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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Cristian Minser Perez Garcia,

Petitioner,

v.

Christopher J. LAROSE, in his official capacity as Senior Warden of Otay Mesa Detention Center operated by CoreCivic, Inc.; Markwayne MULLIN, Secretary of the Department of Homeland Security; Todd BLANCHE, Acting U.S. Attorney General; Gregory J. ARCHAMBEAULT, in his official capacity as Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations, San Diego Field Office; in their official capacities.

Respondents.

Case Number: '26CV3998 DMS AHG

PETITION FOR HABEAS CORPUS AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. Petitioner Cristian Minser Perez Garcia [redacted] challenges his summary re-detention after approximately thirteen years of successful release in the community. ICE detained him on June 26, 2026, when he appeared for a required check-in in Miramar, Florida. ICE later transferred him to Otay Mesa Detention Center in San Diego, California, where he is now confined.

2. Petitioner has no final order of removal. His removal case remains pending before the Miami Immigration Court, with a master calendar hearing scheduled for November 2,

2028. He has no criminal history and, to his knowledge, ICE identified no missed hearing, new criminal conduct, reporting violation, or other materially changed circumstance before revoking his release.

3. This Petition does not ask the Court to decide removability or the merits of immigration relief. It challenges the deprivation of an established conditional liberty interest without advance notice, a pre-deprivation hearing, or a neutral determination that changed circumstances justified re-detention. Courts applying Ninth Circuit law have repeatedly granted relief in materially similar cases. See *Hernandez v. Sessions*, 872 F.3d 976, 981, 988-90 (9th Cir. 2017); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969-70 (N.D. Cal. 2019); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1056 (N.D. Cal. 2021); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036-37 (N.D. Cal. 2025).

4. The appropriate remedy is immediate release under the conditions of release and supervision in effect immediately before June 26, 2026, together with an injunction prohibiting another non-exigent re-detention unless DHS first provides written notice and a hearing before a neutral decisionmaker at which the Government bears the burden of proving that materially changed circumstances justify confinement. See *Lopez Buendia v. Chestnut*, No. 1:26-cv-00465-DJC-SCR, ECF No. 12, at 4-5 (E.D. Cal. Jan. 28, 2026). Alternatively, the Court should order a prompt, legally effective custody hearing under 8 U.S.C. § 1226(a).

I. PARTIES

1. Petitioner Cristian Minser Perez Garcia is a native and citizen of Guatemala. His immigration registration number is [redacted] He is presently detained at Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, CA 92154

2. Christopher J. LAROSE, in his official capacity as Senior Warden of Otay Mesa Detention Center operated by CoreCivic, Inc.

3. Markwayne MULLIN, Secretary of the Department of Homeland Security

Todd BLANCHE, Acting U.S. Attorney General;

4. Gregory J. ARCHAMBEAULT, in his official capacity as Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations, San Diego Field Office; in their official capacities

II. JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 1331, and the Suspension Clause because Petitioner is in federal custody in violation of the Constitution and laws of the United States. Habeas review remains available for questions of law and constitutional claims concerning immigration detention. *Hernandez*, 872 F.3d at 988; *Zadvydas v. Davis*, 533 U.S. 678, 687, 690 (2001).

6. Section 1226(e) does not bar review of the legal framework governing custody or of the procedures constitutionally required before liberty is withdrawn. See *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018); *Hernandez*, 872 F.3d at 988.

7. Venue and territorial jurisdiction are proper because Petitioner and his immediate custodian are within the Southern District of California. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004).

8. Petitioner requests that the Court adopt Chief Judge Order No. 144. That order supplies an expedited response-and-reply schedule, preserves jurisdiction by prohibiting transfer outside this District, and permits the Court to resolve preliminary relief together with the merits.

III. FACTUAL BACKGROUND

9. Petitioner entered the United States through Hidalgo, Texas, on September 28, 2012, and has remained in the interior of the United States since that date.

10. Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a. He has pursued relief before the Immigration Court, including asylum-related protection and cancellation of removal under 8 U.S.C. § 1229b(b).

11. Petitioners' proceedings were administratively closed through prosecutorial discretion on October 27, 2023. The case was later re-calendared and remains pending.

12. EOIR's public system lists the removal case as pending, with an in-person master calendar hearing scheduled for November 2, 2028, at 8:00 a.m. before Immigration Judge Rene D. Mateo in Miami. The public EOIR printout is **Exhibit C**.

13. Petitioner has no final administrative order of removal. Therefore, 8 U.S.C. § 1231 does not govern his custody.

14. In 2012, Petitioner received a custody and bond determination and was released from immigration custody. The official order, Form I-286, release conditions, and related records are maintained by DHS and EOIR and should be produced by Respondents.

15. After that release, Petitioner lived openly in the community for more than thirteen years. To the best of his knowledge, he complied with the requirements imposed on him, maintained a stable residence, worked, filed federal income tax returns, supported his household, and appeared for immigration and ICE appointments.

16. Petitioner is the father of a United States citizen child, [redacted] born in 2017. Petitioner also has a long-term partner and substantial family and community ties in South Florida. His family depends significantly on his financial, parental, and emotional support.

17. Petitioner has never been arrested or convicted of a crime. He received a traffic citation in the past and paid it. Respondents have not identified any criminal or terrorism-related ground that would place him within 8 U.S.C. § 1226(c).

18. On June 26, 2026, Petitioner appeared for a required ICE appointment at the Miramar field office in Florida. ICE detained him during that appointment without advance notice that his longstanding release would be revoked.

19. To Petitioner's knowledge, ICE did not allege that he violated any release condition and did not identify any new criminal conduct, missed hearing, failure to report, or other materially changed circumstance. Petitioner does not recall receiving a written decision explaining why the successful prior release was revoked.

20. Petitioner was initially transferred to Krome North Service Processing Center in Florida and was later transferred to Otay Mesa Detention Center in San Diego, California, where he remains detained.

21. No neutral decisionmaker has reviewed whether ICE lawfully revoked the prior release, whether materially changed circumstances justify re-detention, or whether the prior release conditions should be restored. No neutral decisionmaker has found that Petitioner currently presents a danger or flight risk.

22. An ordinary custody request may not provide an effective remedy because EOIR adjudicators may decline jurisdiction under Matter of *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), even though Hernandez Alvarez controls the governing statute in this Circuit.

IV. GOVERNING LAW

23. Section 1226(a) authorizes detention pending a decision on removal and also authorizes release on bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2). Section 1226(b) authorizes

revocation and re-arrest, but it does not make an unexplained revocation immune from review.

24. The Board has recognized that a later custody change may rest on changed circumstances affecting reliability as a bail risk and that custody remains subject to redetermination before a final removal order. *Matter of Sugay*, 17 I. & N. Dec. 637, 639-40 (BIA 1981); *Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

25. In *Hernandez Alvarez*, the Eleventh Circuit rejected the Government's position that all unadmitted persons found in the interior are subject to mandatory detention under § 1225(b)(2)(A). It held that § 1226 supplies the general detention rule for persons in the interior, subject to § 1226(a)'s release provisions unless § 1226(c) applies. Nos. 25-14065 & 25-14075, slip op. at 3-6, 39-40.

26. Section 1226(e) does not foreclose this legal and constitutional challenge to the detention framework. See *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018). Habeas remains available to test the legal basis of immigration custody. *Zadvydas*, 533 U.S. at 687.

27. Due process requires procedures appropriate to the nature of the liberty interest and the risk of erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Conditional liberty, once granted, is a substantial interest even though it is subject to lawful conditions and revocation. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (addressing conditional liberty in the parole context).

V. CLAIM ONE: § 1226 GOVERNS PETITIONER'S PRESENT DETENTION

28. Petitioner was not detained while arriving at the port of entry, undergoing inspection, or seeking lawful admission. He had lived in the interior for more than thirteen years, had

pending § 1229a proceedings, and had already received custody and bond determination before ICE re-detained him at a routine check-in.

29. Under *Hernandez Alvarez*, those circumstances place Petitioner within § 1226. His 2012 custody determination and years of successful release reinforce that conclusion.

30. Respondents may not evade § 1226 by reclassifying Petitioner as categorically ineligible for release under § 1225(b)(2)(A). Petitioner has no final order and no identified § 1226(c) ground.

31. The Court should declare that § 1226 governs and should restore the release conditions that worked successfully for more than thirteen years, unless Respondents promptly establish a lawful, case-specific basis for revocation.

VI. CLAIM TWO: PETITIONER IS ENTITLED TO THE PROCEDURES AVAILABLE UNDER § 1226(a)

32. Petitioner was re-arrested at an interior ICE office after years of residence and while his § 1229a proceedings remained pending. He was not seeking admission at a port of entry, and he has no final order of removal.

33. Under the statutory framework applied by courts in this Circuit, § 1226(a), not § 1225(b)(2)(A), governs this interior detention. *Jennings*, 583 U.S. at 288, 301; *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM.

34. If the Court does not order immediate restoration of release, it should require a prompt custody hearing before a neutral decisionmaker with authority to order release. At that hearing, DHS should bear the burden by clear and convincing evidence to establish present danger or flight risk, and the decisionmaker should consider ability to pay and alternatives

to detention. See *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011); *Hernandez*, 872 F.3d at 990-91.

VII. EXHAUSTION

35. Section 2241 contains no statutory exhaustion requirement, and exhaustion is prudential rather than jurisdictional. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75.

36. Further exhaustion should be excused because the controlling statutory issue has been decided by the Eleventh Circuit, the prior bond proceeding is completed, Petitioner challenges revocation of an existing release, and delay prolongs the liberty deprivation.

37. Petitioner does not ask this Court to set an initial bond amount or conduct a routine custody assessment. He asks the Court to restore a prior release that remained successful for years or require a legally effective review of the revocation.

VIII. NO ADEQUATE ADMINISTRATIVE REMEDY EXISTS FOR THE COMPLETED PRE-DEPRIVATION VIOLATION

38. Petitioner challenges a completed constitutional violation: ICE withdrew longstanding conditional liberty before providing notice or a neutral hearing. EOIR cannot rewind the arrest or supply the missing pre-deprivation process after the fact.

39. Moreover, if EOIR declines custody jurisdiction under Matter of *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the ordinary bond process would provide no effective remedy. Requiring an unavailable or inadequate procedure would only prolong the challenged loss of liberty.

IX. REQUEST FOR EXPEDITED AND INJUNCTIVE RELIEF

40. Each day of detention is a completed loss of physical liberty and separates Petitioner from his child and household. See 28 U.S.C. § 2243.

41. Petitioner requests immediate adoption of Chief Judge Order No. 144, including its prohibition against transfer outside the Southern District of California while the Petition is pending.

42. Petitioners contemporaneously request temporary and preliminary injunctive relief. Consistent with Section 6 of Chief Judge Order No. 144, the Court may determine that request together with the merits of this Petition.

X. PRAYER FOR RELIEF

A. Issue the writ or order Respondents to show cause forthwith and adopt Chief Judge Order No. 144.

B. Order Respondents to produce all 2012 custody and bond records, all conditions in effect immediately before June 26, 2026, and every document stating the factual or legal basis for re-detention.

C. Order Respondents not to transfer Petitioner outside the Southern District of California while this action is pending.

D. Grant the Petition and order Petitioner's immediate release under the conditions of release and supervision in effect immediately before June 26, 2026, or substantially similar conditions.

E. Enjoin future non-exigent re-detention unless Respondents first provide written notice and a hearing before a neutral decisionmaker at which the Government bears the burden of proving materially changed circumstances that justify confinement.

F. Alternatively, order a legally effective § 1226(a) custody hearing within three business days, with DHS bearing the burden by clear and convincing evidence and with consideration of alternatives to detention and ability to pay.

G. Order release if Respondents do not provide the required process and written decision within the Court-ordered deadline.

H. Retain jurisdiction to enforce the Court's orders and grant any other just and proper relief

Dated: July 10, 2026

Respectfully submitted,

/s/ Mario Salgado
Mario Salgado
Attorney for Petitioner
SALGADO & PERALTA, P.A.

CERTIFICATE OF SERVICE

I, Mario Salgado, am over the age of 18 years and maintain a business address located at 605 Market Street, Suite 1111, in San Francisco, California 94105. I electronically served the **PETITION FOR HABEAS CORPUS AND INJUNCTIVE RELIEF** on the United States Attorney's Office for the Southern District of California, Federal Office Building, 880 Front Street, Room 6293, San Diego, California 92101-8807, via the Court's electronic filing system.

I swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

Dated: July 10, 2026

Respectfully submitted,

/s/ Mario Salgado
Mario Salgado
Attorney for Petitioner
SALGADO & PERALTA, P.A.