

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

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

11 **JUAN JOSE HIDALGO GONZALEZ,**

12 Petitioner,

13 v.

14 **CHRISTOPHER LAROSE,** Warden, Otay Mesa

15 Detention Center;

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

17 Department of Homeland Security;

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

19 Immigration and Customs Enforcement;

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

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

22 Respondents
23
24
25
26
27
28

Case No.: '26CV3561 GPC GC



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

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

4 **INTRODUCTION**

5 2. Petitioner, Juan Jose Hidalgo Gonzalez, is a native and citizen of Venezuela currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

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

10 4. Petitioner presented himself for inspection at a United States port of entry through the
11 CBP One appointment process on or about May 28, 2023. Following inspection and processing
12 by the Department of Homeland Security, Petitioner was granted parole into the United States
13 and issued a Form I-94 documenting that parole. (*Ex. 1.*) Following that grant of parole,
14 Petitioner was permitted to reside at liberty in the United States.

15 5. Petitioner remained at liberty for more than two years following his grant of parole.
16 During that period, Petitioner resided in the community without any indication that he posed a
17 danger to the community or a risk of flight.

18 6. On or about March 28, 2024, the Immigration Court terminated Petitioner's removal
19 proceedings after determining that Petitioner was prima facie eligible for Temporary Protected
20 Status. (*Ex. 2.*) Thereafter, on or about August 9, 2024, USCIS approved Petitioner's application
21 for Temporary Protected Status.

22 7. Despite Petitioner's grant of parole, the termination of his removal proceedings, and his
23 subsequent approval for Temporary Protected Status, Immigration and Customs Enforcement
24 later took Petitioner into custody following an encounter while he was making a food delivery at
25 the entrance to a military installation.

1 8. At no point following Petitioner's re-detention did Respondents provide Petitioner with
2 an individualized custody determination before a neutral decisionmaker or otherwise provide
3 constitutionally adequate custody review.

4 9. Respondents' continued detention of Petitioner is unlawful. Once the government
5 exercised its discretionary authority to grant Petitioner parole into the United States, permitted
6 him to reside at liberty in the community for an extended period of time, obtained termination of
7 his removal proceedings, and approved his application for Temporary Protected Status,
8 Petitioner acquired significant liberty interests protected by the Due Process Clause.

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

12 11. By continuing to detain Petitioner without an individualized custody determination or
13 constitutionally adequate custody review, Respondents have deprived Petitioner of his liberty in
14 violation of the Due Process Clause of the Fifth Amendment.

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

19 **CUSTODY**

20 13. Petitioner is currently in the legal and physical custody of Respondents and is
21 detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of
22 this Court.

23 **JURISDICTION AND VENUE**

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

1 15. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
2 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody
3 under the United States' color of authority, and such custody violates the Constitution, laws, or
4 treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality,
5 status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747
6 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends.
7 V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

8 16. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's
9 detention. Federal district courts possess broad authority to issue writs of habeas corpus when a
10 person is held "in custody in violation of the Constitution or laws or treaties of the United States"
11 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that
12 survived the REAL ID Act's jurisdictional restrictions.

13 17. Because Petitioner seeks the traditional habeas remedy of release from allegedly
14 unlawful detention rather than additional administrative review of his underlying claims, his
15 petition presents precisely the type of threshold legality-of-detention question that § 2241 was
16 designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v.*
17 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

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

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

1 detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under
2 28 U.S.C. § 2241.

3 **PARTIES**

4 20. Petitioner, Juan Jose Hidalgo Gonzalez, is a native and citizen of Venezuela currently
5 detained at the Otay Mesa Detention Center in San Diego, California.

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

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

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

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

15 25. All Respondents are named in their official capacities.

16 **STATEMENT OF FACTS**

17 26. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego,
18 California. Petitioner is a native and citizen of Venezuela who presented himself for inspection at
19 a United States port of entry through the CBP One appointment process on or about May 28,
20 2023.

21 27. Following inspection and processing by the Department of Homeland Security,
22 Petitioner was granted parole into the United States and issued a Form I-94 documenting that
23 parole. (Ex. 1.) Following that grant of parole, Petitioner was permitted to reside at liberty in the
24 United States.

25 28. Petitioner thereafter resided at liberty in the United States for more than two years
26 while living in the community.

1 29. On or about March 28, 2024, the Immigration Court terminated Petitioner's removal
2 proceedings after determining that Petitioner was prima facie eligible for Temporary Protected
3 Status.

4 30. Thereafter, United States Citizenship and Immigration Services approved Petitioner's
5 application for Temporary Protected Status.

6 31. Despite Petitioner's grant of parole, the termination of his removal proceedings, and
7 his subsequent approval for Temporary Protected Status, Immigration and Customs Enforcement
8 later took Petitioner into custody following an encounter while Petitioner was making a food
9 delivery at the entrance to a military installation.

10 32. Following his arrest, Petitioner was transferred to the Otay Mesa Detention Center in
11 San Diego, California, where he is currently detained.

12 33. At no point following Petitioner's re-detention did DHS provide Petitioner with an
13 individualized custody hearing, an individualized custody determination before a neutral
14 decisionmaker, or any constitutionally adequate custody review. Respondents continue to detain
15 Petitioner notwithstanding his prior grant of parole, the termination of his removal proceedings,
16 his approval for Temporary Protected Status, and his prolonged liberty in the community.

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

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

23 35. Federal courts have long emphasized the importance of habeas corpus as a
24 protection against unlawful restraint. The Supreme Court has described the Great Writ as
25 “perhaps the most important writ known to the constitutional law of England, affording as it
26 does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
27 *Noia*, 372 U.S. 391, 400 (1963).

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

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

26 39. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his
27 detention violates the Constitution and the INA. Constitutional claims and pure questions of law
28

1 —such as whether DHS has statutory authority to detain Petitioner and whether detention under
2 § 1225(b) is lawful in these circumstances—fall outside the agency’s adjudicatory competence.
3 See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
4 (exhaustion excused where the agency “does not have jurisdiction to review” constitutional
5 claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
6 There is no administrative forum that can determine whether DHS may lawfully invoke §
7 1225(b)(2) to detain Petitioner under these circumstances.

8 40. Petitioner suffers irreparable harm for each additional day he remains unlawfully
9 detained. Even brief periods of unlawful civil detention inflict significant deprivation of liberty
10 and emotional distress. Petitioner’s continued detention following a prolonged period of
11 authorized liberty in the community further magnifies these ongoing harms. Courts routinely
12 excuse exhaustion where unlawful detention results in irreparable injury. Petitioner’s ongoing
13 detention therefore warrants waiver of prudential exhaustion.

14 **LEGAL FRAMEWORK**

15 41. The Immigration and Nationality Act distinguishes between detention at the time of
16 entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225,
17 1226.

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

22 43. Once the Department of Homeland Security grants parole to a noncitizen pursuant to
23 INA § 212(d)(5)(A) and permits that individual to reside at liberty in the United States for a
24 prolonged period of time, the inspection-stage detention framework no longer applies in the same
25 manner as it would to a noncitizen detained immediately upon entry. Any subsequent detention
26 following a later interior arrest must comply with the constitutional requirements governing civil
27 immigration detention, including individualized custody review consistent with due process.

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

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

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

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

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

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

25 **CLAIM FOR RELIEF**

26 **COUNT 1**

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

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

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

8 52. Petitioner presented himself for inspection at a United States port of entry through the
9 CBP One appointment process on or about May 28, 2023. Following inspection and processing
10 by the Department of Homeland Security, Petitioner was granted parole into the United States
11 and issued a Form I-94 documenting that parole. Following that grant of parole, Petitioner was
12 permitted to reside at liberty in the United States. Thereafter, the Immigration Court terminated
13 Petitioner's removal proceedings after determining that Petitioner was *prima facie* eligible for
14 Temporary Protected Status, and USCIS subsequently approved Petitioner's application for
15 Temporary Protected Status. Following his later arrest, Respondents took Petitioner into
16 immigration custody without providing any individualized custody determination or
17 constitutionally adequate custody review.

18 53. Having previously been granted parole into the United States, permitted to reside at
19 liberty in the community for more than two years, obtained termination of his removal
20 proceedings, and received approval for Temporary Protected Status, Petitioner acquired
21 substantial liberty interests protected by the Due Process Clause. Continued detention without an
22 individualized determination and without constitutionally adequate process constitutes an
23 arbitrary deprivation of liberty in violation of the Fifth Amendment.

24 54. Here, Respondents re-detained Petitioner after previously granting him parole into the
25 United States, permitting him to reside at liberty in the community for more than two years,
26 obtaining termination of his removal proceedings, and approving his application for Temporary
27 Protected Status. Respondents have provided no reasoned explanation for Petitioner's continued
28

1 detention and have failed to provide any individualized custody determination or constitutionally
2 adequate custody review.

3 55. Respondents have further failed to articulate any reasoned basis for continuing to
4 detain Petitioner after previously granting him parole into the United States, permitting him to
5 reside at liberty in the community for more than two years, obtaining termination of his removal
6 proceedings, and approving his application for Temporary Protected Status. Continued detention
7 under these circumstances, without any individualized custody determination or constitutionally
8 adequate process, is arbitrary, capricious, and contrary to law.

9 **COUNT 2**

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

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

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

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

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

23 60. Here, Respondents re-detained Petitioner after previously granting him parole into the
24 United States, permitting him to reside at liberty in the community for more than two years,
25 obtaining termination of his removal proceedings, and approving his application for Temporary
26 Protected Status. Respondents have provided no reasoned explanation for Petitioner's continued
27
28

1 detention and have failed to provide any individualized custody determination or constitutionally
2 adequate custody review.

3 61. Respondents have further failed to articulate any reasoned basis for continuing to
4 detain Petitioner after previously granting him parole into the United States, permitting him to
5 reside at liberty in the community for more than two years, obtaining termination of his removal
6 proceedings, and approving his application for Temporary Protected Status. Continued detention
7 under these circumstances, without any individualized custody determination or constitutionally
8 adequate process, is arbitrary, capricious, and contrary to law.

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner respectfully requests that this Court:

16 A) Assume jurisdiction over this matter;

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

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

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

26 E) Declare that Respondents' actions detaining Petitioner without a reasoned explanation,
27 without an individualized justification, and without complying with governing procedures were
28

1 arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the
2 Administrative Procedure Act, 5 U.S.C. § 706(2);

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

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

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

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

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

16 K) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
17 2412, and any other basis authorized by law; and

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

19 Respectfully submitted,

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

21 Alex Monsalve Law Firm, PC

22 240 Woodlawn Ave, Suite 9

23 Chula Vista, CA 91910

24 Phone: (619) 777-6796

25 Email: info@alexmonsalvelawfirm.com

26 Counsel for Petitioner

27 Dated: June 15, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and Petitioner's relatives, as well as my review of available immigration and court records. Those records include documentation issued by the Department of Homeland Security, including Petitioner's Form I-94 documenting his parole into the United States and related immigration records. I have also personally communicated with Petitioner's relatives regarding the circumstances of his detention and personally visited Petitioner at the Otay Mesa Detention Center.

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

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

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner

Dated: June 15 2026