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Attorney for Petitioner
ROSANIO TOMAS LEIVA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROSANIO TOMAS LEIVA,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; DANIEL A. BRIGHTMAN, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); DAVID J. VENTURELLA, Senior Official Performing Duties of Director of Immigration Customs Enforcement ("ICE"); U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

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CASE NO.: '26CV4056 JO BJW

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR IMMEDIATE RELEASE

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Petitioner ROSANIO TOMAS LEIVA petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 seeking immediate release from unlawful detention and alleges as follows:

INTRODUCTION

The Department of Homeland Security ("DHS") determined in 2018 that Petitioner could remain at liberty while his immigration proceedings were pending. After apprehending Petitioner near the southwest border, DHS exercised its statutory custody authority, served him with a Notice to Appear, and released him on an Order of Release on Recognizance. DHS concluded that detention was unnecessary and permitted Petitioner to remain in the community subject to the conditions of that release. Petitioner honored that determination. For nearly eight years, he complied with every condition imposed upon him, appeared for every immigration hearing, committed no crimes, remained continuously available to immigration authorities, and never engaged in conduct suggesting that he posed a danger to the community or a risk of flight. His removal proceedings were ultimately dismissed pursuant to a joint motion based on prosecutorial discretion.

On July 7, 2026, Respondents abruptly deprived Petitioner of that liberty. Without prior notice that DHS was reconsidering its earlier release determination, without identifying any violation of the conditions upon which Petitioner had remained free for nearly eight years, and without identifying any materially changed circumstance relating to Petitioner, Respondents arrested him and placed him in immigration detention. Respondents subsequently initiated new removal proceedings arising from Petitioner's October 2018 entry into the United States. This case presents a straightforward constitutional question. After determining that detention was unnecessary and permitting an individual to remain at liberty for nearly eight years, may the

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government abruptly deprive him of that liberty based upon the same underlying facts, without identifying any violation of the conditions of his release or any materially changed circumstance justifying a different custody determination? The Due Process Clause does not permit that result.

This case is not about the government's authority to initiate removal proceedings. Nor is it about whether Petitioner should receive a bond hearing or other discretionary custody review. The issue before this Court is whether Respondents may take away a liberty they previously granted without identifying any violation of Petitioner's release conditions, any materially changed circumstance, or providing constitutionally adequate process. Because Petitioner's continued detention is the direct result of that constitutional violation, he is entitled to immediate release through a writ of habeas corpus.

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JURISDICTION

1. This action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in the custody of Respondents in violation of the Constitution and laws of the United States.
3. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because this action presents federal questions arising under the Constitution and laws of the United States.
4. This Court has authority to grant the requested relief pursuant to 28 U.S.C. §§ 2201-2202, 28 U.S.C. § 1651(a), and its inherent equitable authority to remedy ongoing constitutional violations.

VENUE

5. Venue is proper in this District pursuant to 28 U.S.C. § 2241 because Petitioner is presently

confined at the Otay Mesa Detention Center in San Diego County, California, within the Southern District of California.

6. Habeas corpus remains the fundamental means by which federal courts protect individuals from unlawful executive detention. As the Supreme Court observed, the Great Writ is "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).

PARTIES

7. Petitioner Rosanio Tomas-Leiva is a native and citizen of Guatemala who is presently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.

8. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center and Petitioner's immediate custodian. He is sued in his official capacity.

9. Respondent David J. Venturella is the Senior Official Performing Duties of Director of U.S. Immigration and Customs Enforcement. As Senior Official Performing Duties of Director, he is responsible for the administration of ICE and the detention of noncitizens in ICE custody. He is sued in his official capacity.

10. Respondent Daniel A. Brightman is the Field Office Director for ICE Enforcement and Removal Operations, San Diego Field Office. He exercises supervisory authority over Petitioner's detention and custody and is sued in his official capacity.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. As Secretary, he is responsible for the administration and enforcement of the immigration laws of the United States and exercises ultimate authority over the detention of noncitizens through the

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Department of Homeland Security and its component agencies. He is sued in his official capacity.

12. Respondent Todd Blanche is the Acting Attorney General of the United States. As Acting Attorney General, he is responsible for the administration and enforcement of the immigration laws of the United States. He is sued in his official capacity.

FACTUAL BACKGROUND

A. DHS Determined That Petitioner Could Remain At Liberty

13. Petitioner Rosanio Tomas-Leiva is a native and citizen of Guatemala who entered the United States on or about October 7, 2018.

14. Shortly after his entry, DHS apprehended Petitioner, initiated removal proceedings by serving him with a Notice to Appear, and exercised its statutory custody authority.

15. After considering Petitioner's circumstances, DHS determined that detention was unnecessary and released Petitioner pursuant to an Order of Release on Recognizance ("I-220A"). As a condition of that release, Petitioner agreed to comply with the terms set forth in the Order of Release on Recognizance.

16. By releasing Petitioner rather than continuing his detention, DHS determined that Petitioner could remain at liberty while his immigration proceedings were pending, subject to the conditions of his release.

B. Petitioner Fully Complied With The Conditions Of His Release

17. Petitioner honored the conditions of his release.

18. For nearly eight years, Petitioner remained continuously available to immigration authorities, appeared for every immigration proceeding as required, complied with every directive issued

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by DHS and the Immigration Court, and committed no criminal offenses.

19. At no time during those nearly eight years did DHS notify Petitioner that he had violated the conditions of his release or that his continued liberty was being reconsidered.

20. Petitioner's removal proceedings were ultimately dismissed pursuant to a joint motion based upon prosecutorial discretion.

21. Following dismissal of those proceedings, Petitioner attempted to pursue asylum affirmatively with USCIS. That filing was rejected because government records incorrectly reflected that his prior removal proceedings remained pending despite their dismissal.

C. Respondents Abruptly Deprived Petitioner Of His Liberty

22. On July 7, 2026, nearly eight years after DHS released Petitioner on an Order of Release on Recognizance, ICE officers arrested Petitioner during an immigration enforcement operation and placed him in custody at the Otay Mesa Detention Center.

23. Prior to his arrest, Petitioner received no notice that DHS was reconsidering its prior release determination.

24. At the time of his arrest, Respondents did not identify any violation of the conditions of Petitioner's release, any failure to appear, any criminal conduct, or any other conduct by Petitioner that had occurred since his release in 2018.

25. Following Petitioner's arrest, DHS initiated new removal proceedings arising from Petitioner's October 2018 entry into the United States.

D. Petitioner Remains Detained Without Any Individualized Determination Justifying The Withdrawal Of His Previously Granted Liberty

26. Petitioner remains detained at the Otay Mesa Detention Center.

27. To Petitioner's knowledge, Respondents have not provided any individualized determination

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explaining why Petitioner's previously granted liberty should now be withdrawn after nearly eight years of compliance with the conditions of his release.

28. This Petition followed.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Due Process Clause of the Fifth Amendment

(Unlawful Deprivation of Previously Granted Liberty)

29. Petitioner realleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

30. The Due Process Clause of the Fifth Amendment protects every person within the United States from the arbitrary deprivation of liberty by the federal government. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

31. In October 2018, DHS exercised its statutory custody authority and affirmatively determined that Petitioner could remain at liberty while his immigration proceedings were pending. DHS implemented that determination by releasing Petitioner pursuant to an Order of Release on Recognizance.

32. Petitioner honored that determination. For nearly eight years, he complied with every condition of his release, appeared for every immigration proceeding, committed no crimes, remained continuously available to immigration authorities, and never engaged in conduct suggesting that he posed a danger to the community or a risk of flight.

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33. By releasing Petitioner on an Order of Release on Recognizance and permitting him to remain at liberty for nearly eight years, Respondents could not thereafter deprive Petitioner of that liberty without affording the process required by the Fifth Amendment.

34. On July 7, 2026, Respondents deprived Petitioner of that liberty by arresting and detaining him without first identifying any violation of the conditions of his release, any failure to comply with the government's directives, or any materially changed circumstance warranting withdrawal of Petitioner's previously granted liberty.

35. Before depriving Petitioner of his liberty, Respondents did not provide notice that Petitioner's previously granted release was being reconsidered, nor did they provide any meaningful opportunity to contest the deprivation before he was taken into custody.

36. The constitutional injury in this case is not the absence of a custody redetermination or bond hearing. Rather, it is Respondents' decision to deprive Petitioner of the liberty they previously granted without constitutionally adequate process and without any individualized justification for that deprivation.

37. The subsequent initiation of new removal proceedings does not cure the constitutional violation because the deprivation of Petitioner's liberty had already occurred. Likewise, a subsequent custody determination cannot retroactively validate an unconstitutional deprivation of liberty.

38. Respondents' actions violate the Due Process Clause of the Fifth Amendment. As a direct and proximate result of those constitutional violations, Petitioner continues to suffer the ongoing loss of his physical liberty.

39. Because Petitioner's continued detention is the product of an ongoing violation of the Due Process Clause, he is entitled to immediate release from immigration custody.

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COUNT TWO

Petition for Writ of Habeas Corpus
(28 U.S.C. § 2241)

40. Petitioner realleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

41. Petitioner is presently in the custody of Respondents at the Otay Mesa Detention Center within the Southern District of California.

42. Under 28 U.S.C. § 2241(c)(3), federal district courts may grant habeas relief to a person who is "in custody in violation of the Constitution or laws or treaties of the United States."

43. For the reasons set forth above, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment because Respondents deprived him of the liberty previously granted through an Order of Release on Recognizance without constitutionally adequate process or an individualized justification sufficient to support that deprivation.

44. Petitioner's continued detention constitutes an ongoing constitutional injury that this Court has authority to remedy through the issuance of a writ of habeas corpus directing Respondents to immediately release Petitioner from immigration custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

A. Issue an Order to Show Cause directing Respondents to file a response to this Petition within seven (7) days of the Court's Order, or within such other expedited period as the Court deems appropriate.

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B. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 directing Respondents to immediately release Petitioner from immigration custody and restore him to the same conditions of release that existed immediately prior to his arrest and detention on July 7, 2026.

C. Order that Respondents shall not impose additional or more restrictive conditions of release, including electronic monitoring or other conditions not previously imposed, absent a constitutionally adequate determination made in accordance with due process.

D. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court while this Petition is pending without prior authorization of this Court.

E. Declare that Respondents' deprivation of Petitioner's previously granted liberty violated the Due Process Clause of the Fifth Amendment.

F. Award Petitioner his reasonable attorneys' fees and costs as authorized by law, including pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, if applicable.

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

Date: July 14, 2026

STERGER LAW GROUP, P.C.

By: /s/ Richard S. Sterger, Esq.
Richard S. Sterger, Esq.
Attorney for Petitioner
ROSANIO TOMAS-LEIVA

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