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Selvin Olvidio Orozco Perez

UNITED STATES DISTRICT COURT

SOUTHERN DISTRIECT OF CALIFORNIA

SELVIN OLVIDIO OROZCO PEREZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; Todd BLANCHE, U.S. Attorney General; JOSEPH FREDEN, Acting Field Office Director, U.S. Immigration & Customs Enforcement (ICE), Senior Warden, Otay Mesa Detention Facility; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. '26CV4275 TWR VET

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241; VERIFIED PETITION

PETITIONER'S A NO. [redacted]

I. INTRODUCTION

1. Petitioner Selvin Olvidio Orozco Perez, A# [redacted] ("Petitioner"), by and through undersigned counsel, respectfully submits this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, together with claims for declaratory and injunctive relief, challenging his ongoing and unlawful detention by the Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE").
2. Petitioner is a native and citizen of Guatemala.
3. On December 13, 2023, Petitioner arrived at the United States border near Nogales, Arizona, and voluntarily surrendered himself to United States Border Patrol.
4. Petitioner did not evade immigration authorities or enter the United States without presenting himself for inspection.
5. Rather, Petitioner affirmatively presented himself to Border Patrol immediately upon his arrival and was processed by immigration officials.
6. Petitioner was detained for approximately one day.
7. On December 14, 2023, DHS issued Petitioner a Notice to Appear initiating removal proceedings.
8. DHS's own records identify Petitioner's last entry or attempted entry as occurring on December 13, 2023, near Nogales, Arizona.
9. The first page of the documents provided by DHS reflecting Petitioner's border encounter and processing is attached as Exhibit A.
10. The remaining pages of Petitioner's Notice to Appear are attached as Exhibit B.

11. Following his processing, DHS released Petitioner into the United States subject to regular ICE reporting requirements.

12. Petitioner thereafter lived in the community while his immigration proceedings remained pending.

13. Petitioner complied with his ICE reporting requirements and remained available to DHS.

14. Petitioner's removal proceedings were not scheduled for a hearing until 2027.

15. Petitioner was therefore permitted to remain at liberty under DHS supervision while awaiting the adjudication of his immigration case.

16. At the time of his re-detention, Petitioner was living in Florida.

17. On or about July 10, 2026, ICE officers detained Petitioner while he was riding as a passenger in a vehicle.

18. Petitioner was not driving the vehicle and was not detained for committing any criminal offense.

19. ICE detained Petitioner without providing him advance notice that DHS intended to revoke his liberty.

20. Petitioner was not provided a pre-deprivation hearing or a meaningful opportunity to contest the basis for his detention before he was taken into custody.

21. DHS has not identified any material change in Petitioner's circumstances that occurred between his release in December 2023 and his detention in July 2026.

22. DHS has not alleged that Petitioner failed to comply with his reporting requirements.

23. DHS has not alleged that Petitioner committed a crime while living in the community.

24. DHS has not alleged that Petitioner failed to appear for an immigration hearing or otherwise attempted to evade the immigration process.

25. After his detention in Florida, Petitioner was transferred across the country to the Otay Mesa Detention Center in San Diego County, California.

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

27. Petitioner's first master calendar hearing is presently scheduled for August 3, 2026.

28. DHS's own records establish that Petitioner presented himself to immigration authorities at the border and was processed immediately upon his arrival.

29. Those records support Petitioner's classification as an arriving noncitizen rather than as a person who entered the United States at an unknown place and time and was later apprehended in the interior.

30. The Notice to Appear is therefore inaccurate to the extent it alleges or designates Petitioner as a noncitizen who was merely present in the United States without having been admitted or paroled, rather than recognizing that he was encountered and processed by DHS upon his arrival at the border.

31. This distinction is significant because arriving noncitizens are generally denied access to an ordinary bond redetermination hearing before an Immigration Judge.

32. DHS cannot rely upon a classification that deprives Petitioner of ordinary Immigration Court bond review while simultaneously re-detaining him without

advance notice, without a pre-deprivation hearing, and without identifying any change in circumstances warranting the revocation of his liberty.

33. Petitioner's detention is unlawful for multiple independent reasons.

34. First, DHS's re-detention of Petitioner after more than two and one-half years of supervised liberty, without advance notice or a pre-deprivation hearing, violates the Due Process Clause of the Fifth Amendment.

35. Second, Petitioner's detention is arbitrary because DHS has not identified any material change in circumstances justifying the revocation of the liberty DHS previously granted him.

36. Third, DHS's own border-processing records establish that Petitioner should be treated as an arriving noncitizen, yet that classification deprives him of access to an ordinary Immigration Judge bond hearing and leaves him without a meaningful administrative mechanism to challenge his detention.

37. Fourth, a later post-deprivation review cannot cure the constitutional injury because the loss of Petitioner's liberty has already occurred and continues every day.

38. Federal courts have repeatedly recognized that when DHS has permitted a noncitizen to live in the community, the Government may not abruptly re-detain that individual without constitutionally adequate notice and an opportunity to be heard. See Carmen Aracely Pablo Sequen v. Kaiser, No. 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Aug. 1, 2025); Prieto Salazar v. Kaiser, No. 1:25-cv-01017-JLT-SKO (E.D. Cal. Aug. 25, 2025); Hyppolite v. Noem, 808 F. Supp. 3d 474 (E.D.N.Y. 2025).

39. Those courts have ordered immediate release where DHS deprived individuals of their previously granted liberty without providing adequate pre-deprivation procedures.

40. Immediate judicial intervention is warranted because Petitioner remains detained without advance notice, without an individualized pre-deprivation determination, and without any identified change in circumstances demonstrating that his detention is necessary.

41. Petitioner respectfully requests that this Court order his immediate release under the conditions of supervision that governed his release before July 10, 2026.

42. In the alternative, Petitioner requests a prompt and constitutionally adequate custody determination before a neutral decision-maker within five days, at which the Government bears the burden of proving by clear and convincing evidence that Petitioner presents a danger to the community or a risk of flight that cannot reasonably be mitigated through conditions of release.

43. Each additional day of confinement inflicts continuing and irreparable harm upon Petitioner.

II. JURISDICTION

44. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody under federal authority and challenges the legality and constitutionality of that custody. See 28 U.S.C. §§ 2241(a), (c)(3); Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

45. Habeas jurisdiction extends to claims that immigration detention violates the Constitution or exceeds lawful authority. See Zadvydas v. Davis, 533 U.S. 678, 687–88, 699 (2001).

46. Petitioner does not challenge a final order of removal.

47. Petitioner's removal proceedings remain pending, and his first master calendar hearing is scheduled for August 3, 2026.

48. Petitioner does not ask this Court to determine whether he is removable or to adjudicate any application for immigration relief.

49. Petitioner instead challenges only the legality and constitutionality of his present physical detention and the absence of constitutionally adequate procedures before DHS revoked his previously granted liberty.

50. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

51. Petitioner's detention claim may be resolved without addressing whether he is removable or whether he is ultimately entitled to remain in the United States.

52. Accordingly, this Court has jurisdiction to determine whether Petitioner's detention violates the Fifth Amendment and to grant habeas, declaratory, and injunctive relief.

III. VENUE

53. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because Petitioner is detained within this District at the Otay Mesa Detention Facility.

54. Venue is also proper because Petitioner's immediate custodian is located within this District. See Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973).

55. Because the detention challenged in this Petition is occurring within this District, this Court is the proper and appropriate forum to adjudicate the legality of Petitioner's confinement.

IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

56. Under 28 U.S.C. section 2241, federal courts may entertain petitions for a writ of habeas corpus on behalf of individuals who are in custody in violation of the Constitution or laws of the United States.

57. Petitioner satisfies these requirements because he is presently detained under federal authority and alleges that his detention violates the Due Process Clause of the Fifth Amendment.

58. Petitioner challenges the fact and legality of his confinement and seeks relief from an ongoing deprivation of physical liberty.

59. Section 2243 requires prompt judicial action in habeas proceedings.

V. PARTIES

60. Petitioner Selvin Olvidio Orozco Perez, [redacted], is a native and citizen of Guatemala. Petitioner was born on [redacted].

61. Petitioner arrived at the United States border near Nogales, Arizona, on December 13, 2023.

62. Upon arriving, Petitioner voluntarily surrendered himself to United States Border Patrol.

63. Petitioner was detained and processed by immigration officials.

64. On December 14, 2023, DHS issued Petitioner a Notice to Appear.

65. DHS thereafter released Petitioner into the United States subject to regular ICE reporting requirements.

66. Petitioner's removal proceedings were scheduled to continue in 2027.

67. Before his re-detention, Petitioner was residing in Florida.

68. On or about July 10, 2026, ICE detained Petitioner while he was riding as a passenger in a vehicle.

69. Petitioner received no advance notice that DHS intended to revoke his liberty.

70. Petitioner was transferred from Florida to the Otay Mesa Detention Center in San Diego County, California.

71. Petitioner remains detained at Otay Mesa.

72. Petitioner's first master calendar hearing is scheduled for August 3, 2026.

VI. RESPONDENTS

87. Respondent is the warden of Otay Mesa Detention Facility and has immediate physical custody over Petitioner. As the local custodian, the Warden is responsible for the day-to-day administration of the detention facility where Petitioner is held. The Warden is sued in his/her official capacity as a representative of the entity exercising direct custody over Petitioner.

88. Respondent JOSEPH FREDEN is the Acting Field Office Director of U.S. Immigration and Customs Enforcement (ICE), in San Diego California. ICE is the component of the Department of Homeland Security (DHS) which is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Mr. Freden is named in his official capacity. In his official capacity, he is a legal custodian of the petitioner.

89. Respondent MARKWAYNE MULLIN, in his official capacity as the Secretary of the Department of Homeland Security, is the highest-ranking official in DHS. He has ultimate authority over ICE and the enforcement of immigration laws, including detention policy. DHS, under Respondent Noem's direction, is responsible for the decision to continue Petitioner's detention and to designate him as subject to mandatory custody. He is sued in his official capacity.

90. Respondent TODD BLANCHE, in his official capacity as the Attorney General of the United States, oversees the U.S. Department of Justice, which includes the Executive Office for Immigration Review (EOIR). EOIR encompasses the nation's Immigration Courts and the Board of Immigration Appeals (BIA). The Attorney General has ultimate authority over immigration court procedures, including the availability of bond hearings and the interpretation of detention statutes through precedent decisions. Respondent is sued in his official capacity.

VII. LEGAL FRAMEWORK

91. Federal immigration law establishes distinct detention schemes depending upon a noncitizen's status and procedural posture.

92. Section 1225(b) governs the processing and detention of certain applicants for admission, including arriving noncitizens.

93. Section 1226 generally governs the arrest and detention of certain noncitizens during pending removal proceedings.

94. Section 1231 governs detention following the entry of an administratively final order of removal.

95. The Supreme Court has recognized that these statutory provisions establish separate detention authorities depending upon a noncitizen's procedural posture. Jennings v. Rodriguez, 583 U.S. 281, 288–89 (2018).

96. Under applicable regulations, an Immigration Judge generally lacks jurisdiction to redetermine the custody status of an arriving noncitizen. See 8 C.F.R. § 1003.19(h)(2)(i)(B).

97. DHS's own records establish that Petitioner arrived at the border near Nogales, Arizona, on December 13, 2023, and immediately presented himself to Border Patrol.

98. DHS processed Petitioner upon his arrival and issued his Notice to Appear on December 14, 2023.

99. The document attached as Exhibit A identifies Petitioner's last entry or attempted entry as occurring on December 13, 2023, near Nogales, Arizona.

100. These facts demonstrate that Petitioner was encountered and processed by DHS upon his arrival at the border.

101. To the extent the Notice to Appear instead characterizes Petitioner solely as a noncitizen present in the United States without admission or parole, the Notice to Appear is inconsistent with DHS's own records concerning the time, place, and circumstances of his encounter.

102. Petitioner should therefore be treated consistently with the circumstances documented by DHS—as a noncitizen who presented himself for processing upon arrival at the border.

103. DHS cannot use Petitioner's status as an arriving noncitizen to deny him access to an ordinary Immigration Judge bond hearing while also re-detaining him without advance notice, without a pre-deprivation hearing, and without any individualized demonstration that detention is necessary.

104. The existence of statutory detention authority does not displace the independent requirements of the Constitution.

105. The Fifth Amendment applies to all persons within the United States, including noncitizens in removal proceedings.

106. Freedom from imprisonment and physical restraint lies at the heart of the liberty protected by the Due Process Clause. Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Even where detention is authorized by statute, the Government must exercise that authority in a manner consistent with due process.

107. Procedural due process ordinarily requires notice and an opportunity to be heard before the Government deprives a person of a protected liberty interest. See Mathews v. Eldridge, 424 U.S. 319, 333–35 (1976).

108. These protections are particularly important where the Government seeks to revoke liberty it previously granted.

109. Petitioner was detained for approximately one day following his arrival and was then released into the United States under DHS supervision.

110. Petitioner thereafter lived in the community for more than two and one-half years.

111. During that period, Petitioner complied with ICE reporting requirements and remained available to immigration authorities.

112. DHS re-detained Petitioner on or about July 10, 2026, without providing advance notice that his liberty would be revoked.

113. DHS provided no pre-deprivation hearing at which Petitioner could contest the alleged need for his detention.

114. DHS has identified no material change in Petitioner's circumstances that required his immediate re-detention.

115. Federal courts have recognized that the Government may not revoke a noncitizen's previously granted liberty without constitutionally adequate notice and a meaningful opportunity to be heard.

116. In Carmen Aracely Pablo Sequen v. Kaiser, the court ordered the petitioner's immediate release and prohibited her re-detention without notice and a pre-deprivation hearing before a neutral decision-maker. No. 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Aug. 1, 2025).

117. In Prieto Salazar v. Kaiser, the court ordered immediate release and required advance notice describing the changed circumstances allegedly necessitating any future detention, together with a timely hearing at which the Government bore the burden of proof. No. 1:25-cv-01017-JLT-SKO (E.D. Cal. Aug. 25, 2025).

118. In Hyppolite v. Noem, the court held that detention without notice and an opportunity to be heard violated procedural due process and ordered the petitioner's immediate release. 808 F. Supp. 3d 474 (E.D.N.Y. 2025).

119. Courts have also recognized that post-deprivation proceedings do not necessarily cure the injury caused by an unlawful loss of liberty.

120. In E.A.T.-B. v. Wamsley, the court explained that a post-detention hearing cannot prevent an erroneous deprivation because it occurs only after the individual has already lost his or her liberty. 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025).

121. Similarly, Jorge M.F. v. Jennings recognized that once an individual is detained, the constitutional injury has already occurred. 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021).

122. Domingo v. Kaiser likewise concluded that even prompt post-detention review does not erase the deprivation of liberty already suffered. No. 25-cv-05893-RFL, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025).

123. These principles apply with full force here.

124. Petitioner lived in the community for more than two and one-half years under DHS supervision.

125. Petitioner complied with ICE reporting obligations and remained available for his immigration proceedings.

126. DHS nevertheless detained Petitioner without advance notice, a pre-deprivation hearing, or an identified change in circumstances.

127. If DHS treats Petitioner as an arriving noncitizen, Petitioner also lacks access to an ordinary bond hearing before an Immigration Judge.

128. Petitioner therefore has no meaningful administrative mechanism through which to obtain prompt review of DHS's decision to revoke his liberty.

129. Under these circumstances, immediate release is the appropriate remedy.

VIII. FACTS

130. Petitioner is a native and citizen of Guatemala.

131. Petitioner arrived at the United States border near Nogales, Arizona, on December 13, 2023.

132. Upon his arrival, Petitioner voluntarily surrendered himself to United States Border Patrol.

133. Petitioner was detained for approximately one day while immigration officials processed him.

134. DHS's own records identify December 13, 2023, near Nogales, Arizona, as the date and place of Petitioner's last entry or attempted entry.

135. A copy of the first page of the documents reflecting that border encounter and processing is attached as Exhibit A.

136. On December 14, 2023, DHS issued Petitioner a Notice to Appear.

137. The remaining pages of the Notice to Appear are attached as Exhibit B.

138. The Notice to Appear is inaccurate to the extent it fails to designate Petitioner consistently with DHS's own documentation showing that he presented himself and was processed upon arrival at the border.

139. Following his processing, DHS released Petitioner into the United States subject to regular reporting requirements.

140. Petitioner thereafter lived in the community while his immigration proceedings remained pending.

141. Petitioner complied with his ICE reporting requirements.

142. Petitioner remained available to immigration authorities.

143. Petitioner's immigration proceedings were scheduled to continue in 2027.

144. DHS therefore permitted Petitioner to remain at liberty for more than two and one-half years while awaiting further proceedings.

145. Before his detention, Petitioner was living in Florida.

146. On or about July 10, 2026, Petitioner was riding as a passenger in a vehicle.

147. ICE officers stopped or encountered the vehicle and detained Petitioner.

148. Petitioner was not driving the vehicle.

149. Petitioner was not detained based upon the commission of any criminal offense.

150. Before taking Petitioner into custody, DHS did not provide written or oral advance notice that it intended to revoke his liberty.

151. DHS did not provide Petitioner a pre-deprivation hearing.

152. DHS did not provide Petitioner a meaningful opportunity to contest the basis for his detention before he was taken into custody.

153. DHS did not identify any material change in Petitioner's circumstances that required his immediate detention.

154. DHS did not allege that Petitioner had violated his reporting obligations.

155. DHS did not allege that Petitioner had failed to attend an immigration hearing.

156. DHS did not allege that Petitioner had attempted to evade immigration officials.

157. DHS did not identify any individualized facts establishing that Petitioner presented a danger to the community.

158. DHS did not identify any individualized facts establishing that Petitioner presented a risk of flight that could not be addressed through conditions of supervision.

159. Following his detention, DHS transferred Petitioner from Florida to California.

160. Petitioner is presently detained at the Otay Mesa Detention Center in San Diego County.

161. Petitioner's first master calendar hearing is scheduled for August 3, 2026.

162. If DHS treats Petitioner as an arriving noncitizen, the Immigration Court lacks ordinary bond jurisdiction over his detention.

163. Petitioner therefore lacks a meaningful ordinary bond process through which to challenge his continued confinement.

164. Petitioner remains detained despite his prior compliance with ICE supervision and the absence of any identified material change in his circumstances.

165. Each day of confinement continues the deprivation of Petitioner's physical liberty.

IX. FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause
Re-Detention Without Advance Notice or Constitutionally Adequate Pre-Deprivation Procedures

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

167. The Fifth Amendment prohibits the Government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

168. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

169. DHS released Petitioner after processing him at the border and permitted him to reside in the community for more than two and one-half years.

170. Petitioner complied with ICE reporting requirements and remained available to immigration authorities.

171. Petitioner's interest in maintaining his physical liberty is substantial.

172. DHS nevertheless revoked Petitioner's liberty on or about July 10, 2026, without providing meaningful advance notice.

173. Petitioner was not provided a pre-deprivation hearing or a meaningful opportunity to challenge the asserted need for detention before he was taken into custody.

174. DHS has not identified any extraordinary circumstance that prevented it from providing Petitioner notice and an opportunity to be heard before revoking his liberty.

175. DHS has not identified any material change in circumstances demonstrating that Petitioner suddenly posed a danger to the community or an unmanageable risk of flight.

176. Under Mathews v. Eldridge, the Court considers the private interest affected, the risk of erroneous deprivation under the procedures employed, the

value of additional safeguards, and the Government's interests. 424 U.S. 319, 335 (1976).

177. Petitioner's interest in freedom from physical confinement is among the most fundamental interests protected by the Constitution.

178. The risk of erroneous deprivation was exceptionally high because DHS detained Petitioner without advance notice, a pre-deprivation hearing, or an individualized determination of necessity.

179. Advance notice and a hearing would have allowed Petitioner to present evidence of his compliance with ICE requirements and the absence of any changed circumstances.

180. Providing those protections would have imposed little burden upon DHS, particularly because Petitioner had been living openly in the community and remained subject to supervision.

181. The Government's asserted immigration-enforcement interests do not justify the summary revocation of liberty without constitutionally adequate process.

182. By detaining Petitioner without advance notice or a pre-deprivation hearing, Respondents violated the Due Process Clause of the Fifth Amendment.

183. Petitioner is therefore entitled to immediate release under his prior conditions of supervision.

X. SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act
(5 U.S.C. § 706 – Arbitrary and Capricious Agency Action)

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

184. Civil immigration detention must bear a reasonable relationship to a legitimate governmental objective and may not be arbitrary or excessive in relation to that objective. See Foucha v. Louisiana, 504 U.S. 71, 80 (1992); Zadvydas, 533 U.S. at 690.

185. DHS released Petitioner into the community after processing him at the United States border.

186. Petitioner lived in the community for more than two and one-half years and complied with ICE reporting requirements.

187. Petitioner remained available for his immigration proceedings, which were scheduled to continue in 2027.

188. Respondents have not identified any material change in circumstances that occurred before July 10, 2026.

189. Respondents have not alleged that Petitioner violated a condition of release.

190. Respondents have not alleged that Petitioner failed to appear for a required ICE appointment or immigration hearing.

191. Respondents have not alleged that Petitioner committed a crime while residing in the community.

192. Respondents have not made any individualized finding that Petitioner poses a danger to the community.

193. Respondents have not made any individualized finding that Petitioner poses a risk of flight that cannot be mitigated through reasonable conditions of release.

194. DHS's unexplained decision to revoke Petitioner's liberty after more than two and one-half years of compliance is arbitrary and excessive in relation to the Government's legitimate regulatory objectives.

195. Respondents' continued detention of Petitioner therefore violates the Due Process Clause of the Fifth Amendment.

196. Petitioner is entitled to immediate release subject to reasonable conditions of supervision.

XI. THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause
Denial of a Meaningful Mechanism to Challenge Detention

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

197. Due process requires a meaningful opportunity to challenge the Government's deprivation of physical liberty.

198. DHS's own records establish that Petitioner arrived at the border near Nogales, Arizona, and voluntarily presented himself to Border Patrol.

199. Those circumstances support Petitioner's classification as an arriving noncitizen.

200. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), an Immigration Judge ordinarily lacks jurisdiction to redetermine the custody status of an arriving noncitizen.

201. If DHS treats Petitioner as an arriving noncitizen, Petitioner cannot obtain an ordinary bond redetermination hearing before the Immigration Court.

202. DHS nevertheless re-detained Petitioner without advance notice and without providing any pre-deprivation hearing before a neutral decision-maker.

203. DHS cannot deprive Petitioner of ordinary Immigration Court bond review and simultaneously deny him constitutionally adequate procedures before revoking his liberty.

204. The absence of both pre-deprivation process and ordinary post-detention bond review leaves Petitioner without a meaningful mechanism to challenge his confinement.

205. This complete absence of meaningful custody review violates the Due Process Clause of the Fifth Amendment.

206. Petitioner is therefore entitled to immediate release.

XII. FOURTH CLAIM FOR RELIEF

Immediate Release Is Required Because Post-Deprivation Procedures Cannot Cure the Constitutional Violation

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

207. Petitioner was deprived of physical liberty when DHS detained him on or about July 10, 2026.

208. DHS did not provide Petitioner advance notice or a pre-deprivation hearing.

209. The constitutional injury therefore occurred at the moment DHS revoked Petitioner's liberty without adequate process.

210. A later hearing cannot return the days or weeks of liberty Petitioner has already lost.

211. Courts have recognized that post-deprivation review does not necessarily cure an unlawful detention because the deprivation of liberty has already occurred. See E.A.T.-B. v. Wamsley, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025); Jorge

M.F. v. Jennings, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); Domingo v. Kaiser, No. 25-cv-05893-RFL, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025).

212. Petitioner remains detained without an identified change in circumstances and without a meaningful ordinary bond-review mechanism.

213. Under these circumstances, immediate release is necessary to restore the status quo that existed before Respondents' unconstitutional conduct.

214. Petitioner should be released under the same or substantially similar conditions of supervision that governed his release before July 10, 2026.

215. In the alternative, if the Court declines to order immediate release, it should require a constitutionally adequate custody hearing within five days before a neutral decision-maker.

216. At any alternative hearing, the Government should bear the burden of proving by clear and convincing evidence that Petitioner presents a danger to the community or a risk of flight that cannot reasonably be mitigated through conditions of release.

XII. FIFTH CLAIM FOR RELIEF

Petitioner Is in Custody in Violation of the Constitution and Is Entitled to Habeas Relief Under 28 U.S.C. § 2241

Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein:

217. Under 28 U.S.C. § 2241(c)(3), federal courts may grant habeas relief to persons who are in custody in violation of the Constitution or laws of the United States.

218. Petitioner is presently in federal immigration custody at the Otay Mesa Detention Center.

219. Respondents revoked Petitioner's previously granted liberty without advance notice, without a pre-deprivation hearing, and without identifying any materially changed circumstances warranting detention.

220. Petitioner lacks access to an ordinary Immigration Judge bond hearing if DHS classifies him as an arriving noncitizen.

221. Petitioner's present custody therefore violates the Due Process Clause of the Fifth Amendment.

222. Habeas corpus is the proper vehicle for challenging the legality of Petitioner's present physical confinement.

223. Petitioner respectfully requests that this Court issue a writ of habeas corpus directing Respondents to immediately release him under reasonable conditions of supervision.

224. Alternatively, Petitioner requests that the Court order a constitutionally adequate custody determination within five days before a neutral decision-maker, at which Respondents bear the burden of justifying continued detention by clear and convincing evidence.

XIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

a. Assume jurisdiction over this Petition pursuant to 28 U.S.C. §§ 2241 and 1331;

b. Issue the writ or an order directing Respondents to show cause pursuant to 28 U.S.C. § 2243;

c. Declare that Respondents violated the Due Process Clause of the Fifth Amendment by revoking Petitioner's previously granted liberty without

meaningful advance notice or a constitutionally adequate pre-deprivation hearing;

d. Declare that Petitioner's continued detention, absent any identified material change in circumstances or individualized determination of necessity, is arbitrary and unconstitutional;

e. Declare that DHS's own records establish that Petitioner presented himself to immigration officials at the United States border and was processed immediately upon arrival;

f. Declare that, to the extent DHS treats Petitioner as an arriving noncitizen who is ineligible for ordinary Immigration Judge bond review, Respondents may not continue to detain him without providing constitutionally adequate procedures;

g. Declare that post-deprivation process cannot fully cure the constitutional injury caused by Petitioner's detention without adequate pre-deprivation procedures;

h. Issue a Writ of Habeas Corpus directing Respondents to immediately release Petitioner from custody under the conditions of supervision in effect before his detention on or about July 10, 2026, or under other reasonable conditions deemed appropriate by the Court;

i. In the alternative, order Respondents to provide Petitioner with a prompt and constitutionally adequate custody determination within five days before a neutral decision-maker;

j. Order that at any such custody determination, Respondents bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the

community or a risk of flight that cannot reasonably be mitigated through conditions of release;

k. Order that if Respondents fail to provide a constitutionally adequate custody determination within the time specified, Petitioner shall be immediately released;

l. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court while this action remains pending, absent prior notice to Petitioner's counsel and leave of Court;

m. Award Petitioner reasonable attorneys' fees and costs to the extent authorized by law, including under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

n. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted on:

Dated: July 24, 2026

/s/ Daniel S. Castaneda
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3065 Rosecrans Place, Suite 204 San Diego, CA 92110
Tel:(619)710-6095
daniel@castalegal.com
Counsel for Petitioner-Plaintiff

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Daniel S. Castaneda, submit this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Respectfully submitted on:

Dated: July 24, 2026

/s/ Daniel S. Castaneda
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