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CESAR JOSE MONTENEGRO-VELASQUEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CESAR JOSE MONTENEGRO-VELASQUEZ, Petitioner, v. **CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center; JAMISON MATUSZEWSKI, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; DAVID J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S.**	Case No. '26CV4297 JO DEB **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** (Immigration Detention; 8 U.S.C. § 1226(a)) **IMMEDIATE RELIEF REQUESTED**

Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, Acting Attorney General of the United States; DAREN MARGOLIN, Director, Executive Office for Immigration Review; and EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

All Respondents are sued in their official capacities.

I. INTRODUCTION

1. Petitioner Cesar Jose Montenegro-Velasquez is a twenty-nine-year-old native and citizen of Venezuela who has lived in the United States since August 2022. In June 2024, the Department of Homeland Security placed him in removal proceedings under 8 U.S.C. § 1229a and chose not to detain him. It served him with a Notice to Appear, permitted him to remain in the community at his home address, and required him to report to Immigration and Customs Enforcement. For the next two years Petitioner did exactly what the government asked of him. He lived openly

at the Florida address printed on the face of his Notice to Appear. He appeared for every scheduled report. His removal case moved forward on schedule and no immigration judge has ever entered an order of removal against him. He is charged with no crime and with no criminal ground of inadmissibility or removability.

2. On June 29, 2026, Petitioner appeared as directed for a scheduled check-in with Immigration and Customs Enforcement. Officers arrested him at the appointment. He received no written notice of the reasons for his arrest. No neutral decisionmaker found that he had become a flight risk or a danger to anyone. No changed circumstance was identified to him. Nothing about Petitioner had changed. Only the government's position had changed. Respondents then moved Petitioner more than 2,000 miles from Florida to the Otay Mesa Detention Center in San Diego, California, where he sits today, with no bond hearing held, none scheduled, and none available to him at all under the position Respondents now take.

3. Petitioner's removal case is nowhere near its end. The Miami Immigration Court has set his individual merits hearing for May 25, 2029. If Respondents are right about the law, Petitioner will spend approximately three more years in a detention cell before any adjudicator reaches the merits of his case, and he will never receive a hearing at which anyone asks whether locking him up is necessary at all.

4. Petitioner's detention is unlawful twice over. First, it rests on the wrong statute. Petitioner was not apprehended at the border or at a port of entry. He was arrested in the interior of the United States nearly four years after he entered and two years after the Department of Homeland Security itself chose to leave him at liberty. Detention in that posture is governed by 8 U.S.C. § 1226(a), which entitles Petitioner to seek release on bond before an immigration judge. Four courts of appeals have so held on the merits, and the Ninth Circuit has decided nothing to the contrary. Second, and independently, the Fifth Amendment does not permit the government to terminate a liberty it knowingly allowed Petitioner to exercise under reporting

requirements for two years, without notice, a hearing, a neutral decisionmaker, or any finding that circumstances changed.

5. Petitioner asks this Court to issue the writ and order his immediate and unconditional release from custody or, in the alternative, to order Respondents to provide him an individualized bond hearing within seven days before a neutral immigration judge at which the government bears the burden of establishing by clear and convincing evidence that his continued detention is necessary.

II. JURISDICTION

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, Section 9, Clause 2 of the United States Constitution. Petitioner is in custody under color of the authority of the United States and is held in violation of the Constitution and laws of the United States. 28 U.S.C. § 2241(c)(1), (c)(3).

7. The Supreme Court has repeatedly confirmed that the federal courts retain habeas jurisdiction over challenges to immigration detention. Zadvydas v. Davis, 533 U.S. 678, 687 (2001); Demore v. Kim, 538 U.S. 510, 516-17 (2003). Section 1226(e) does not bar this action. Petitioner challenges the statutory and constitutional framework of his confinement, not a discretionary judgment about the amount of a bond. Demore, 538 U.S. at 516-17.

8. This Court may grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, and may issue all writs necessary or appropriate in aid of its jurisdiction under 28 U.S.C. § 1651.

III. VENUE

9. Venue is proper in the Southern District of California. Petitioner is confined at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, which lies within this District. The proper respondent in a core habeas action is the immediate custodian, and the proper forum is the district of confinement. Rumsfeld v. Padilla, 542 U.S. 426, 435, 442-43 (2004); Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 494-95 (1973); see also Trump v. J.G.G., 604 U.S. 670 (2025).

10. Venue is independently proper under 28 U.S.C. § 1391(e) because Respondents are officers and agencies of the United States acting in their official capacities and a substantial part of the events giving rise to this Petition, namely Petitioner's confinement, occurs in this District.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

11. Section 2243 provides that a court entertaining an application for a writ of habeas corpus "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. The return is due "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. The court "shall summarily hear and determine the facts, and dispose of the matter as law and justice require." Id.

12. The writ of habeas corpus is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." Fay v. Noia, 372 U.S. 391, 401-02 (1963). Habeas petitions challenging immigration detention are entitled to "special, preferential consideration." Yong v. INS, 208 F.3d 1116, 1120 (9th Cir. 2000). Petitioner respectfully requests that the Court proceed with the dispatch that Section 2243 requires.

V. PARTIES

13. Petitioner Cesar Jose Montenegro-Velasquez is a native and citizen of Venezuela, A-Number [redacted] He is detained by U.S. Immigration and Customs Enforcement at the Otay Mesa Detention Center in San Diego, California. (Ex. B, U.S. Immigration and Customs Enforcement, Online Detainee Locator System record.)

14. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center. He is Petitioner's immediate custodian and exercises day-to-day control over Petitioner's confinement. He is sued in his official capacity.

15. Respondent Jamison Matuszewski is the Field Office Director of the San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He exercises custodial and legal authority over Petitioner's detention. He is sued in his official capacity.

16. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, the agency that arrested Petitioner and detains him. He is sued in his official capacity.

17. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security and has ultimate legal custody of Petitioner. He is sued in his official capacity.

18. Respondent U.S. Department of Homeland Security is the federal agency responsible for Petitioner's arrest, detention, and removal proceedings.

19. Respondent Todd Blanche is the Acting Attorney General of the United States. The Attorney General supervises the Executive Office for Immigration Review and the immigration judges who conduct custody redetermination hearings. He is sued in his official capacity.

20. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review, U.S. Department of Justice. He is sued in his official capacity.

21. Respondent Executive Office for Immigration Review is the component of the U.S. Department of Justice that houses the immigration courts and the Board of Immigration Appeals. Respondents Blanche, Margolin, and the Executive Office for Immigration Review are named because Petitioner seeks, in the alternative, an order directing that a custody hearing be provided, and those Respondents are the parties with authority to produce that hearing.

22. Petitioner names Warden LaRose as his immediate custodian. See Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004); Doe v. Garland, 109 F.4th 1188, 1195-96 (9th Cir. 2024). The remaining Respondents are named as legal custodians and as the officials and agencies whose participation is necessary for notice and for complete relief.

VI. LEGAL FRAMEWORK

23. The Immigration and Nationality Act supplies three distinct detention authorities. Section 1225(b) governs the inspection and detention of noncitizens arriving at the border or at a port of entry who are seeking admission. Section 1226 governs the detention of noncitizens arrested in the interior "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1231 governs detention after a removal order becomes administratively final.

24. Section 1226(a) is the default authority. It permits the Attorney General to arrest and detain a noncitizen pending a removal decision, and it expressly authorizes release on "bond of at least $1,500" or on "conditional parole." 8 U.S.C. § 1226(a)(2). Congress created a single mandatory detention exception in Section 1226(c), for

noncitizens with specified criminal histories. Petitioner falls within no Section 1226(c) category, and Respondents have never alleged that he does.

25. The agencies charged with administering the statute said as much themselves. In the 1997 interim rule implementing IIRIRA, under the heading "Apprehension, Custody, and Detention of Aliens," the Immigration and Naturalization Service and the Executive Office for Immigration Review explained that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). That was the agencies' settled understanding for nearly three decades, and it remains embodied in the regulations still on the books. 8 C.F.R. §§ 236.1(c), (d), 1003.19, 1236.1.

26. On July 8, 2025, the Department of Homeland Security reversed course. In a memorandum captioned "Interim Guidance Regarding Detention Authority for Applicants for Admission," the agency instructed its officers that section 235 of the Act, rather than section 236, supplies the detention authority for all applicants for admission, a category the agency reads to sweep in every person who entered without inspection, however long ago and wherever in the country the arrest occurs. The Board of Immigration Appeals adopted that position in Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

27. Four courts of appeals have now rejected that reading on the merits, holding that Section 1225(b)(2)(A) does not reach unadmitted noncitizens found in the interior of the country. Barbosa da Cunha v. Freden, 175 F.4th 61 (2d Cir. 2026); Lopez-Campos v. Raycraft, 175 F.4th 713 (6th Cir. 2026); Santillan Quiroz v. Mullin, No. 26-6019 (10th Cir. June 30, 2026); Hernandez Alvarez v. Warden, Federal Detention Center Miami, 175 F.4th 1258 (11th Cir. 2026). Two have accepted it. Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026); Avila v.

Bondi, 170 F.4th 1128 (8th Cir. 2026). The Ninth Circuit has not decided the question, and no authority binding on this Court forecloses Petitioner's claim.

28. Because the Board's position is an interpretation of a statute, it commands no deference. Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). This Court exercises its own independent judgment on whether the agency has acted within its statutory authority. Id.

29. Whatever statute applies, the Due Process Clause supplies a floor beneath which no detention scheme may fall. Zadvydas, 533 U.S. at 690, 695; Clark v. Martinez, 543 U.S. 371, 380 (2005).

VII. STATEMENT OF FACTS

A. Entry and Removal Proceedings

30. Petitioner is a native and citizen of Venezuela. He entered the United States at or near Eagle Pass, Texas, on or about August 24, 2022. He was not admitted and he was not paroled. (Ex. A, Notice to Appear, Form I-862, at 1.)

31. On June 27, 2024, the Department of Homeland Security served Petitioner in person with a Notice to Appear, Form I-862, at Miramar, Florida. The Notice to Appear checks the box stating that Petitioner is "an alien present in the United States who has not been admitted or paroled." It does not check the box for "arriving alien." (Ex. A at 1, 2.)

32. The Notice to Appear alleges that Petitioner entered the United States at or near Eagle Pass, Texas, on or about August 24, 2022, at a time or place other than as designated by the Attorney General, and that he is an immigrant not in possession of a valid unexpired immigrant visa or other valid entry document. It charges him as

inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I). (Ex. A at 1, 4.)

33. The Notice to Appear alleges no criminal conduct and charges no criminal ground of inadmissibility or removability. Nothing in it invokes 8 U.S.C. § 1226(c), and Respondents have never contended that Section 1226(c) applies to Petitioner. (Ex. A at 1, 4.)

34. The Notice to Appear placed Petitioner in removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a, and directed him to appear before an immigration judge at the Miami Immigration Court.

35. Petitioner's removal proceedings remain pending. The Executive Office for Immigration Review's Automated Case Information system reflects that Petitioner's case is pending, that no appeal has been received by the Board of Immigration Appeals, and that his next hearing is an in-person individual hearing set for May 25, 2029 at 1:00 p.m. before Immigration Judge Abraham L. Burgess at the Miami Immigration Court, 333 South Miami Avenue, Suite 700, Miami, Florida 33130. (Ex. C, Executive Office for Immigration Review, Automated Case Information record.)

36. Petitioner's case has proceeded past the master calendar stage and is now set for an individual merits hearing. No immigration judge has entered an order of removal against Petitioner, in absentia or otherwise. No removal order is administratively final. Petitioner is not detained under 8 U.S.C. § 1231.

B. Two Years at Liberty and in Compliance

37. The Department of Homeland Security did not detain Petitioner when it initiated removal proceedings against him. It served the Notice to Appear on him in person, permitted him to remain in the community at his home address, and required him to report periodically to Immigration and Customs Enforcement.

38.By serving Petitioner with the Notice to Appear and permitting him to remain in the community subject to reporting requirements, Respondents knowingly left Petitioner at liberty with full knowledge of every fact they now invoke to justify his confinement, including the date and manner of his entry, which appear on the face of the charging document they drafted.

39.Petitioner lived openly at his home address in Sunrise, Florida, the address printed on the face of the Notice to Appear. (Ex. A at 1.) He kept that address current with the immigration court and with the Department of Homeland Security, and he received notices there.

40.Petitioner complied with every reporting requirement Respondents imposed. He appeared for every scheduled report to Immigration and Customs Enforcement. He never failed to appear. He never absconded. Respondents have identified no violation of any condition they placed on him.

C. Detention Without Notice, Hearing, or Any Finding of Changed Circumstances

41.On June 29, 2026, Petitioner appeared as directed for a scheduled check-in with Immigration and Customs Enforcement. Officers took him into custody at that appointment. Petitioner did nothing to prompt the arrest except report where the government had told him to report. He was detained for complying.

42.On that date Respondents detained Petitioner without providing any of the process the Due Process Clause requires:

(a) No written notice of the reasons for his detention was provided;

(b) No hearing before a neutral decisionmaker was conducted, either before or after the arrest;

(c) No individualized assessment of flight risk or danger was disclosed to Petitioner or conducted before a neutral decisionmaker;

(d) No finding of changed circumstances justifying detention was disclosed to Petitioner; and

(e) The only facts Respondents invoke to justify detention, the date and manner of Petitioner's entry in 2022, are the identical facts the Department of Homeland Security knew and acted upon when it left Petitioner at liberty in 2024.

D. Detention, Cross-Country Transfer, and Duration

43. Following his arrest, Petitioner was detained in Florida. Respondents then transferred him more than 2,000 miles to the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, where he is confined today. Petitioner's removal proceedings remain venued in Miami, Florida, on the opposite side of the country from the facility where Respondents have placed him. (Ex. B.)

44. As of the date of this Petition, Petitioner has been in Respondents' custody for twenty-eight days. He has received no bond hearing. None is scheduled. Under the position Respondents take, he is categorically ineligible for one, no matter how long his detention runs and no matter what the evidence about him would show.

45. Petitioner's next immigration court hearing is set for May 25, 2029. Absent relief from this Court, Petitioner faces roughly three additional years of confinement before an immigration judge reaches the merits of his case, and longer still if either party appeals. Petitioner has not delayed his proceedings and has sought no continuance.

E. Administrative Exhaustion Would Be Futile

46. Section 2241 imposes no statutory exhaustion requirement, and exhaustion is not required where the administrative remedy is inadequate or where pursuing it would be futile.

47. Any request for a custody redetermination would be futile here. Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), are binding on immigration judges and on the Board, and they hold that a noncitizen in Petitioner's position is subject to mandatory detention under Section 1225(b)(2) and is ineligible for a custody redetermination. An immigration judge applying that precedent must deny Petitioner a hearing for want of jurisdiction, and the Board would apply the same precedent on appeal.

48. In any event, the Board cannot grant the constitutional relief Petitioner seeks. That claim is for this Court.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

8 U.S.C. § 1226(a)

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

50. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to every noncitizen residing in the United States who is subject to a ground of inadmissibility. It does not apply to those who previously entered the country and were already in the United States before being apprehended and placed in removal

proceedings. Such noncitizens are detained under Section 1226(a) unless they are subject to Section 1225(b)(1), Section 1226(c), or Section 1231.

51. Section 1226(a) applies by default to all persons detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Those decisions are made in proceedings under 8 U.S.C. § 1229a, which exist for the purpose of "deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1).

52. Section 1226 expressly reaches people charged as inadmissible, including people who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people confirms that, by default, they are afforded a custody hearing under subsection (a). As one court put the point, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025).

53. Section 1225(b), by contrast, governs people arriving at United States ports of entry and people otherwise seeking admission. Its entire framework is premised on inspection at the border of persons seeking admission. The Supreme Court has described that scheme as operating "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

54. Petitioner was not apprehended upon arrival. He entered the United States in August 2022 and lived here for nearly four years before Immigration and Customs Enforcement arrested him at a reporting appointment in Florida. He was not at the border. He was not at a port of entry. He was not seeking admission. He was reporting to the government exactly as the government had ordered him to do.

55. Four courts of appeals have rejected Respondents' reading of Section 1225(b)(2)(A) on the merits. Barbosa da Cunha v. Freden, 175 F.4th 61 (2d Cir.

2026); Lopez-Campos v. Raycraft, 175 F.4th 713 (6th Cir. 2026); Santillan Quiroz v. Mullin, No. 26-6019 (10th Cir. June 30, 2026); Hernandez Alvarez v. Warden, Federal Detention Center Miami, 175 F.4th 1258 (11th Cir. 2026). District courts within this Circuit and across the country have overwhelmingly reached the same conclusion. See, e.g., Caseres Moran v. Warden of Imperial Detention Facility, No. 3:26-cv-03580 (S.D. Cal. June 26, 2026) (holding that Section 1226 governs the detention of a noncitizen who entered without inspection and was arrested in the interior after years of residence, and ordering immediate release); Rodriguez Vazquez v. Bostock, 802 F. Supp. 3d 1297 (W.D. Wash. 2025); Bautista v. Santacruz, 813 F. Supp. 3d 1084 (C.D. Cal. 2025).

56. Respondents' application of Section 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the Immigration and Nationality Act.

COUNT II

Violation of the Bond Regulations

8 C.F.R. §§ 236.1, 1236.1, and 1003.19

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

58. In 1997, after Congress amended the Act through IIRIRA, the Executive Office for Immigration Review and the then Immigration and Naturalization Service issued an interim rule interpreting and applying the amendments. Under the heading "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

59. The agencies thus made clear that individuals who entered without inspection were eligible for consideration for bond and for bond hearings before immigration judges under 8 U.S.C. § 1226 and its implementing regulations.

60. In the decades that followed, people who entered without inspection and were placed in standard removal proceedings received custody hearings unless their criminal history rendered them ineligible under 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, under which noncitizens who were not arriving were entitled to a custody hearing before an immigration judge or other hearing officer.

61. Pursuant to Matter of Q. Li and Matter of Yajure Hurtado, the Executive Office for Immigration Review now maintains a policy and practice of applying Section 1225(b)(2) to individuals like Petitioner and denying them the custody hearing the regulations provide.

62. Respondents' application of Section 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of the Fifth Amendment Right to Due Process

Unlawful Detention After Two Years at Liberty

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

64. Petitioner has a fundamental interest in liberty and in being free from official restraint. See Zadvydas v. Davis, 533 U.S. 678, 690 (2001). The interest in being free from physical detention by one's own government is "the most elemental of liberty interests." Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004). Freedom from

bodily restraint "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

65. "Freedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty protected by the Due Process Clause." Zadvydas, 533 U.S. at 690.

66. Consistent with that principle, individuals released from custody on parole or other forms of conditional release have a liberty interest in their "continued liberty." Morrissey v. Brewer, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and to live with one's family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." Id. Petitioner's interest is independently substantial. Respondents did not detain him when they initiated proceedings in June 2024; instead, they left him at liberty in his community for two years under reporting requirements they imposed and he satisfied.

67. To guard against arbitrary deprivations of that liberty, due process requires "adequate procedural protections" ensuring that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Zadvydas, 533 U.S. at 690. Under Mathews, those protections required timely notice and an individualized hearing before a neutral decisionmaker to assess danger and flight risk before or promptly after Respondents terminated Petitioner's liberty through detention. Goldberg v. Kelly, 397 U.S. 254, 267 (1970); Morrissey, 408 U.S. at 485.

68. Applying the framework of Mathews v. Eldridge, 424 U.S. 319 (1976), each factor favors Petitioner.

(a) Private interest. Petitioner was deprived of an established and fundamental interest in his physical liberty. Respondents left him at liberty in June 2024 and he lived in the community in Sunrise, Florida for two years, complying with every reporting condition imposed on him.

(b) Risk of erroneous deprivation. Without a hearing before a neutral decisionmaker, the risk of erroneous deprivation of liberty is high and, on this record, obvious. Respondents permitted Petitioner to remain in the community for two years, during which he complied with his reporting obligations, and they have disclosed no changed circumstance warranting detention. A custody redetermination hearing is precisely the procedure that would counter that risk. See Ramirez-Mendez v. Olson, No. 26-17, 2026 WL 907576 (E.D. Ky. Apr. 2, 2026); Alvarez-Rico v. Noem, No. 4:26-cv-729, 2026 WL 522322 (S.D. Tex. Feb. 25, 2026); Zapata v. Kaiser, No. 25-cv-7492, 2025 WL 2578207 (N.D. Cal. Sept. 5, 2025).

(c) Government interest. The government's legitimate interests in immigration detention are preventing flight and protecting the public. Neither is served by detaining a person Respondents knowingly left at liberty and who then reported as ordered for two years. A bond hearing imposes no more than minimal cost on Respondents. See Singh v. Andrews, No. 25-cv-801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

69. Respondents' detention of Petitioner without notice, without a hearing, without a neutral decisionmaker, and without any finding of changed circumstances violates the Due Process Clause of the Fifth Amendment.

70. Courts have ordered release in closely analogous circumstances, including in this District. In Caseres Moran v. Warden of Imperial Detention Facility, No. 3:26-

cv-03580 (S.D. Cal. June 26, 2026), the court ordered the immediate release of a noncitizen who had entered without inspection, lived in the United States for years, was charged under the same two provisions charged here, and was arrested in the interior. The court further ordered that before any re-detention the petitioner must receive a hearing before an immigration judge under 8 U.S.C. § 1226(a) at which the government bears the burden of establishing danger or flight risk by clear and convincing evidence. See also E.A. T.-B. v. Wamsley, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025); Sepulveda Ayala v. Bondi, 794 F. Supp. 3d 901 (W.D. Wash. 2025); Jimenez Carrion v. Hermosillo, No. 2:26-cv-00694-JNW (W.D. Wash. Mar. 27, 2026).

COUNT IV

Violation of the Fifth Amendment Right to Due Process

Detention Without a Custody Hearing

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

72. The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. That protection extends to all persons within the United States, without regard to immigration status. See Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

73. Civil immigration detention is constitutionally permissible only insofar as it serves its regulatory purpose of ensuring a noncitizen's appearance at removal proceedings or effectuating a removal order. Detention that is untethered from those purposes, or that continues without adequate procedural safeguards, violates due process. Detention for its own sake is not a legitimate government interest. See Pinchi v. Noem, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. 2025).

74. Whether detention without custody review violates due process requires consideration of the detention already elapsed and reasonably anticipated, the process received and available, and responsibility for delay. Rodriguez Diaz v. Garland, 53 F.4th 1189, 1207-08 (9th Cir. 2022); see Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017). Every consideration favors Petitioner: he has received no custody hearing at all; none is available under Respondents' position, no matter what the evidence about him would show; his merits hearing is set for May 25, 2029, so the detention Respondents propose is measured in years, not weeks; and he has caused no delay whatsoever.

75. Petitioner has been detained without any individualized determination that his continued confinement is necessary. Respondents' categorical denial of a custody hearing, without any consideration of Petitioner's individual circumstances, including his years of residence in the United States, his unbroken record of compliance with the reporting conditions Respondents imposed, and the absence of any criminal charge, violates the Due Process Clause.

76. Due process requires, at a minimum, a hearing before a neutral adjudicator at which the government bears the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot be addressed by bond or conditions of release. Singh v. Holder, 638 F.3d 1196, 1203, 1208 (9th Cir. 2011), abrogated on other grounds by Jennings v. Rodriguez, 583 U.S. 281 (2018); accord Sadeqi v. LaRose, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025). The adjudicator must also consider Petitioner's financial circumstances and alternatives to bond in setting any conditions of release. Hernandez v. Sessions, 872 F.3d 976, 1000 (9th Cir. 2017).

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause directing Respondents to show cause, within three days as provided by 28 U.S.C. § 2243, why the writ should not be granted;

c. Issue a writ of habeas corpus and order Respondents to release Petitioner from custody immediately and unconditionally;

d. In the alternative, order that within seven days of the Court's order Respondents shall provide Petitioner an individualized bond hearing before a neutral immigration judge at which the government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot reasonably be addressed by bond or conditional release, see Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by Jennings v. Rodriguez, 583 U.S. 281 (2018); Sadeqi v. LaRose, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025);

e. Order that Respondents shall not deny Petitioner bond on the ground that 8 U.S.C. § 1225(b) requires or authorizes mandatory detention, or on the ground that Board of Immigration Appeals precedent deprives the immigration judge of jurisdiction to decide bond;

f. Order that the immigration judge shall consider Petitioner's financial circumstances and alternatives to bond in setting any conditions of release, see Hernandez v. Sessions, 872 F.3d 976, 1000 (9th Cir. 2017);

g. Order that if no hearing occurs within seven days of the Court's order, Respondents shall release Petitioner from custody by 5:00 p.m. on the eighth day;

h. Order Respondents to file a declaration within eleven days of the Court's order stating the outcome of any bond hearing conducted pursuant to the order, including any denial of bond, the bond amount set, or other conditions of release, or, if no hearing was conducted, confirming that Petitioner has been released;

i. Enjoin Respondents from re-detaining Petitioner during the pendency of his removal proceedings without first providing written notice, a finding by a neutral decisionmaker of changed circumstances, and an individualized hearing as set forth above, see Boumediene v. Bush, 553 U.S. 723, 779-80 (2008); Rodriguez v. Hayes, 591 F.3d 1105, 1117 (9th Cir. 2010); Clark v. Martinez, 543 U.S. 371, 376 n.3 (2005);

j. Order Respondents to file a declaration attesting to full compliance with those obligations at least 48 hours prior to any re-detention of Petitioner;

k. Enter an order barring Respondents from transferring Petitioner outside this District during the pendency of this action without at least 48 hours' advance written notice to the Court and to counsel, see United States v. United Mine Workers of America, 330 U.S. 258, 293 (1947); FTC v. Dean Foods Co., 384 U.S. 597, 608 (1966); Belbacha v. Bush, 520 F.3d 452 (D.C. Cir. 2008);

l. Declare that Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to an individualized custody hearing, and that Respondents' application of 8 U.S.C. § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act, its implementing regulations, and the Due Process Clause of the Fifth Amendment;

m. Award Petitioner reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Dated: July 27, 2026

Respectfully submitted,

/s/ Deron Edward Smallcomb
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Attorney for Petitioner

VERIFICATION OF COUNSEL PURSUANT TO 28 U.S.C. §§ 2242 AND 1746

I, Deron Edward Smallcomb, declare as follows:

1. I am an attorney licensed to practice law in the State of California, State Bar Number 282493, and I am admitted to practice before this Court. I represent Petitioner Cesar Jose Montenegro-Velasquez in this matter. I have personal knowledge of the matters stated in this verification.

2. I make this verification on Petitioner's behalf pursuant to 28 U.S.C. § 2242, which provides that an application for a writ of habeas corpus may be signed and verified by the person for whose relief it is intended or by someone acting in his behalf. Petitioner is confined at the Otay Mesa Detention Center and cannot practicably execute a verification within the time this matter requires.

3. I have read the foregoing Petition for Writ of Habeas Corpus. The factual allegations in it are based on my diligent inquiry, including my review of the charging document and other records in Petitioner's immigration case, information obtained from Petitioner, and information obtained from records maintained by U.S. Immigration and Customs Enforcement and the Executive Office for Immigration Review. Those allegations are true and correct to the best of my knowledge, information, and belief, and allegations made on information and belief are believed by me to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2026, at San Diego, California.

/s/ Deron Edward Smallcomb
DERON EDWARD SMALLCOMB (SBN 282493)
Attorney for Petitioner