FILED
JUL 17 2026
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

Gabriel Alejandro Vivas Ávila,
[redacted]
Petitioner, pro se
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

Gabriel Alejandro Vivas Ávila
Proceeding Pro Se,
Petitioner,
v.
WARDEN, OTAY MESA DETENTION CENTER; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States,
Respondents.

Civil Action No.: '26CV4137 BJC JAC

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Gabriel Alejandro Vivas Ávila, a national of Venezuela, files this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, challenging his unlawful and unconstitutional detention by Respondents.
2. Petitioner does not seek an ordinary discretionary bond redetermination. He challenges the legality of his summary re-detention after living and complying in the community under an ICE order of release. He requests restoration of his liberty and immediate release under reasonable nonmonetary conditions.
3. After being released from immigration custody on an Order of Release on Recognizance on October 30, 2021, Petitioner lived at liberty in the United States for approximately four years and eight months. During this time, he established deep and enduring ties to his family and community.
4. On June 25, 2026, while attending a scheduled ICE check-in, Petitioner was summarily re-

detained. He has since remained detained without advance notice, a meaningful explanation, or any neutral review of whether materially changed circumstances justified revoking his previously granted liberty.

5. Petitioner seeks restoration of his liberty and immediate release under reasonable nonmonetary conditions. Only in the alternative, if the Court declines to order immediate release, Petitioner requests prompt review before a neutral decisionmaker at which Respondents bear the burden of justifying continued detention.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241, which grants federal courts the power to issue writs of habeas corpus to persons in custody in violation of the Constitution or laws of the United States, and 28 U.S.C. § 1331. The Supreme Court has repeatedly affirmed that federal courts have jurisdiction to review constitutional challenges to immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517–18 (2003).

7. Venue and territorial jurisdiction are proper in this District because Petitioner is physically confined at the Otay Mesa Detention Center, within the Southern District of California, and his immediate custodian is located in this District.

PARTIES

8. **Petitioner GABRIEL ALEJANDRO VIVAS ÁVILA** (A# [redacted] is a citizen and national of Venezuela, [redacted] He is currently detained by Respondents at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, CA 92154.

9. **Respondent WARDEN, OTAY MESA DETENTION CENTER** is the custodian of the facility where Petitioner is detained and is responsible for his physical custody.

10. **Respondent TODD M. LYONS** is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for the supervision, custody, and control of immigration detainees in the United States, including Petitioner.

11. **Respondent MARKWAYNE MULLIN** is the Secretary of the Department of Homeland Security and is responsible for the enforcement and administration of federal immigration laws.

12. **Respondent TODD BLANCHE** is the Acting Attorney General of the United States and is responsible for the administration and enforcement of federal immigration laws.

FACTUAL BACKGROUND

13. Petitioner entered the United States in October 2021. On October 30, 2021, he was released from immigration custody on an Order of Release on Recognizance (Form I-220A), subject to reporting, appearance, address, and compliance conditions imposed by ICE.

14. For approximately four years and eight months following his release, Petitioner fully complied with his conditions of supervision and built a life in the United States. He established deep and meaningful ties to his family and community, demonstrating his commitment to being a productive member of society.

15. **Integration and Immigration Filings:** Petitioner affirmatively pursued available legal avenues. USCIS previously approved Petitioner for Temporary Protected Status, as reflected in the attached notice. USCIS approved Petitioner's employment authorization, and his Employment Authorization Document reflects validity from February 17, 2025 through February 16, 2030. Petitioner previously filed an application for asylum, which he understands remains unresolved.

16. **Employment and Financial Responsibility:** Since 2023, Petitioner has been gainfully

employed as a groomer at [redacted] He is a responsible taxpayer and has filed joint federal income tax returns with his wife for the 2023 and 2024 tax years. He holds a valid Florida driver's license.

17. **Strong Family and Community Ties:** To the best of Petitioner's knowledge, he has never been convicted of a criminal offense and currently faces no criminal charges. He is married to Keyla C. Urdaneta Rivera. [A declaration from Petitioner's wife is being obtained and will be submitted.] He is an integral part of a close-knit family of U.S. Citizens and Lawful Permanent Residents, including:

    a. Father: Alejandro Antonio Vivas Romero (Lawful Permanent Resident);

    b. Stepmother: Lilia Díaz Vivas (Lawful Permanent Resident);

    c. Sister: Nathaly Perez (U.S. Citizen); and

    d. Sister: Andreina Vivas Díaz (U.S. Citizen). These family members are prepared to provide unwavering support to ensure Petitioner's compliance with all immigration obligations.

18. **Unlawful Re-Detention:** On June 25, 2026, Petitioner appeared voluntarily for a scheduled ICE check-in at the ICE office in Miami, Florida. He did not attempt to flee and was not arrested based on any new criminal conduct. ICE took him into custody during the appointment. Based on the information currently available to Petitioner, ICE did not provide a meaningful advance notice or neutral hearing before revoking his release. [Petitioner's sworn Declaration, provides additional detail regarding the circumstances of his arrest.]

19. Petitioner was held at the Krome Detention Center in Florida for approximately one week before being transferred across the country to the Otay Mesa Detention Center in this

District, where he remains detained.

20. At no point before, during, or after his re-detention has Petitioner been afforded a hearing before a neutral decisionmaker to determine whether his detention is justified. He has been denied any opportunity to contest his confinement or seek release.

21. Respondents previously determined that Petitioner could safely remain in the community under conditions of release. Petitioner relied on that determination, complied with ICE reporting requirements, maintained a stable residence and employment, and appeared voluntarily for his scheduled appointment. Respondents have not identified any materially changed circumstance sufficient to justify the abrupt deprivation of that settled liberty.

22. Based on the records presently available to Petitioner, he is not aware of any final administrative order of removal. Respondents should be required to identify and produce any order or statutory authority on which they rely to justify his present detention.

LEGAL CLAIMS

COUNT ONE Violation of the Fifth Amendment Due Process Clause (Re-Detention Without a Pre-Deprivation Hearing)

23. Petitioner re-alleges and incorporates by reference the preceding paragraphs.

24. The Fifth Amendment to the U.S. Constitution provides that no "person" shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Supreme Court has repeatedly affirmed that this protection extends to all persons within the United States, irrespective of their immigration status. *Zadvydas*, 533 U.S. at 693.

25. A procedural due process analysis involves a two-step inquiry: first, whether a protected liberty interest exists, and second, what process is constitutionally required to deprive an individual of that interest. *See Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460

(1989).

26. Petitioner has a substantial, constitutionally protected liberty interest in his continued freedom from physical restraint. This liberty interest was established upon his release from custody in October 2021 and was significantly strengthened over the approximately four years and eight months he lived in the community. He was previously granted Temporary Protected Status, received employment authorization, maintained stable employment, paid taxes, and built a settled life with his family, developing the "enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

27. Federal courts have consistently recognized that a noncitizen who has been released from immigration custody on bond or other conditions has a protected liberty interest in remaining out of custody. *See, e.g., Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *6 (N.D. Cal. Sept. 12, 2025); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025); *Pacheco v. LaRose*, No. 24-CV-1936-GPC-DDL, 2025 WL 124317, at *4 (S.D. Cal. Jan. 11, 2025).

28. To determine what process was due, this Court must balance the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): (1) the private interest affected; (2) the risk of an erroneous deprivation of that interest and the probable value of additional safeguards; and (3) the government's interest.

29. Here, the *Mathews* factors weigh decisively in Petitioner's favor. His private interest in his freedom is profound. The risk of an erroneous deprivation is exceptionally high, as Respondents provided no process whatsoever, making it impossible to determine if any valid basis for detention exists. The government's interest in proceeding without a pre-deprivation hearing is negligible, as providing notice and a custody hearing are routine

administrative functions that impose a minimal burden. By summarily re-detaining Petitioner without prior notice and an opportunity to be heard before a neutral arbiter, Respondents violated his right to procedural due process under the Fifth Amendment.

COUNT TWO DETENTION WITHOUT IDENTIFIED STATUTORY AUTHORITY OR AN INDIVIDUALIZED CUSTODY DETERMINATION

30. Petitioner re-alleges and incorporates the preceding paragraphs.

31. Respondents have not provided Petitioner with a meaningful written explanation identifying the statutory authority for his present detention or the factual basis for revoking his prior release.

32. The records presently available do not establish whether Respondents purport to detain Petitioner under 8 U.S.C. §§ 1225, 1226, 1231, or another provision.

33. Respondents may not rely solely on Petitioner's original manner of entry to avoid meaningful constitutional review after they released him into the community, permitted him to reside and work in the United States, and later re-detained him during an interior ICE check-in.

34. Respondents cannot constitutionally deprive Petitioner of his liberty while withholding the statutory and factual grounds for his confinement and denying meaningful neutral review.

35. If Respondents contend that 8 U.S.C. § 1226(a) governs, Petitioner alleges in the alternative that Respondents failed to provide the individualized custody procedures applicable under that provision and its implementing regulations. *See Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022).

36. If Respondents contend that any other statutory provision authorizes Petitioner's detention, they must identify that provision and demonstrate that Petitioner's detention complies with

its substantive and procedural requirements and with the Due Process Clause of the Fifth Amendment.

Petitioner intends to file a separate Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary Injunction, supported by a sworn declaration and proposed order, seeking emergency relief pending resolution of this Petition.

PRAYER FOR RELIEF

Petitioner does not seek an ordinary discretionary bond redetermination. He challenges the legality of his summary re-detention after living and complying in the community under an ICE order of release. He requests restoration of his liberty and immediate release under reasonable nonmonetary conditions.

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this matter; B. Issue a Writ of Habeas Corpus and order Petitioner's **IMMEDIATE RELEASE** from Respondents' custody; C. In the alternative, if the Court declines to order immediate release, order Respondents to provide Petitioner within a strictly limited period with a hearing before a neutral decisionmaker at which Respondents bear the burden, by clear and convincing evidence, of establishing that continued detention is necessary because Petitioner presently poses a danger or a flight risk and that no less restrictive conditions would reasonably address those concerns; D. Enjoin Respondents from re-detaining Petitioner based on the same circumstances absent materially changed circumstances, reasonable advance notice, and a meaningful opportunity to be heard before a neutral decisionmaker, except where Respondents establish a genuine and immediate emergency requiring temporary action; E. Appoint counsel to represent Petitioner in this matter pursuant to 18 U.S.C. § 3006A(a)(2)(B); and F. Grant such other and further relief as this Court deems just and proper.

VERIFICATION

I, Gabriel Alejandro Vivas Ávila, declare under penalty of perjury under the laws of the United States of America that I am the Petitioner in the above-entitled action, that I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof, and that the matters stated therein are true and correct to the best of my knowledge and belief.

Executed on July 14, 2026, at San Diego, California.



Gabriel Alejandro Vivas Ávila,



Petitioner, pro se
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154
Pro Se