

1 Jazmín Preciado (SBN 342328)
2 jpreciado@centrolegal.org
3 CENTRO LEGAL DE LA RAZA
3400 E. 12th Street
Oakland, CA 94601
Telephone: (510) 269-1251

4
5 *Attorneys for Petitioner*
6
7

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**
11
12

13 Nicolas Daniel MIRASOL MORALES,

14 Petitioner,

15 v.

16
17 RON MURRAY, et al.,

18 Respondents.
19
20
21
22
23
24
25
26
27
28

Case No.: 1:26-CV-05106-DJC-JDP

**REPLY IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

Respondents state that Petitioner is detained under 8 U.S.C. § 1226 and do not argue that he is otherwise subject to mandatory detention. They do not dispute that he was detained without being afforded a pre-deprivation hearing in violation of his Fifth Amendment rights to Due Process, yet they ask that his petition be denied or stayed, and that the only relief he should be granted is a custody redetermination. In addition, they argue that he should be required to exhaust the administrative remedies before filing a habeas petition, though exhaustion is prudential and Petitioner's unlawful detention is already causing irreparable harm. This Court has previously addressed the legal issues raised by the petition, *see Morillo v. Albarran*, No. 1:25-cv-01533-DJC-AC; *see also E.L.D.M. v Becerra*, No.1:25-cv-01906-DJC-JDP, and ordered Respondents to show cause as to whether there are any factual or legal issues in this case that distinguish it from the Court's prior orders that would justify denying the petition. The only argument brought forth is that "Petitioner's presence in the United States had an expiration date and was required to leave." (Dkt. 7). "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."). In accordance with the Constitution, the above-referenced and numerous other cases that have been decided by Court and many district courts in this Circuit, and for the reasons set forth below, the petition should be granted.

II. BACKGROUND

Petitioner is a noncitizen who is currently detained by Immigration and Customs Enforcement ("ICE") in Respondents' custody at Mesa Verde Detention Center. (Dkt. 1). Petitioner is a 32-year-old citizen of Argentina, lawfully admitted to the United States on a B-2 visitor visa in August 2020. (Dkts. 1-2). Petitioner's visa status expired in early 2021, during the global COVID-19 pandemic, when international travel restrictions made departure from the United States impossible. *Id.* Unable to travel home and strapped for money, when he was offered an employment

1 opportunity, he could not turn down. *Id.* He has resided continuously in the United States since that
2 time, maintaining good moral character and establishing strong family and community ties in the
3 San Francisco Bay Area. *Id.* Respondents knew Petitioner was living in the United States and
4 allowed him to remain at liberty despite their access to a tactical center that identifies and tracks
5 noncitizens for removal. (Dkt. 7) Respondents had previously encountered Petitioner upon his
6 arrival at a U.S. port of entry with a visitor visa as he was legally required to undergo an inspection
7 by an immigration officer who determined his admissibility and granted his entry. *Id.* Respondents
8 had chosen to allow Petitioner to remain non-detained, upon a determination that Petitioner was
9 neither dangerous nor a flight risk. Yet, despite no material change in circumstances as to
10 Petitioner's flight risk or dangerousness, Respondents arrested Petitioner on or around June 27,
11 2026 in Oakland, CA. *Id.*

12 III. ARGUMENT

13 Respondents were ordered to show cause as to whether there are any factual or legal
14 issues in this case that distinguish it from the Court's prior orders that would justify denying the
15 petition and failed to do so. There are many parallels in Petitioner's case to those of the petitioner
16 in *Morillo v. Albarran* previously decided by this Court. *Morillo v. Albarran*, No. 1:25-cv-01533-
17 DJC-AC. Both petitioners had been living in the United States for several years and had
18 established a life and a family in this country. (Dkts. 1 and 2). Similarly, neither petitioner had
19 been convicted of a crime nor had criminal charges filed against him. *Id.* Both Petitioners have
20 been working and paying their taxes. *Id.* Upon their respective arrests, both Petitioners were
21 issued a Notice to Appear stating that they are removable under the INA. (Dkt. 7).

22 Additionally, Petitioner here had recently traveled domestically with a round-trip flight
23 without incident demonstrating that he had no intent to abscond but was living a normal life in the
24 United States. Further, he had already purchased an upcoming international flight with the
25 intention to permanently leave the country in October, which is merely a couple of months away.
26 Petitioner did not come to the United States with the intention to remain indefinitely. *But for* the
27 global pandemic preventing international travel at the time his tourist visa expired and forcing
28 him to find a way to survive in this country drastically changing the trajectory of his original
plans to leave within the allotted time, he would have left.

1 The only distinction Respondents made between Petitioner in the instant case and that in
2 *Morillo* is that Petitioner here had an expiration date and that his unlawful presence was never
3 made known to DHS allegedly rendering him a flight risk. (Dkt. 7). However, if anything, the
4 Petitioner in the *Morillo* case's entry without having ever encountered immigration authorities
5 could possibly be seen as a flight risk because he existed for years in the country without the
6 government's knowledge, but Petitioner here was never absconding in any imaginable manner.
7 His presence in the United States was known to the DHS as he entered with permission. Based on
8 Exhibit A in Dkt. 7, the department avails itself to a tactical center, Pacific Enforcement
9 Response Center (PERC), that generates information that helps identify and track noncitizens
10 subject to removal from the country, so it is nonsensical to say that Petitioner is a flight risk
11 because he failed to make his presence known to DHS. Instead, it is reasonable to believe that
12 DHS already knew about it and/or had ways to find out about it if they did not. Further, when the
13 global pandemic prohibited international travel, Petitioner had no other option but to try to find a
14 way to survive in the country and once he realized that there was no clear path for him and his
15 family to remain here permanently, they made concrete plans to leave the country and provided
16 proof of that upcoming international travel. Finally, unlike Petitioner in *Morillo*, there is neither
17 an argument that Petitioner here is subject to mandatory detention under INA § 1225 nor that he
18 falls under one of the carved-out categories preventing release.

17 IV. CONCLUSION

18 Respondents ask this Court to deny the petition of an individual it allowed entry into the
19 United States and whose presence was therefore necessarily known. An individual who has lived
20 in this country for more than half a decade and who has already established to be in the process of
21 permanently leaving this country. They ask this Court to deny the petition after violating
22 Petitioner's due process rights by depriving him of his liberty without a prior individualized
23 assessment of his flight risk or danger to the community (and as courts have pointed out, post-
24 deprivation hearings do not cure this constitutional violation). For the foregoing reasons, this
25 Court should grant the petition for writ of habeas corpus and order Petitioner's immediate and
26 complete release from all forms of custody.

1 Date: July 10, 2026

Respectfully Submitted,

2 /s/ Jazmín Preciado

Jazmín Preciado (SBN 342328)

3 jpreciado@centrolegal.org

CENTRO LEGAL DE LA RAZA

4 3400 E. 12th Street

5 Oakland, CA 94601

(510) 269-1251

6
7 *Attorney for the Petitioner*