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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JACINTO ANTONIO PLAZA DE LOS SANTOS Petitioner, vs. MARKWAYNE MULLIN, Secretary, Department of Homeland Security; TODD BLANCHE, Acting Attorney General; DAVID J. VENTURELLA, Acting Director of Immigration and Customs Enforcement; JESUS ROCHA, Acting Field Office Director, San Diego Field Office; JEREMY CASEY, Warden, Imperial Regional Detention Facility; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF HOMELAND SECURITY. Respondents	Case No.: '26CV4238 DMS DEB **PETITION FOR WRIT OF HABEAS CORPUS** Hon. United States District Judge Date of Hearing: Time of Hearing:

INTRODUCTION

1. Petitioner, Jacinto Antonio Plaza De Los Santos (A# [redacted], brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging his unlawful detention by U.S. Immigration and Customs Enforcement ("ICE").

2. Petitioner has lived in the United States since on or about June 4, 2023. He was detained upon arrival at the Texas-Mexico border and was placed into removal proceedings because he entered without inspection and does not have a valid visa or other entry document as required by 8 U.S.C. § 1182(a). Exhibit A, Immigration History Documents.

3. On or about July 24, 2023, he was released under an Order of Release on Recognizance ("OREC"). Exhibit A, Immigration History Documents.

4. On July 3, 2026, Petitioner was re-detained by ICE in the interior of Florida without any notice or a pre-detention hearing.

5. Petitioner has no criminal convictions, has resided in the United States for over three years, lawful work authorization and has a pending asylum petition. *Id.*

6. Because Respondents continue to detain Petitioner in violation of the Immigration and Nationality Act and the Fifth Amendment, the Court should order Petitioner's immediate release or, alternatively, order a prompt bond hearing consistent with governing law.

JURISDICTION AND VENUE

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California. Exhibit B, Proof of Current Detention.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2241

12. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

13. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

14. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

15. Respondent David Venturella is the Acting Director ICE. ICE's responsibilities include operating the immigration detention system. In his capacity as Acting Director, Respondent Venturella exercises control over and is a custodian of persons held at ICE facilities nationally. He exercises legal authority over Petitioner's detention. He is sued in his official capacity.

16. Jesus Rocha is the Acting Field Office Director for ICE Enforcement and Removal Operations, San Diego Field Office. He has direct supervisory authority over Petitioner's detention at the Imperial Regional Detention Facility and is sued in his official capacity.

17. Respondent, Jeremy Casey is the current warden of the where Petitioner is detained. He has immediate physical custody of Petitioner and is sued in his official capacity.

18. Respondent Department of Homeland Security ("DHS") is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

19. Respondent Executive Office for Immigration Review ("EOIR") is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

20. Respondent Immigration and Customs Enforcement is the agency within DHS responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

STATEMENT OF FACTS

21. Petitioner is a citizen and national of Ecuador, born [redacted], in Ecuador.

22. Petitioner last entered the United States on or about June 4, 2023 near Brownsville, Texas. He subsequently was issued a credible fear interview with a border patrol agent in Rio Grande Valley, Texas.

23. On June 20, 2023, he was issued a Notice to Appear ("NTA"), charging him with being removable under INA §§ 212(a)(7)(A)(i)(I) (no valid visa or other entry document) and 212(a)(6)(A)(i) (entry without inspection). Exhibit A. The NTA also notes that he demonstrated a credible fear of persecution or torture for his ongoing asylum claim. *Id.*

24. On June 22, 2023, Petitioner was released on recognizance subject to in person reporting requirements. *Id.* He complied with all these requirements and has not missed any check-ins or court hearings.

25. Prior to being arrested, Petitioner lived in Miami, Florida.

26. On July 25, 2023, Petitioner reported to an in-person ICE check-in in North Carolina.

27. On April 28, 2026, Petitioner drove from Miami to attend an in-person master hearing at the immigration court in Charlotte, North Carolina. The immigration judge subsequently set his case for an individual hearing in February 2027.

28. Petitioner has lived continuously in the United States for approximately 3 years and has never been admitted, removed, or had a final order of removal.

29. On or about July 3, 2026, Petitioner was arrested by ICE officers in the interior of the United States while he was on his way to work. He was initially detained at the Krome North Processing Center in Miami, Florida.

30. Without reasonable explanation, he was transferred from Florida to California shortly after ICE detained him.

31. Petitioner is currently being detained at the Imperial Regional Detention Facility. Exhibit B.

32. Petitioner has developed notable ties to the United States and the state of Florida while living here for the past three years. He has obtained work authorization and is employed by Sabri Properties, a property management company. Exhibit C, Proof of Employment. He also has his own landscaping

business which is lawfully registered in the state of Florida. *Id.* Petitioner has numerous long-time friends who commend him for his honesty, work ethic, and law-abiding character. Exhibit D, Letters of Support.

33. Petitioner's life is in Miami, Florida. He has no meaningful ties to California, where he is currently detained.

34. No evidence suggests that Petitioner poses a danger to the community or is a flight risk. He has no criminal history and holds multiple jobs. His employer, Basim Omar Sabri previously offered to serve as his sponsor and post bond on his behalf. Exhibit D. Petitioner has a pending asylum application that was timely filed in December 2023. His asylum claim is based on death threats from Ecuadorian police made to dissuade Petitioner from reporting how he was shot at by a local criminal organization that attempted to extort him. Exhibit A.

35. Petitioner has never been arrested, convicted of a crime, or accused of conduct involving violence, controlled substances, gangs, theft, fraud, or alcohol-related offenses.

36. ICE has detained Petitioner without providing him any meaningful custody review that properly accounts for his equities, potential relief and his ties to the United States.

37. Petitioner has never been removed, has never been subject to a reinstated removal order, and is not detained pursuant to 8 U.S.C. § 1226(c).

LEGAL BACKGROUND

38. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.

39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal proceedings before an immigration judge. Individuals covered by § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while certain noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

40. Second, the INA provides for mandatory detention of noncitizens subjected to an Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

41. Third, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

42. This case concerns the detention provisions at 8 U.S.C. § 1225(b)(2) and § 1226.

43. After an initial release from custody on conditions, a person has a protected liberty interest in that conditional release. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). As the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

44. This reasoning applies with equal if not greater force to people released from civil immigration detention like Petitioner. Noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. See *Zadvydas v. Davis*, 533 U.S. 678, 679-680 (2001). Moreover, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

45. Even where detention is authorized, the Fifth Amendment's Due Process Clause requires procedural protections before depriving an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

46. Agency action that fails to follow its own regulations is unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

47. This Court and other district courts in California have repeatedly found a violation of the Fifth Amendment Due Process Clause and granted immediate release where ICE re-detains an individual without prior notice or a hearing regarding the revocation of their OREC. *See NARDI CAMPOS NAVARRO v. MARKWAYNE MULLIN, et al.*, No. 5:26-CV-02171-AYP, 2026 WL 1848126, at *1 (C.D. Cal. June 23, 2026) (granting immediate release where ICE re-detained the petitioner previously released on an OREC but provided no pre-deprivation notice or opportunity to be heard); *Koshelev v. Doe*, No. 3:26-CV-1529-JES-MSB, 2026 WL 835447 (S.D. Cal. Mar. 26, 2026) (same) *Ramales v. LaRose*, No. 26-CV-501-JES-DEB, 2026 WL 280216, at *1, 3 (S.D. Cal. Feb. 3, 2026) (same); *Leiva Flores v. Albarran*, No. 25-CV-09302-AMO, 2025 WL 3228306, at *1 (N.D. Cal. Nov. 19, 2025) (same); *Faizyan v. Casey*, No. 3:25-CV-02884-RBM-JLB, 2025 WL 3208844, at *1, 7-8 (S.D. Cal. Nov. 17, 2025) (same).

FIRST CAUSE OF ACTION:

PETITIONER'S RE-DETENTION VIOLATES THE SUBSTANTIVE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

48. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

49. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690 (2001).

50. Petitioner has a fundamental interest in liberty and being free from official restraint. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See Id.*

51. Petitioner is not a danger to the community or a flight risk. He has resided in the United States for approximately three years, has a wife and child living in Miami, Florida, and has no criminal convictions. The government has never made an individualized determination that Petitioner presents a danger or flight risk. Such detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment.

52. Furthermore, under the *Mathews v. Eldridge* balancing test, Petitioner's substantial private interest in liberty, the high risk of erroneous deprivation given

the weak factual basis for detention, and the minimal burden on the government of providing additional safeguards compel relief. *Mathews*, 424 U.S. 319.

53. The risk of erroneous deprivation is particularly acute because immigration judges continue to refuse to hold a bond hearing for individuals in Petitioner's situation, citing a lack of jurisdiction. See *LUIS ALONZO CALIXTRO v. MARKWAYNE MULLIN,* No. EDCV 26-1797-AS, 2026 WL 1288654, at *3-4 (C.D. Cal. May 7, 2026) (granting immediate release where the immigration judge found they lacked jurisdiction to give petitioner a bond hearing); *SANTOS CARLOS GARCIA AGUILAR v. MARKWAYNE MULLIN*, No. CV 26-3709-AS, 2026 WL 1196090, at *2-4 (C.D. Cal. Apr. 28, 2026) (granting immediate release to a petitioner who was "denied bond after the immigration judge concluded he lacked jurisdiction under Section 1225(b)(2) *and Matter of Yajure Hurtado*"); *Garcia v. Lyons*, No. 26-CV-01882-BAS-BJW, 2026 WL 905335, at *1 (S.D. Cal. Apr. 2, 2026) (observing that the immigration judge refused to hold a bond hearing because they lacked jurisdiction pursuant to *Matter of Yajure Hurtado*); *Murillo-Ortiz v. LaRose*, No. 3:26-CV-1469-JES-BJW, 2026 WL 800556, at *2 (S.D. Cal. Mar. 23, 2026) (noting that the immigration judge wrongly concluded they had no jurisdiction to hold a bond hearing). Accordingly, pursuing a bond hearing is futile for Petitioner and would likely be an inadequate form of relief if ordered by the Court.

54. Moreover, because Petitioner's community ties are in Florida–not California–any bond hearing he receives while he is detained at the Imperial Detention Facility that examines whether he is a flight risk will not adequately assess the likelihood that he will appear at the Imperial Immigration Court.

55. Therefore, because Petitioner was not granted a bond hearing before being re-detained, his detention exceeds DHS's authority and violates the Fifth Amendment.

SECOND CAUSE OF ACTION:

PETITIONER'S RE-DETENTION VIOLATES THE PROCEDURAL DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

56. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

57. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after his release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

58. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the

government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.").

59. Petitioner's re-detention without a pre-deprivation hearing violated procedural due process. Long after deciding to release Petitioner from custody on his own recognizance, Respondents re-detained him without prior notice or opportunity to contest his re-detention before a neutral adjudicator before being taken into custody.

60. Petitioner has a profound personal interest in his liberty. Because he received no procedural protections, the risk of erroneous deprivation is high. The government has no legitimate interest in detaining Petitioner without a pre-deprivation hearing.

THIRD CAUSE OF ACTION:

PETITIONER'S DETENTION VIOLATES 8 U.S.C. § 1226(a)

61. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

62. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who (1) have entered and were residing in the United States prior to being arrested, (2) have been placed under § 1229a removal proceedings, and (3) have been charged with a ground of inadmissibility, including 8 U.S.C. §§ 1182(a)(6)(A)(i) or (a)(7)(A)(i)(I). Such noncitizens may only be detained pursuant to § 1226(a), unless subject to § 1225(b)(1), § 1226(c), or § 1231.

63. Section 1226(a) applies by default to all persons "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

64. Any application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

65. Accordingly, Petitioner can only be detained under § 1226(a). *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (noting that [a] noncitizen released on an OREC necessarily must have been detained and released under § 1226).

66. Detention under § 1226(a) must serve a legitimate government purpose of mitigating danger or preventing flight. See *Zadvydas*, 533 U.S. at 690; 8 U.S.C. § 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

67. Petitioner's prior release by DHS in 2023, pending asylum application, lack of any criminal history and his work authorization necessarily reflects a

determination that he is neither a flight risk nor a danger to the community. 8 C.F.R. 1236.1(c)(8) (outlining requirements for release on recognizance).

68. Thus, his re-detention pursuant 8 U.S.C. § 1226(a) requires an individualized determination of a material change in circumstances going to flight risk or danger in order for her re-detention to serve a regulatory purpose.

69. Petitioner's re-detention violates § 1226 given that he was not afforded an individualized determination of a material change in circumstances related to flight risk or danger to justify re-detention.

FOURTH CAUSE OF ACTION:

PETITIONER'S DETENTION VIOLATES THE *ACCARDI* DOCTRINE (FAILURE TO FOLLOW AGENCY REGULATIONS)

70. Petitioner re-alleges and incorporates each allegation contained in the preceding paragraphs.

71. Immigration authorities must follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

72. DHS regulations at 8 C.F.R. § 236.1 require individualized custody determinations considering factors such as ties to the community, equities, and whether detention is necessary.

73. Respondents failed to conduct any contemporaneous, individualized assessment that properly weighed Petitioner's three years of residence in the United States, lack of criminal offenses, and the avenues for relief available to the Petitioner.

74. This failure to comply with 8 C.F.R. § 236.1 renders Petitioner's detention unlawful under the *Accardi* doctrine.

FIFTH CAUSE OF ACTION:

AGENCY ACTION NOT IN ACCORDANCE WITH LAW AND ARBITRARY, CAPRICIOUS, AND AN ABUSE OF DISCRETION (5 U.S.C. § 706(2)(A))

75. Petitioner re-alleges and incorporates by reference all preceding allegations.

76. The Administrative Procedure Act authorizes courts to 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).

77. Respondents' continued detention of Petitioner without having first held a custody redetermination required by law is arbitrary, capricious, contrary to law, and an abuse of discretion.

78. Respondents' actions have deprived Petitioner of liberty without any individualized determination that he is a danger to the community or a flight risk

79. Petitioner has no adequate alternative remedy and is suffering ongoing injury as a result of Respondents' unlawful actions.

80. Accordingly, Respondents' actions should be declared unlawful and set aside pursuant to 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;
b. Grant the Petition for Writ of Habeas Corpus;
c. Order Petitioner's immediate release from ICE custody;
d. Alternatively, order ICE to provide a prompt, constitutionally adequate custody redetermination hearing before a neutral decisionmaker, with the burden on the government;
e. Declare that ICE's detention of Petitioner without adequate process is unlawful;
f. Enjoin Respondents from continued detention absent compliance with the U.S. Constitution, applicable federal regulations;
g. Issue an order directing Respondents not to transfer Petitioner outside the Southern District of California without prior notice to counsel and leave of court;
h. Award costs and reasonable attorneys' fees, including under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
i. Retain jurisdiction to enforce any release order entered in this matter;

j. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

/s/ *Morris J. Wilner* Dated: July 24, 2026

Morris J. Wilner
WILNER & O'REILLY, APLC
Attorney for Petitioner, Jacinto Antonio Plaza De Los Santos

EXHIBITS

The following exhibits are attached to and incorporated by reference in this Petition:

Exhibit A – Immigration History Documents

Exhibit B – Proof of Petitioner's Detention

Exhibit C – Proof of Employment

Exhibit D – Letters of Support

VERIFICATION BY ATTORNEY ACTING ON MR. PLAZA DE LOS SANTOS BEHALF PURSUANT TO 28 U.S.C. §§ 2242

I am submitting this verification on behalf of Mr. PLAZA DE LOS SANTOS because I am his attorney. As Petitioner's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: July 24, 2026 By: */s/ Morris J. Wilner*