Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALEXANDER JOSE ROMERO-MEDINA,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa Detention Center;

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

David J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement;

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

Respondents

Case No.: '26CV4111 GPC JAC

[redacted]

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

1. Petitioner, Alexander Jose Romero-Medina, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention following his prior release from immigration custody and years of liberty in the community, and alleges as follows:

INTRODUCTION

2. Petitioner, Alexander Jose Romero-Medina, is a native and citizen of Venezuela currently detained at the Otay Mesa Detention Center in San Diego County, California.

3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his re-detention by the Department of Homeland Security after Respondents previously released him from immigration custody, permitted him to reside at liberty in the United States for nearly five years, processed his affirmative asylum application, initiated removal proceedings, and then abruptly returned him to detention without identifying any individualized basis for doing so.

4. Petitioner entered the United States without inspection on or about June 25, 2021, and was subsequently apprehended by immigration authorities. On or about August 10, 2021, ICE affirmatively exercised its parole authority under INA § 212(d)(5)(A), released Petitioner from custody, and permitted him to remain at liberty in the United States subject to the conditions of his release.

5. Following his release, Petitioner openly resided in the United States while complying with Respondents' requirements. During that period, USCIS accepted and processed his affirmative asylum application for several years before referring the matter to the immigration court, and Respondents thereafter initiated removal proceedings by serving Petitioner with a Notice to Appear. Petitioner appeared for his initial Master Calendar Hearing as directed.

6. Despite Petitioner's longstanding compliance with Respondents' directives, ICE officers arrested him during a routine reporting appointment on or about July 6, 2026, and placed him in immigration detention. Respondents provided no prior notice, identified no changed circumstances, and offered no individualized explanation for abruptly revoking the liberty they had previously afforded him.

7. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he presently remains detained.

8. Respondents' actions violate the Due Process Clause of the Fifth Amendment. By affirmatively releasing Petitioner from custody, permitting him to remain at liberty for years, administering his immigration case while he remained in the community, and allowing him to appear in removal proceedings before abruptly re-detaining him, Respondents created a substantial liberty interest in Petitioner's continued freedom from physical restraint.

9. The Constitution does not permit the government to revoke that liberty interest without constitutionally adequate process. Respondents have identified no individualized basis, no changed circumstances, and no constitutionally sufficient procedure justifying Petitioner's re-detention after years of permitting him to remain at liberty.

10. Petitioner therefore respectfully requests that this Court declare his continued detention unlawful and order his immediate release. In the alternative, and only if the Court declines to order immediate release, Petitioner respectfully requests that the Court order Respondents to provide a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which less restrictive alternatives to detention are considered.

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 County, 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, Alexander Jose Romero-Medina, is a native and citizen of Venezuela currently detained at the Otay Mesa Detention Center in San Diego County, California.

19. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego County, California, and is Petitioner's immediate custodian.

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

21. Respondent David J. Venturella is the Senior Official Performing the Duties of the 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 County, California. Petitioner is a native and citizen of Venezuela who entered the United States without inspection on or about June 25, 2021.

25. Shortly after his entry, Petitioner was encountered by immigration authorities and taken into immigration custody.

26. On or about August 10, 2021, Respondents exercised their discretionary authority under section 212(d)(5)(A) of the Immigration and Nationality Act to parole Petitioner from immigration custody and issued an Interim Notice Authorizing Parole. The parole authorized Petitioner to remain at liberty in the United States subject to specified conditions. (*Ex.* 1.)

27. Following his release on parole, Petitioner filed an affirmative application for asylum with United States Citizenship and Immigration Services ("USCIS"). USCIS accepted and

processed Petitioner's application over the course of several years before ultimately referring the matter to the Immigration Court.

28. On or about April 27, 2026, DHS issued Petitioner a Notice to Appear commencing removal proceedings under section 240 of the Immigration and Nationality Act. The Notice to Appear scheduled Petitioner's initial Master Calendar Hearing for June 23, 2026, in Miami, Florida. (*Ex.* 2.)

29. Petitioner appeared for his initial Master Calendar Hearing as directed. Throughout the nearly five years following his release on parole, Respondents permitted Petitioner to remain at liberty while administering his immigration case and did not allege that he had violated any condition of his release, assert that he posed a danger to the community or a risk of flight, or otherwise identify any individualized basis warranting his return to immigration custody.

30. On or about July 6, 2026, while appearing for a routine ICE reporting appointment in Miami, Florida, Petitioner was arrested by ICE officers and taken back into immigration custody. Respondents provided no prior notice that Petitioner's previously granted liberty would be revoked, no opportunity to challenge that decision before a neutral decisionmaker, and identified no changed circumstances justifying his abrupt re-detention after nearly five years at liberty.

31. Following his arrest, Petitioner was transferred through multiple detention facilities before ultimately being detained at the Otay Mesa Detention Center in San Diego County, California, where he remains in Respondents' custody.

32. At no point before Petitioner's arrest did Respondents provide Petitioner with notice that they intended to revoke the liberty they had previously granted or afford him any opportunity to challenge that decision before a neutral decisionmaker.

33. Nor have Respondents identified any individualized facts or changed circumstances demonstrating that Petitioner's continued detention is necessary because he poses a danger to the community or a risk of flight.

34. Petitioner's re-detention occurred only after Respondents had affirmatively exercised their parole authority, permitted him to remain at liberty for nearly five years, processed his

affirmative asylum application, initiated removal proceedings under section 240 of the Immigration and Nationality Act, and permitted him to appear before the Immigration Court while remaining at liberty.

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, to the extent DHS treats Petitioner as subject to detention under 8 U.S.C. § 1225(b), Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals DHS classifies as subject to § 235(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 § 235(b). If Petitioner were to request a bond hearing, DHS would rely on that statutory classification to block review, and the Immigration Judge would be required to decline jurisdiction. Because no administrative mechanism exists to obtain custody review under DHS's asserted detention authority, any attempt to exhaust administrative remedies would be futile.

40. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his detention violates the Constitution and the INA. Constitutional claims and pure questions of law —such as whether DHS has statutory authority to detain Petitioner and whether detention under § 1225(b) is lawful in these circumstances—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 that can determine whether DHS may lawfully invoke § 1225(b)(2) to detain Petitioner under these circumstances.

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. Continued incarceration following Petitioner's prior release from federal custody magnifies that ongoing harm. 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 Immigration and Nationality Act distinguishes between detention at the time of entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225, 1226.

43. Section 235 governs inspection-stage detention of individuals encountered at or near the time of entry while their admissibility is being determined. By contrast, Section 236(a) governs the arrest and detention of noncitizens who have already entered the United States and are later taken into custody pending removal proceedings.

44. Where the federal government has previously released a noncitizen from immigration custody, permitted him to reside at liberty in the United States for an extended period, and later re-detains him in the interior while removal proceedings are pending, serious statutory and constitutional questions arise regarding the legal authority for that renewed detention and the process required before liberty may be revoked.

45. Federal courts have recognized that when the government affirmatively releases a noncitizen from immigration custody, permits that individual to remain at liberty in the community for an extended period, and later re-detains the individual in the interior of the United States, the renewed detention presents substantial constitutional questions regarding the deprivation of liberty without constitutionally adequate process.

46. The Due Process Clause protects all persons within the United States from arbitrary detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Freedom from physical restraint lies at the core of the liberty protected by the Constitution.

47. Immigration detention is civil in nature and is permissible only when justified by legitimate governmental interests, such as ensuring appearance at proceedings or protecting the community. *Id.* at 690–91.

48. By affirmatively exercising its parole authority to release Petitioner from immigration custody, permitting him to remain at liberty in the United States for nearly five years, processing his affirmative asylum application, initiating removal proceedings under section 240 of the

Immigration and Nationality Act, and permitting him to appear before the Immigration Court while remaining at liberty, Respondents created a substantial liberty interest in Petitioner's continued freedom from physical restraint. Abruptly revoking that liberty without prior notice, without identifying any changed circumstances, and without a meaningful opportunity to be heard violates the Due Process Clause.

49. Where the government has previously released a noncitizen from custody and permitted him to reside at liberty in the community, that release reflects a determination that detention was not necessary to serve those purposes. Once that liberty has been granted, it cannot be revoked without constitutionally adequate process. Re-detention without any individualized determination or changed circumstances therefore raises serious due process concerns.

50. The Administrative Procedure Act prohibits agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must provide a reasoned explanation for its actions based on the relevant facts and circumstances.

51. Re-detaining a noncitizen after a prolonged period of liberty—without identifying any changed circumstances, without providing an individualized justification, or without explaining the legal basis for that re-detention—constitutes arbitrary agency action.

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. Petitioner was previously released from immigration custody after Respondents affirmatively exercised their parole authority under INA § 212(d)(5)(A). Thereafter, Respondents permitted Petitioner to remain at liberty in the United States for nearly five years while processing his affirmative asylum application, initiating removal proceedings under section 240 of the Immigration and Nationality Act, and allowing him to appear before the Immigration Court. On or about July 6, 2026, while appearing for a routine ICE reporting appointment in Miami, Florida, Petitioner was arrested by ICE officers and returned to immigration custody without prior notice, without any identified changed circumstances, and without any individualized explanation. Nor have Respondents identified any individualized facts demonstrating that Petitioner's continued detention is necessary because he poses a danger to the community or a risk of flight.

55. Having affirmatively exercised its parole authority, permitted Petitioner to remain at liberty in the United States for nearly five years, processed his affirmative asylum application, initiated removal proceedings, and allowed him to appear before the Immigration Court while remaining at liberty, Respondents created a substantial liberty interest in Petitioner's continued freedom from physical restraint. Abruptly revoking that liberty without prior notice, without identifying any individualized basis or changed circumstances, and without affording Petitioner a meaningful opportunity to be heard constitutes a deprivation of liberty without due process of law. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

COUNT 2

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Not in Accordance with Law and in Excess of Statutory Authority)

56. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

57. Under the Administrative Procedure Act, a court shall "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

58. Agency action is arbitrary and capricious where the agency fails to consider relevant factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

59. An agency must provide a reasoned explanation for its actions based on the facts and circumstances of the individual case. *Dep't of Com. v. New York,* 139 S. Ct. 2551, 2569 (2019).

60. Here, Respondents re-detained Petitioner after previously exercising their parole authority to release him from immigration custody, permitting him to remain at liberty in the United States for nearly five years, processing his affirmative asylum application, initiating removal proceedings under section 240 of the Immigration and Nationality Act, and allowing him to appear before the Immigration Court while he remained at liberty. Respondents have provided no reasoned explanation for revoking Petitioner's liberty and have identified no changed circumstances or individualized facts justifying his re-detention.

61. Respondents have further failed to provide any individualized assessment justifying Petitioner's detention. They have not identified any facts indicating that Petitioner poses a danger to the community or a risk of flight.

62. By re-detaining Petitioner in the interior of the United States after previously releasing him on parole and permitting him to remain at liberty for nearly five years, without identifying any changed circumstances, without providing any individualized justification, and without articulating a reasoned basis for revoking that liberty, Respondents have acted arbitrarily, capriciously, and not in accordance with law.

63. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

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 Petitioner's continued detention without prior notice, without an individualized determination, and without any identified change in circumstances violates the Due Process Clause of the Fifth Amendment;

E) Declare that Respondents lack lawful authority to re-detain Petitioner without constitutionally adequate process after previously releasing him into the United States and permitting him to reside at liberty;

F) Declare that Respondents' actions re-detaining Petitioner without constitutionally adequate process, without lawful authority, and without a reasoned explanation were arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2);

G) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to 5 U.S.C. § 706(2)(A);

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

I) Order Respondents to restore Petitioner to the status quo ante by releasing him under the same conditions that existed immediately prior to his re-detention;

J) Enjoin Respondents from re-arresting or re-detaining Petitioner absent compliance with constitutional requirements, including constitutionally adequate notice, identification of any changed circumstances, and a meaningful pre-deprivation hearing before a neutral decisionmaker;

K) In the alternative, order Respondents to provide Petitioner with a constitutionally adequate custody hearing, at which DHS bears the burden of establishing by clear and convincing evidence that Petitioner's continued detention is necessary, and at which the neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any bond or other conditions of release;

L) Declare that Respondents may not continue to detain Petitioner without constitutionally adequate process and, to the extent Respondents seek to continue Petitioner's detention, require that any further custody determination comply with the requirements of the Due Process Clause;

M) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other basis authorized by law; and

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

Respectfully submitted,

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave, Suite 9
Chula Vista, CA 91910
Phone: (619) 777-6796
Counsel for Petitioner

Dated: July 17, 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's family members, as well as my review of available immigration records and supporting documents, including, but not limited to, Petitioner's Interim Notice Authorizing Parole, Notice to Appear, and records relating to Petitioner's pending removal proceedings.

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.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave, Suite 9
Chula Vista, CA 91910
Phone: (619) 777-6796
Email: info@alexmonsalvelawfirm.com
Counsel for Petitioner

Dated: July 17, 2026