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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YENISDEL CONCEPCION-CONCEPCION

Petitioner

v.

Christopher LAROSE, Senior Warden, Otay Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the United States, U.S. Department of Justice.

Respondents

Case No.: '26CV3764 TWR BJW

[redacted]

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

1. Petitioner, Yenisdel Concepcion Concepcion, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and respectfully alleges as follows:

INTRODUCTION

2. Petitioner Yenisdel Concepcion Concepcion is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego, California.

3 Petitioner brings this action under 28 U.S.C. § 2241 to challenge the constitutionality of his continued immigration detention following the Board of Immigration Appeals' decision vacating his removal order and remanding his case for further removal proceedings. Despite this fundamental change in Petitioner's legal posture, Respondents have continued to detain him without conducting any new individualized custody determination or otherwise reassessing whether continued detention remains necessary.

4. Petitioner was inspected and paroled into the United States on December 27, 2023. Following his parole, Petitioner resided openly in the community, complied with all conditions imposed by the Department of Homeland Security, and remained at liberty in the United States for approximately twenty months before being taken into immigration custody.

5. On August 27, 2025, Petitioner appeared for a scheduled ICE check-in in Houston, Texas, where he was taken into immigration custody. At the time of his detention, an Immigration Judge had entered a removal order.

6. On May 26, 2026, however, the Board of Immigration Appeals sustained Petitioner's appeal, vacated the removal order, and remanded the matter for further proceedings before the Immigration Judge. As a result, Petitioner is no longer subject to an administratively final order of removal and is once again in pending removal proceedings.

7. Despite the Board's decision fundamentally altering Petitioner's legal posture, Respondents have continued to incarcerate Petitioner without issuing any new custody determination, conducting any individualized custody review, or otherwise reassessing whether continued detention remains necessary. Petitioner remains detained nearly ten months after his arrest and currently awaits further proceedings before the Immigration Court.

8. The Due Process Clause does not permit Respondents to continue Petitioner's civil immigration detention through administrative inertia after the legal basis for that detention has materially changed. Once the Board vacated Petitioner's removal order and restored him to pending removal proceedings, due process required Respondents to undertake a new individualized determination regarding Petitioner's continued detention.

9. Instead, Respondents simply continued Petitioner's incarceration without any new custody determination, individualized assessment, or meaningful process. Petitioner has received no opportunity to challenge the necessity of his continued detention following the Board's decision.

10. Petitioner therefore respectfully requests that this Court declare his continued detention unconstitutional and order his immediate release or, in the alternative, require Respondents to provide a constitutionally adequate custody hearing at which the government bears the burden of justifying any further detention.

CUSTODY

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

JURISDICTION AND VENUE

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

13. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the Constitution, laws, or treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747

(2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

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

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

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

17. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction because Petitioner challenges only the legality of his detention, not the validity of removal proceedings or any removal order. Federal courts have consistently recognized that habeas corpus remains available to review the statutory and constitutional basis of immigration detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241.

PARTIES

18. Petitioner, Yenisdel Concepcion Concepcion, is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego, California.

19. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

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

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

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

23. All Respondents are named in their official capacities.

STATEMENT OF FACTS

24. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Cuba.

25. Petitioner was inspected and paroled into the United States on or about December 27, 2023.

26. On February 4, 2025, an Immigration Judge entered an order of removal against Petitioner.

27. On or about August 27, 2025, Petitioner appeared for a scheduled ICE check-in in Houston, Texas. During that appointment, ICE officers took Petitioner into immigration custody.

28. Following his arrest, Petitioner was transferred through multiple detention facilities before ultimately being transferred to the Otay Mesa Detention Center in San Diego, California, where he presently remains detained.

29. On May 26, 2026, the Board of Immigration Appeals sustained Petitioner's appeal, vacated the Immigration Judge's removal order, and remanded the matter for further proceedings before the Immigration Court.

30. As a result of the Board's decision, Petitioner is no longer subject to an administratively final removal order and is presently in pending removal proceedings before the Immigration Court.

31. Petitioner's next Master Calendar Hearing is scheduled for July 7, 2026, before the Houston Immigration Court.

32. Despite the Board's decision fundamentally changing Petitioner's legal posture, Respondents have continued to detain Petitioner without issuing any new custody determination, conducting any individualized custody review, or otherwise reassessing whether continued detention remains necessary.

33. At no time following the Board's May 26, 2026 decision have Respondents provided Petitioner with any notice explaining the legal or factual basis for his continued detention, nor have they afforded him any meaningful opportunity to challenge the necessity of his continued incarceration.

34. Petitioner has now remained in immigration detention for approximately ten months. Since the Board vacated the removal order, Respondents have neither identified any new facts nor conducted any individualized assessment demonstrating that Petitioner's continued detention remains necessary to ensure his appearance at future proceedings or to protect the community.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

37. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain a prompt and expeditious remedy. As the Ninth Circuit has explained, "The statute itself directs

courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). The court cautioned that delays in habeas proceedings risk creating the impression "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

39. Exhaustion would be futile because no administrative mechanism exists through which Petitioner may obtain review of the constitutional claim presented in this Petition. To the extent Respondents contend that Petitioner is not entitled to a custody redetermination before an Immigration Judge, Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals DHS classifies as subject to 8 U.S.C. § 1225(b) or designates as Arriving Aliens. See 8 C.F.R. § 1003.19(h)(2)(i)(B). In this District, Immigration Judges routinely state on the record that they lack authority to review custody where DHS invokes § 1225(b). Accordingly, any attempt to exhaust administrative remedies would be futile because no administrative forum can adjudicate the constitutional challenge to Petitioner's continued detention presented in this action.

40. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his continued detention violates the Constitution and the INA. Constitutional claims and pure questions of law—such as whether Respondents possess statutory authority to continue Petitioner's detention and whether that continued detention is lawful under the INA—fall outside

the agency's adjudicatory competence. See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (exhaustion excused where the agency "does not have jurisdiction to review" constitutional claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same). There is no administrative forum with authority to adjudicate Petitioner's constitutional challenge to the legality of his continued detention.

41. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied after the fact. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing detention therefore further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

42. The Due Process Clause of the Fifth Amendment protects all persons within the United States from arbitrary governmental deprivation of liberty. Immigration detention, although civil in nature, remains subject to the requirements of due process. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. Civil immigration detention is constitutionally permissible only insofar as it reasonably serves the legitimate governmental purposes of ensuring a noncitizen's appearance at immigration proceedings and protecting the community. *Id.* at 690–91.

44. Because immigration detention constitutes a significant deprivation of liberty, due process requires that continued detention bear a reasonable relationship to those legitimate governmental purposes and be supported by an individualized determination under the circumstances presented.

45. Where the legal basis supporting a noncitizen's detention materially changes, due process requires the government to reassess whether continued detention remains justified. Continued incarceration may not rest solely upon a custody determination made under materially different legal circumstances.

46. Here, Respondents initially detained Petitioner while an administratively final order of removal existed. On May 26, 2026, however, the Board of Immigration Appeals vacated that order and remanded Petitioner's case for further proceedings before the Immigration Court.

47. The Board's decision fundamentally altered Petitioner's legal posture. Once the administratively final removal order was vacated, Respondents could not simply continue Petitioner's detention without undertaking a new individualized custody determination appropriate to Petitioner's changed circumstances.

48. Due process requires more than administrative inertia. It requires that the government meaningfully reassess the factual and legal basis supporting continued civil detention when a material change occurs affecting the justification for that detention.

49. Respondents nevertheless continued Petitioner's detention without issuing any new custody determination, conducting any individualized custody review, or otherwise reassessing whether continued detention remained necessary after the Board's decision.

50. The absence of any post-remand custody determination renders Petitioner's continued civil detention arbitrary and inconsistent with the Due Process Clause of the Fifth Amendment.

51. Accordingly, this Court possesses authority under 28 U.S.C. § 2241 to determine whether Petitioner's continued detention complies with the Constitution and to order appropriate habeas relief if it does not.

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

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

53. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. This protection applies to all persons within the United States, including

noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

54. At the time Respondents initially detained Petitioner on August 27, 2025, an administratively final order of removal existed. On May 26, 2026, however, the Board of Immigration Appeals vacated that order and remanded Petitioner's case for further proceedings before the Immigration Court. Despite that fundamental change in Petitioner's legal posture, Respondents have continued Petitioner's detention without conducting any new individualized custody determination, issuing any new custody decision, or otherwise reassessing whether continued detention remains justified.

55. By continuing Petitioner's civil immigration detention following the vacatur of his removal order without providing any new custody determination, meaningful process, or individualized assessment, Respondents have deprived Petitioner of his liberty without due process of law in violation of the Fifth Amendment. Petitioner is therefore entitled to the issuance of a writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

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

C) Pending adjudication of this action, enjoin Respondents from transferring Petitioner outside the Southern District of California or removing Petitioner from the United States absent prior authorization from this Court, in order to preserve this Court's jurisdiction;

D) Declare that Respondents' continued detention of Petitioner following the Board of Immigration Appeals' May 26, 2026 decision, without any new individualized custody determination or meaningful process, violates the Due Process Clause of the Fifth Amendment;

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

F) In the alternative, order Respondents to provide Petitioner with a constitutionally adequate custody hearing at which the government bears the burden of proving by clear and convincing evidence that continued detention is necessary, and at which the adjudicator shall consider alternatives to detention and Petitioner's ability to pay any monetary bond;

G) Award Petitioner attorney's fees and costs as authorized by law; and

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

Respectfully submitted,

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Counsel for Petitioner

Dated: June 26, 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 family members, as well as my review of available immigration records and supporting documents, including the Board of Immigration Appeals' May 26, 2026 decision.

Based on my review of that 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.

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Dated: June 26, 2026