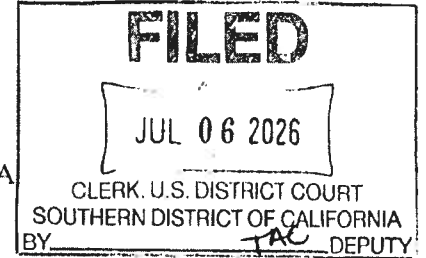


UNITED STATES DISTRICT
COURT SOTHERN DISTRICT OF CALIFORNIA



LUTDAY JESUS GARRILLO VICTORA
Proceeding Pro Se,
Petitioner,
v.
_____, WARDEN, Imperial Regional Detention Facility;
_____, FIELD OFFICE DIRECTOR, ICE San Diego Field
Office; DAVID J. VENTURELLA, Acting Director, United
States Immigration and Customs
Enforcement; MARKWAYNE MULLIN, Secretary of
Homeland Security; TODD BLANCHE, Acting Attorney
General, United States,
Respondents.

Case No. 3:26-cv-03604-JO-JLB
**BRIEF IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Lutday Jesus Garrillo Victora, a 39-year-old asylum seeker from Venezuela with no criminal history, challenges his unlawful civil immigration detention. For nearly three years, Petitioner lived and worked peacefully in Florida, supporting his two young children and elderly mother. On May 27, 2026, he was arrested without a warrant after being stopped for not having a driver's license while walking to work. Since then, he has been subjected to a series of unannounced, cross-country transfers, and has been denied any form of custody hearing.

Petitioner's detention is statutorily and constitutionally infirm. First, as a noncitizen arrested in the interior of the country after years of residence, his detention is governed by the discretionary provisions of 8 U.S.C. § 1226(a), which entitle him to a bond hearing. The government's attempt to subject him to mandatory detention under 8 U.S.C. § 1225(b)(2) is contrary to the overwhelming weight of judicial authority. Second, Respondents' seizure of Petitioner from the community without any prior notice or hearing violated his fundamental right to due process under the Fifth Amendment. Because his liberty was unlawfully taken, the only proper remedy is its restoration.

Petitioner respectfully requests that this Court grant the writ and order his immediate release.

I. JURISDICTION AND VENUE

This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (writ of habeas corpus). The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). A district court’s habeas jurisdiction includes challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). A writ may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3). Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Petitioner is detained in Calexico, California, which is within the Southern District of California.

II. STATEMENT OF FACTS

Petitioner is a citizen of Venezuela who entered the United States on or about July 7, 2023, to seek asylum from the widespread violence and instability in his home country. He established a stable life in Florida, where he worked at a golf course for two years. He is the sole financial provider for his two 8-year-old children and 62-year-old mother, who reside in Venezuela.

On May 27, 2026, Petitioner was arrested in Vero Beach, Florida, for not having a valid driver’s license while walking to work. He has no criminal history whatsoever. His immigration case is currently pending, and he has a pending asylum application (Form I-589 fee paid April 30, 2026) before the Imperial Immigration Court. There is no final order of removal against him.

Since his arrest, Respondents have transferred Petitioner without notice through three different states—from Florida (Broward Transitional Center) to Louisiana (Winn Correctional Center), and finally to his current location in California (Imperial Regional Detention Facility). He has never

received an individualized custody determination or bond hearing.

III. LEGAL STANDARD FOR HABEAS RELIEF

“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Historically, “the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

IV. ARGUMENT

A. PETITIONER'S DETENTION IS GOVERNED BY § 1226(a), NOT § 1225(b)(2).

1. The Statutory Framework

The detention of noncitizens in removal proceedings is governed by a complex statutory framework. Section 1226(a) is the “usual removal process” for inadmissible noncitizens apprehended in the interior. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). It provides for a discretionary detention scheme, allowing the government to either detain the individual or release them on bond or conditional parole pending removal proceedings. 8 U.S.C. § 1226(a)(2)(A)-(B). Crucially, a noncitizen detained under § 1226(a) is entitled to a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

In contrast, 8 U.S.C. § 1225 applies to “applicants for admission”—those who arrive at the border—and mandates detention for certain individuals. 8 U.S.C. § 1225(a)(1), (b)(2). Until recently, DHS applied the discretionary framework of § 1226(a) “to the vast majority of noncitizens allegedly in this country without valid documentation.” *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *3 (N.D. Cal. Sep. 12, 2025). However, following a July 8, 2025, DHS memorandum and the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N.

Dec. 216 (BIA 2025), the government began asserting that § 1225 applies to all noncitizens arrested in the interior, thereby subjecting them to mandatory detention without a bond hearing. *See Garro Pinchi v. Noem*, No. 25-cv-05632-PCP, 2025 WL 3691938, at *4 (N.D. Cal. Dec. 19, 2025).

2. The Overwhelming Majority of Courts Reject the Government's Broad Interpretation.

The government's new, expansive interpretation of § 1225 has been roundly rejected by federal courts. Respondents' argument that § 1225 applies to all noncitizens who entered the United States without inspection "has been consistently rejected by a majority of courts in this district and courts across the country." *Valencia Zapata v. Kaiser*, No. 25-cv-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sep. 26, 2025) (collecting cases).

Courts have "generally held that section 1226 rather than section 1225 is the appropriate section to apply in cases in which a noncitizen is already living in the United States." *Alvarez Maciel v. Noem*, No. 1:26-cv-01318-DC-CKD, 2026 WL 496948, at *7 (E.D. Cal. Feb. 23, 2026); *see Morillo v. Albarran*, No. 25-cv-01533-DJC-AC, 2025 WL 3190899, at *4 (E.D. Cal. Nov. 15, 2025) (finding § 1226 applies to petitioner present for 19 years); *Huerta v. Bondi*, No. 25-cv-00941-JLT-HBK, 2026 WL 366709, at *1 (E.D. Cal. Feb. 10, 2026) (same for petitioner present for over 20 years). Indeed, the "overwhelming majority of courts to address the issue have agreed that Section 1226(a), rather than the mandatory detention provision of Section 1225(b)(2)(A), applies to a noncitizen . . . who has resided in the United States for many years." *Bernardo Aquino v. Larose*, No. 25-cv-02904-RSH-MMP, 2025 WL 3158676, at *3 (S.D. Cal. Nov. 12, 2025) (citing cases).

Furthermore, the district court in *Bautista v. Santacruz*, 820 F. Supp. 3d 1016 (C.D. Cal. 2026), vacated the BIA's decision in *Hurtado*, finding that the government's interpretation "effectively

removes § 1226 from existence” and “cannot be harmonized with other portions of the INA.” *See Quichimbo-Jimenez v. Warden*, No. 2:26-cv-00739-DAD-EFB, 2026 WL 679378, at *2 (E.D. Cal. Mar. 10, 2026) (adopting *Bautista*’s persuasive reasoning).

3. Application to Petitioner

Petitioner is not an arriving alien. He entered the United States nearly three years ago and has been living and working in the interior of the country. Under the overwhelming weight of authority, § 1226(a) governs his detention. Respondents have therefore unlawfully denied him the bond hearing to which he is statutorily entitled.

B. PETITIONER'S RE-DETENTION WITHOUT A PRE-DEPRIVATION HEARING VIOLATED THE DUE PROCESS CLAUSE.

1. Petitioner Has a Protected Liberty Interest.

The Due Process Clause of the Fifth Amendment applies to all “persons” within the United States, regardless of their immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Id.* at 690.

When the government releases a noncitizen into the community, that individual acquires a protected liberty interest in their continued freedom. “A noncitizen released from custody pending immigration proceedings has a protected liberty interest in remaining out of custody.” *Salcedo Aceros*, 2025 WL 2637503, at *6. The government’s decision creates an “implicit promise” that this liberty will be revoked only for cause and with fair process. *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. July 24, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Petitioner’s liberty interest is strengthened by the nearly three years he has lived in the community, established a work history, and pursued his asylum claim. *See Doe v. Becerra*, 787 F. Supp. 3d

1083, 1093 (E.D. Cal. 2025).

2. The *Mathews v. Eldridge* Factors All Favor Petitioner.

To determine what process is due, the Court applies the three-factor test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). All three factors weigh decisively in Petitioner's favor.

First, Petitioner's private interest is profound. It encompasses his fundamental right to freedom, his ability to pursue his pending asylum claim, and his role as the sole financial provider for his two young children and elderly mother. "[T]he meaningful connections Petitioner seems to have made with his community during that time create a powerful interest for Petitioner in his continued liberty." *Doe v. Becerra*, 787 F. Supp. 3d at 1094.

Second, the risk of erroneous deprivation is extremely high. Respondents arrested and detained Petitioner without any pre-deprivation process, based on a minor non-criminal stop. "The absence of pre-deprivation procedures creates a high risk of erroneous liberty deprivation." *Rafaela Neri Angel v. Warden*, No. 5:26-cv-03269-MWC-JDE (C.D. Cal. June 18, 2026), at *4. Without a hearing, no neutral arbiter has determined if his detention serves any legitimate purpose, such as preventing flight or danger to the community.

Third, the government's interest in detaining Petitioner without any procedural protections is "slight." *Pineda v. Chestnut*, No. 1:25-cv-01970-DC-JDP, 2026 WL 25510, at *6 (E.D. Cal. Jan. 5, 2026). The fiscal and administrative burdens of providing a bond hearing are "minimal," as they are routine proceedings. *Doe v. Becerra*, 787 F. Supp. 3d at 1094.

3. Courts Have Consistently Found Due Process Violations in These Circumstances.

A multitude of courts have held that re-detaining a previously released noncitizen without a pre-deprivation hearing is a clear violation of the Fifth Amendment. *See, e.g., Selis Tinoco v. Noem*, No. 1:25-cv-01762-DC-JDP, 2025 WL 3567862 (E.D. Cal. Dec. 14, 2025); *Lainez Escobar v.*

Warden, No. 1:26-cv-03391-DC-AC (E.D. Cal. May 14, 2026); *Johalan David N.M. v. Warden*, No. 2:26-cv-01270-TLN-AC (E.D. Cal. June 25, 2026); *Yunhe B. v. Warden*, No. 1:26-cv-03307-TLN-CKD (E.D. Cal. June 16, 2026). A post-deprivation hearing, even if one were offered, cannot cure the initial constitutional violation. *Charan S. v. Warden*, No. 1:26-cv-03017-TLN-JDP, 2026 WL 1547432 (E.D. Cal. Apr. 28, 2026), at *9. Because pre-deprivation process was possible and valuable, it was required. *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

C. THE PROPER REMEDY IS IMMEDIATE RELEASE.

The “typical remedy” in habeas for unlawful detention “is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Federal courts possess “broad and flexible power” to fashion appropriate habeas relief. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). The goal is to return the parties to the status quo ante—the “last uncontested status which preceded the pending controversy.” *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. Sep. 23, 2025). Here, that status was Petitioner’s liberty.

Courts consistently order immediate release as the remedy for an unconstitutional re-detention without a pre-deprivation hearing. *See, e.g., Jose De La Cruz-Soto v. Warden*, No. 1:26-cv-04344-DAD-SCR (E.D. Cal. June 30, 2026); *Jingqi X. v. Warden*, No. 1:26-cv-03871-TLN-SCR (E.D. Cal. June 24, 2026); *Quichimbo-Jimenez v. Warden*, No. 2:26-cv-00739-DAD-EFB (E.D. Cal. Mar. 10, 2026). This Court should do the same and also enjoin Respondents from re-detaining Petitioner without complying with constitutional due process, as other courts have done. *See Cabreja Liranza v. Warden*, No. 1:26-cv-03512-JLT-EGC (E.D. Cal. May 22, 2026); *Zhou Xiaoxuan v. Warden*, No. 5:26-cv-02431-HDV-PD (C.D. Cal. June 4, 2026).

D. ALL WINTER FACTORS FAVOR INJUNCTIVE RELIEF.

Petitioner also satisfies the four factors for injunctive relief under *Winter v. Natural Res. Def.*

Council, Inc., 555 U.S. 7, 20 (2008). First, as shown above, he is overwhelmingly likely to succeed on the merits. Second, the “deprivation of physical liberty by detention constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018); see *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Third and fourth, the balance of equities and the public interest merge and tip sharply in Petitioner’s favor. The harm of unconstitutional detention is immense, while the burden on the government to comply with the law is minimal. “The public has a strong interest in upholding procedural protections against unlawful detention,” and “neither equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020); *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022).

E. NO SECURITY BOND IS REQUIRED.

Pursuant to Federal Rule of Civil Procedure 65(c), this Court has discretion to waive the security requirement. Courts regularly do so in immigration habeas cases where there is no realistic likelihood of harm to the government. See *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011); *Lepe v. Andrews*, 801 F. Supp. 3d at 1120.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Declare that Petitioner’s detention violates 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment;
3. Order Respondents to immediately release Petitioner from custody;
4. Enjoin Respondents from re-detaining Petitioner without providing a pre-deprivation hearing before a neutral decisionmaker at which the Government bears the burden of

demonstrating by clear and convincing evidence that Petitioner is a flight risk or danger to the community;

5. Enjoin Respondents from removing Petitioner from the United States while his asylum claim remains pending;
6. Waive any security bond requirement; and
7. Grant such other and further relief as this Court deems just and proper.

Dated: July 2, 2026

Respectfully submitted,

/s/ Lutday Jesus Garrillo Victora LUTDAY JESUS GARRILLO VICTORA Petitioner, Pro Se

VERIFICATION

I, Lutday Jesus Garrillo Victora, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 2, 2026, at Calexico, California.

/s/ Lutday Jesus Garrillo Victora
Lutday Jesus Garrillo Victora
Pro Se