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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ISDAEL PEREZ-AZCUY,

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.: '26CV4225 CAB VET

A[redacted]

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

1. Petitioner, Isdael Perez-Azcuy, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and alleges as follows:

INTRODUCTION

2. Petitioner, Isdael Perez-Azcuy, is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego, California.

3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his detention by the Department of Homeland Security following the revocation of his longstanding liberty without constitutionally required process.

4. In 2020, DHS placed Petitioner into removal proceedings under the Migrant Protection Protocols ("MPP") and returned him to Mexico pending his immigration hearing. After returning to Mexico, Petitioner reentered the United States following events that caused him to fear remaining there. Thereafter, DHS and USCIS became fully aware of his presence and, over the next several years, repeatedly exercised affirmative authority over his immigration case by accepting and administering his application for adjustment of status, requiring biometrics and background screening, and issuing and renewing employment authorization while permitting him to reside openly in the community.

5. Throughout the years that followed, Petitioner complied with the requirements imposed by federal immigration authorities and resided openly in the community while Respondents knowingly permitted him to remain at liberty and continued administering his immigration case.

6. Following Petitioner's arrest in the State of Florida for an alleged driving-under-the-influence offense, Immigration and Customs Enforcement took him into immigration custody and transferred him to the Otay Mesa Detention Center.

7. Prior to detaining Petitioner, Respondents provided no notice of their intent to revoke his longstanding liberty, made no individualized custody determination, and afforded Petitioner no meaningful opportunity to be heard before a neutral decisionmaker.

8. Respondents' continued detention of Petitioner is unlawful. Through years of affirmative governmental conduct recognizing Petitioner's presence, requiring his participation in federal immigration processes, collecting his biometric information, and issuing and renewing employment authorization, Respondents permitted Petitioner to remain at liberty in the United States. That liberty interest cannot be revoked without due process of law.

9. Although the government may seek to detain Petitioner based on subsequent events, it may not bypass the procedural safeguards required before depriving him of his liberty. The Constitution does not permit the government to detain first and justify later.

10. By summarily detaining Petitioner without notice, without a hearing, and without any individualized determination regarding the necessity of detention, Respondents have deprived Petitioner of his liberty in violation of the Due Process Clause of the Fifth Amendment.

11. Absent intervention by this Court, no neutral adjudicator will review the legality of Petitioner's detention. Petitioner therefore respectfully requests that this Court declare his detention unlawful and order his immediate release or, in the alternative, require Respondents to provide a constitutionally adequate custody hearing.

CUSTODY

12. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

13. 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.

14. 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).

15. 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.

16. 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). A prior habeas petition challenging Petitioner's detention was filed in another jurisdiction. This petition is filed in a different district and challenges Petitioner's current detention under a materially different factual and legal posture.

17. 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).

18. 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

19. Petitioner, Isdael Perez-Azcuy, is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego, California.

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

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

22. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

23. Respondent Todd Blanche is the Acting Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

24. All Respondents are named in their official capacities.

STATEMENT OF FACTS

25. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Cuba.

26. In November 2020, DHS processed Petitioner under the Migrant Protection Protocols ("MPP"), served him with a Notice to Appear, and returned him to Mexico pending his immigration proceedings. Petitioner later reentered the United States. Thereafter, Respondents permitted him to remain at liberty while continuing to administer his immigration case.

27. As part of its adjudication of those applications, USCIS required Petitioner to appear at an Application Support Center for biometrics collection. The appointment notice reflects that USCIS scheduled Petitioner to submit his fingerprints, photograph, and signature in connection with both his Form I-485 and Form I-765. Petitioner appeared as directed and complied with that requirement. (*Ex.* 1.)

28. Following completion of its background and security screening, USCIS approved Petitioner's application for employment authorization. On May 10, 2025, USCIS issued a Notice of Action approving Petitioner's Form I-765 and authorizing him to work in the United States through July 10, 2030. (*Ex.* 2.)

29. Through the collection of Petitioner's biometrics, the completion of background and security screening, and the approval of his employment authorization, DHS and USCIS were fully aware of Petitioner's identity, fingerprints, and continued presence in the United States while permitting him to remain at liberty in the community.

30. Petitioner remained at liberty for several years while complying with the requirements imposed by federal immigration authorities. During that period, Respondents did not place Petitioner in immigration detention or provide notice that his liberty would be revoked.

31. Petitioner was later arrested in the State of Florida for an alleged driving-under-the-influence offense. Following that arrest, Immigration and Customs Enforcement took Petitioner into immigration custody.

32. At no point prior to detaining Petitioner did Respondents provide notice that Petitioner's longstanding liberty would be revoked or afford him any opportunity to challenge that decision before a neutral decisionmaker.

33. Respondents have not provided Petitioner with an individualized immigration custody determination or afforded him a meaningful opportunity to be heard regarding whether his continued detention is necessary.

REQUIREMENTS OF 28 U.S.C. § 2243

34. 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).

35. 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).

36. 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

37. 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.

38. 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 otherwise treats as applicants for admission under that provision. 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.

39. 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.

40. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. His detention has caused significant emotional distress, physical decline, and deterioration of his mental health. Continued incarceration following the government's longstanding decision to permit him to reside at liberty in the United States magnifies these ongoing harms. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing harm further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

41. 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.

42. 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.

43. The government's affirmative actions recognizing a noncitizen's presence, requiring participation in immigration benefit proceedings, collecting biometric information, conducting background and security screening, and authorizing employment may, under appropriate circumstances, give rise to a substantial liberty interest protected by the Fifth Amendment.

44. Where the government affirmatively permits a noncitizen to reside openly in the United States for years while repeatedly administering his immigration case, it may not abruptly deprive him of that liberty without constitutionally adequate process.

45. 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.

46. 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.

47. Where the government has affirmatively permitted a noncitizen to reside at liberty in the United States through its own immigration processes, the resulting liberty interest is protected by the Due Process Clause. Here, Respondents required Petitioner to submit biometrics, conducted background and security screening, and approved employment authorization, thereby knowingly permitting Petitioner to reside openly in the community for several years. Once that liberty interest has been established through the government's own affirmative conduct, it cannot be revoked without constitutionally adequate process. The existence of any subsequent arrest does not relieve Respondents of their constitutional obligation to provide notice, identify the basis for detention, and afford Petitioner an opportunity to be heard before a neutral decisionmaker before depriving him of his liberty. Detaining a noncitizen after the government has affirmatively permitted him to reside at liberty for years, without an individualized determination and without constitutionally adequate process, violates the Due Process Clause.

48. 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.

49. Detaining a noncitizen after a prolonged period during which the government affirmatively permitted him to reside at liberty—without providing an individualized justification, without constitutionally adequate process, and without applying the proper statutory framework—constitutes arbitrary, capricious, and unlawful agency action.

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

50. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs.

51. 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).

52. For several years, Respondents affirmatively permitted Petitioner to reside openly in the United States while administering his pending immigration benefit applications. During that period, Respondents required Petitioner to submit biometrics, conducted background and security screening, approved his application for employment authorization, and knowingly permitted him to remain at liberty. Petitioner remained at liberty until ICE abruptly detained him following his arrest in Florida, without prior notice, without an individualized determination, and without any opportunity to be heard.

53. By requiring Petitioner to submit biometrics, conducting background and security screening, approving his application for employment authorization, and permitting him to reside openly in the United States for several years, Respondents affirmatively permitted Petitioner to

remain at liberty under circumstances protected by the Due Process Clause. Detaining Petitioner without notice, without an individualized determination, and without an opportunity to be heard before a neutral decisionmaker constitutes an arbitrary deprivation of that liberty in violation of the Fifth Amendment. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

54. Although the government may seek to detain Petitioner based on subsequent events, it may not bypass the procedural safeguards required before depriving Petitioner of the liberty it affirmatively permitted him to enjoy for several years. The Constitution does not permit the government to detain first and justify later.

55. By detaining Petitioner without notice, without an individualized determination, and without affording him any opportunity to be heard prior to the deprivation of his liberty, Respondents have violated the Due Process Clause of the Fifth Amendment.

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 detained Petitioner after years of affirmatively permitting him to reside openly in the United States while administering his immigration benefit applications. During that period, Respondents required Petitioner to submit biometrics, conducted background and security screening, approved his application for employment authorization, and knowingly permitted him to remain at liberty. Notwithstanding subsequent events that the government may rely upon to justify detention, Respondents have provided no reasoned explanation for abruptly revoking Petitioner's liberty or identified any individualized basis for doing so.

61. Respondents have neither conducted an individualized assessment nor articulated a reasoned basis for depriving Petitioner of his liberty without constitutionally adequate process.

62. By abruptly depriving Petitioner of the liberty that Respondents had affirmatively permitted him to enjoy for years—without a reasoned explanation, without an individualized justification, and without constitutionally adequate process—Respondents acted arbitrarily, capriciously, and in excess of their statutory authority.

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) Declare that Petitioner's continued detention without prior notice, without an individualized determination, and without an opportunity to be heard violates the Due Process Clause of the Fifth Amendment;

D) Declare that Respondents lack lawful authority to revoke Petitioner's protected liberty and detain him without constitutionally adequate process;

E) Declare that Respondents' actions detaining Petitioner without a reasoned explanation, without an individualized justification, and without complying with governing procedures 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);

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

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

H) In the alternative, order a constitutionally adequate custody hearing at which DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence, and the neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any bond imposed;

I) Enjoin Respondents from transferring Petitioner outside this District without prior approval of this Court;

J) 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

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

Respectfully submitted,

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Dated: July 23, 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 and Petitioner's relative, as well as my review of available immigration records and supporting documentation. Those records include the Application Support Center Appointment Notice issued by United States Citizenship and Immigration Services requiring Petitioner to appear for biometrics collection in connection with his Forms I-485 and I-765 (Exhibit 1), as well as the Notice of Action approving Petitioner's application for employment authorization (Exhibit 2). I also personally met with Petitioner during a visit to the Otay Mesa Detention Center on July 22, 2026, during which I reviewed the relevant documentation and discussed the facts underlying this Petition with him.

Based on my review of this 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.

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Dated: July 23, 2026