Court has found six months to be
8 the limit of confinement for a criminal offense that a federal court may impose
9 without the protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S.
10 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a
11 benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at
12 249, 250–52 (recognizing six months as an outer limit for confinement without
13 individualized inquiry for civil commitment).
14

15
16
17 79. To determine whether a civil detention violates a detainee’s due process
18 rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S.
19 319, (1976).
20

21
22
23 80. Pursuant to *Mathews*, courts weigh the following three factors: (1) “the
24 private interest that will be affected by the official action”; (2) “the risk of an
25 erroneous deprivation of such interest through the procedures used, and the
26 probable value, if any, of additional or substitute procedural safeguards”; and (3)
27 “the Government’s interest, including the function involved and the fiscal and
28 administrative burdens that the additional or substitute procedural requirement
would entail.” *Mathews*, 424 U.S. at 335.

81. Petitioner has a significant interest at stake: being free from physical
detention “is the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S.

1 507, 529 (2004). Petitioner is being held at a for profit private detention center for
2
3 adults in the same conditions as criminal inmates and is far from his family and his
4
5 immigration counsel. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir.
6
7 2020) (finding, in assessing the first *Mathews* factor, that, “The deprivation he
8
9 experienced while incarcerated was, on any calculus, substantial. He was locked up
10
11 in jail. He could not maintain employment or see his family or friends or others
12
13 outside normal visiting hours.”).

14
15 82. Second, there is an enormous risk of erroneous deprivation of Petitioner’s
16
17 liberty interest through the procedures used in this case. As shown by the fact of
18
19 this case, despite Petitioner’s entitlement to a *Rodriguez* bond, the Court found it
20
21 has no jurisdiction, thus relegating Petitioner to languish in indefinite detention.
22
23 See Exhibit E & F. The risk of deprivation is especially high because Respondents
24
25 have no process or procedure and do not conduct pre-deprivation inquiry prior to
26
27 re-detaining non-citizens like Petitioner.
28

83. Third, there is no significant governmental interest at stake in Petitioner’s
detention while the BIA reviews the pending motion to reopen. *See Kucana v.*
Holder, 558 U.S. 233 (2010) (“The motion to reopen is an “important safeguard”
intended “to ensure a proper and lawful disposition” of immigration
proceedings. *Dada v. Mukasey*, 554 U. S. 1, ____.”)

84. The burden on the Government for the additional process requested by
Petitioner, to wit, that Respondents provide a notice and an opportunity to be heard

1 before a neutral adjudicator prior to re-detention or a at least a constitutionally
2 sufficient Rodriguez bond hearing, is minimal.
3

4
5 85. Not affording Peititioner a judicial forum to challenge the legality of his
6 continued detention despite the prior release on OREC, though this habeas corpus
7 proceedings would also violate the Suspension Clause of the U.S. Constitution.
8

9
10
11 86. Because all three *Mathews* factors favor Petitioner's rights, Respondents
12 have violated Petitioner's procedural due process rights under the Fifth
13 Amendment both on its face and as applied to the particular circumstances of this
14 case.
15
16
17

18
19 **COUNT FOUR**
20 **Non-Statutory Ultra Vires Action/Accardi Doctrine Violation**
21 **Against all Defendants**
22

23
24 87. There is no statute, constitutional provision, or other source of law that
25 authorizes Respondents to detain Petitioner under the circumstances of this case.
26

27
28 88. Petitioner has a non-statutory right of action to declare unlawful, set aside,
and enjoin Respondents' ultra vires actions.

89. Under the *Accardi* doctrine, Petitioner also has a right to set aside agency
action that violated agency procedures, rules, or instructions. *See United States ex*
rel. Accardi v. Shaughnessy, 347 U.S. 260 ("If petitioner can prove the allegation
[that agency failed to follow its rules in a hearing] he should receive a new
hearing").

1 90. Petitioner has a liberty interest accruing to him by the grant of parole and
2
3 release of recognizance that cannot be taken without due process. Congress has
4
5 permitted the Attorney General to delegate detention determinations to “any other
6
7 officer, employee, or agency of the Department of Justice.” 28 U.S.C. § 510.
8
9

10 91. Defendants violated its own regulations in re-detaining Petitioner without a
11
12 notice, an opportunity to be heard and rebut before a neutral adjudicator and by
13
14 refusing to either release him of supervision under section 1231(a) or provide him
15
16 with an individualized Rodriguez bond.
17
18
19
20

21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff-Petitioner prays that this Court grant the following relief:
23

24 (1) Assume jurisdiction over this matter;
25

26 (2) Issue a Writ of Habeas Corpus on the ground that Petitioner’s continued
27
28 detention violates the Due Process Clause and order Petitioner’s immediate
release;

(3) In the alternative, issue injunctive relief ordering Respondents to
immediately release Petitioner on an order of supervision or provide him
with an individualized *Rodriguez* type bond;

(4) Issue an injunction ordering Respondents not to transfer Petitioner outside of
the jurisdiction of this Court;

(5) Enter a judgment declaring that Respondents’ detention of Petitioner and

1 is and will be unauthorized by statute and contrary to law;

2
3 (6) Award Petitioner reasonable costs and attorney fees.

4
5 Date: 6/10/2026

6
7 Verified and Submitted by

8
9 s/ Nicolette Glazer Esq.

10 Nicolette Glazer Esq.

11 LAW OFFICES OF LARRY R GLAZER

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13 Century City, CA 90067

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15 F: 310-407-5354

16 nicolette@glazerandglazer.com

17 ATTORNEY FOR PETITIONER

18
19
20
21 VERIFICATION OF COUNSEL

22
23 I am counsel for the Petitioner who is detained by ICE outside of the counties in
24 which I maintain my offices and he can easily receive and return documents.
25 Accordingly, I make this verification for and on behalf of Petitioner for that reason.
26 I have conducted a reasonable investigation into the facts and circumstances in this
27 case, I have interviewed witnesses, and I am informed and believe and on that
28 ground allege that the factual matters stated in the foregoing Petition for Habeas
Corpus are true and correct to the best of my knowledge. I so declare under penalty
of perjury.

s/ Nicolette Glazer Esq.

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ATTORNEY FOR PETITIONER

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 29

EXHIBITS

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF - 30

01/19/2026

To Whom it May Concern,

My name is YAHAIIRA FUENTES. I am presenting this declaration in support of my husband's petition for habeas corpus. The facts stated in this declaration are based on my own observations and by talking to my husband and reviewing his documents.

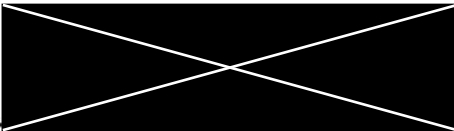
MANUEL ALEXANDER FUENTE GUEVARA is my husband. We married on JUNE 11, 2011 in Van Nuys California. We've been married for 14 years now and have two daughters [REDACTED] (14yrs) and [REDACTED] (10).

Manuel and I, run our own auto detailing business. Manuel fled to the US with his aunt and sister in 2005 because he wanted to be with his mother that he never met and to live a better life here in the US compare to the poor life he had in El Salvador being raised by his really old grandparents. He was waiting to receive a letter from the Immigration Court after he was released. He never received a notice and had no idea that he had been ordered removed.

On Friday November 07, 2025; my husband and I were waiting for a client to pick up his car on a Walgreen's parking lot located on 9750 Woodman Ave, Arleta CA 91331. He stepped aside to make a phone call between 10:00-10:30 am while I was waiting in our working vehicle, suddenly a black truck stopped next to our vehicle, and ICE Officers came out. I rapidly called my husband to see where he was, when he answered he said "come here." I saw the Officers with him and walked toward them to see what was happening. As I approached one of the Officers was asking for his documents, while he was answering "I don't feel safe showing any documentation, please show me a badge or something that tells me you are an official ICE Officer." During this time another Officer was asking me the same question which I answered that I didn't carry my documents that stated I was legal in this country. I asked him for permission to return to my car and check my wallet if by any chance I did carry them. Before the Officer could reply if he would or wouldn't allow me to step aside, the officer with my husband brought out a small device that is similar to a black phone and took a picture of our faces. Once they took our pictures I guessed it showed in their system I was legal because they said I wasn't being detained but my husband was being taken. Once they stated he was being taken my husband told the Officers that he would go voluntarily with them to please not handcuff him like a criminal. That's when both officers used force and violence toward him, one hit his elbow on his neck hurting him while the other put the handcuffs on. He was telling the other officer to please stop hurting him and they put him inside the vehicle. I asked them multiple times information about where they were taking him. Due to the different answers from the officers I asked one of the officers if I could follow them and he said yes but to not intervene. Five hundred feet into driving I decided not to continue and contact my Lawyer.

Since being detained my husband has experienced lots of stress, anxiety, no sleep due to all the worries, back pain from fear he could get deported and not getting a chance to stay in this country. . He also experienced lung pain on some days. Recently he's had many days with fever due to not getting proper food, his skin has been getting some sort of rashes, and we believe it could be from allergies. When he has been to the nurse's office all they say its normal.

The above is true and correct to the best of my knowledge.

X 
YAHARA FUENTES 01/19/2026