Cynthia Bautista (CA Bar No. 336327)
Bautista Immigration Law, P.C.
1227 Laurel Street
San Carlos, CA 94070
Office: (650) 674-6070
Cell Phone: (415) 936-6730
cbautista@bautista-law.com

Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Jose Angel SOBALVARRO LEON,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL DETENTION FACILITY, in his or her official capacity; David VENTURELLA, Acting Director , U.S. Immigration and Customs Enforcement, in his official capacity; **Markwayne MULLIN,** in his official capacity as Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE,** in his official capacity as Acting U.S. Attorney General; **Acting or Current Field Office Director** of the Immigration and Customs Enforcement, Enforcement and Removal Operations San Diego Field Office

Respondents.

Case No.: **'26CV4375 AGS JLB**

Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C § 2241

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, JOSE ANGEL SOBALVARRO LEON, petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents. In support of this Petition, Petitioner alleges as follows:

I. INTRODUCTION

1. Petitioner JOSE ANGEL SOBALVARRO LEON ("Petitioner" or "Mr. SOBALVARRO") has been civilly imprisoned by U.S. Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility ("Imperial") since June 29, 2026.

2. Petitioner has been detained even though no neutral decisionmaker—neither a federal judge nor an immigration judge ("IJ")—has ever conducted a hearing to determine whether his incarceration is warranted based on danger or flight risk.

3. Petitioner has lived in the United States continuously for approximately twenty-three years. He has no criminal convictions of any kind, no pending criminal charges, and has never been detained by immigration authorities. He was arrested as a passenger in his own vehicle during a traffic stop at which officers demanded documents and, upon his inability to produce them, took him into custody.

4. Petitioner is being held on the position that he is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2), notwithstanding that he entered the United States in 2003 and has resided here ever since. Under that position, no statutory or regulatory mechanism exists by which Petitioner may obtain a custody determination from any neutral decisionmaker, at any point, no matter how long his detention continues.

5. Petitioner's detention without any individualized hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

6. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, determine that his detention is governed by 8 U.S.C. § 1226(a), and order Respondents to provide him with a prompt

custody redetermination hearing before an Immigration Judge pursuant to § 1226(a) and its implementing regulations.

7. Alternatively, if the Court concludes that Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2), Petitioner requests that the Court issue a writ of habeas corpus and order Respondents to provide him, within ten days, with a constitutionally adequate individualized custody hearing before a neutral decisionmaker. At that hearing, the decisionmaker must determine whether Petitioner's continued detention is justified by danger or risk of flight and consider whether alternatives to detention could reasonably mitigate any identified risk.

II. JURISDICTION AND VENUE

8. Petitioner is detained in the custody of Respondents at the Imperial Regional Detention Facility in Calexico, California.

9. This action arises under the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (habeas corpus); see also U.S. Const. art. I, § 9, cl. 2 (Suspension Clause). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

10. Congress has preserved judicial review of challenges to immigration detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to immigration detention); see also *id.* at 876 (Breyer, J., dissenting) (noting that § 1252(b)(9) applies by its terms only to review of an order of removal).

11. Venue is proper in this District because Petitioner is confined within this District and his immediate custodian is located here. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442-43 (2004); 28 U.S.C. § 2241(a). A substantial part of the events giving rise to these claims occurred and continues to occur in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ affords "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (habeas statute requires expeditious determination of petitions).

IV. PARTIES

14. Petitioner is a noncitizen currently detained by Respondents pending ongoing removal proceedings.

15. Respondent Warden of the Imperial Regional Detention Facility is the immediate physical custodian of Petitioner and is named in his or her official capacity.

16. Respondent David Venturella is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity. He oversees ICE operations, including detention and removal, and is the legal custodian of Petitioner.

17. Respondent Markwayne Mullin is named in his official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Mullin is ultimately responsible for the actions of ICE and is a legal custodian of Petitioner.

18. Respondent U.S. Department of Homeland Security is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Petitioner.

19. Respondent Todd Blanche is the Acting Attorney General of the United States Department of Justice (DOJ). He is responsible for the administration of the Executive Office for Immigration Review ("EOIR"), including policies that bear on immigration judges' jurisdiction over custody.

20. Respondent Current or Acting Field Office Director of the San Diego ICE Field Office is responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioner's case. They are a legal custodian of Petitioner and are named in their official capacity.

V. STATEMENT OF FACTS

21. Petitioner is a fifty-six-year-old native and citizen of Nicaragua, with A-Number [redacted] He holds no lawful status in any other country.

22. Petitioner entered the United States in or about May 2003 without inspection. He has resided in the United States continuously since that date and has never departed. This was his only entry into the United States.

23. Immediately prior to his detention, Petitioner resided in Miami, Florida.

24. Petitioner has three sisters residing in the United States. The first is a United States citizen. The second is a Lawful Permanent Resident ("LPR"). Petitioner's third sister holds employment authorization while in removal proceedings.

25. Petitioner is divorced. His adult daughter and his mother reside in Nicaragua. Petitioner has a partner who resides in the United States.

26. On June 29, 2026, Petitioner was arrested by immigration officers in Miami, Florida. Petitioner was a passenger in his own vehicle, which was being driven by a friend; the two were traveling to a hardware store to purchase supplies for work. Two unmarked sport-utility vehicles approached the car. The driver, alarmed, attempted to pull to the side of the road to allow the vehicles to pass. The vehicles instead cut in front of the car and stopped it. The officers displayed no marked police vehicle. The officers demanded documents, and when Petitioner was unable to produce them, he was arrested.

27. Petitioner was subsequently transferred from Florida to the custody of Respondents at the Imperial Regional Detention Facility in Calexico, California, where he remains confined. He has been continuously detained since June 29, 2026.

28. Petitioner has no criminal convictions in the United States or in any other country. He has no pending criminal charges. He has never been arrested other than in connection with the immigration arrest described above.

29. Petitioner has never previously been detained by ICE, has never been ordered removed, and has never been granted or denied any form of immigration status or relief.

30. Respondents served Petitioner with a Notice to Appear during his detention. His first master calendar hearing was scheduled for July 29, 2026. Petitioner does not know when his next hearingis scheduled. No merits hearing has been held, and no order of removal has been entered.

31. Petitioner intends to apply for asylum, withholding of removal, and protection under the Convention Against Torture. [redacted]

32. Petitioner has not been provided a bond hearing before a neutral decisionmaker to determine whether his detention is justified based on danger or flight risk. No such hearing has been scheduled.

33. Respondents have taken the position that Petitioner is an "applicant for admission" subject to detention under 8 U.S.C. § 1225(b)(2). Under that position, the Immigration Court lacks jurisdiction to conduct a custody redetermination, and there is no statutory or regulatory pathway by which Petitioner may seek a bond hearing before a neutral decisionmaker.

34. Absent intervention by this Court, Petitioner cannot and will not be provided with a bond hearing by a neutral decisionmaker to assess the propriety of his continued detention, however long that detention lasts.

VI. LEGAL BACKGROUND

35. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This protection applies to all noncitizens, including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J., dissenting) (both removable and inadmissible noncitizens are entitled to be free from detention that is arbitrary or capricious).

36. 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. *Zadvydas*, 533 U.S. at 690. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

37. The Supreme Court sustained mandatory detention under § 1226(c) in *Demore* on the basis of the petitioner's concession of deportability and the Court's understanding that such detention is ordinarily brief and bounded by the removal proceedings themselves. *Demore*, 538 U.S. at 513, 522 n.6, 528. Justice Kennedy, concurring, wrote that an individualized determination as to risk of flight and dangerousness may be required if continued detention became unreasonable or unjustified. *Id.* at 532 (Kennedy, J., concurring). Petitioner's case presents the situation *Demore* did not address: detention under a provision that supplies no custody hearing at all, at any point, for a long-term resident who concedes nothing and who is pursuing relief from removal.

38. Where the Supreme Court has permitted civil detention in other contexts, it has emphasized the importance of adequate procedural safeguards to ensure that confinement remains reasonably related to

a permissible governmental purpose. See *United States v. Salerno*, 481 U.S. 739 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992); *Zadvydas*, 533 U.S. at 692.

VII. LEGAL ARGUMENT

A. DUE PROCESS REQUIRES AN INDIVIDUALIZED CUSTODY HEARING BEFORE A NEUTRAL DECISIONMAKER.

39. Petitioner's detention, without any individualized review and without any mechanism to obtain such review, is unreasonable under the *Mathews v. Eldridge* due process test.

40. The *Mathews* test balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Each factor weighs in Petitioner's favor.

41. First, Petitioner has a weighty interest in his liberty, the core private interest at stake. *Zadvydas*, 533 U.S. at 690. Petitioner is held in a locked facility with limited freedom of movement and limited access to his family and support network, under conditions comparable to those of criminal confinement. That interest is substantial regardless of the length of detention, because any length of detention implicates the same fundamental right.

42. Second, the risk of erroneous deprivation is high and the value of the requested safeguard is correspondingly great. Petitioner has been detained without any evaluation whatsoever of whether the government can justify detention under his individualized circumstances. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011). The risk is heightened here because Respondents' position forecloses review entirely rather than merely deferring it: Petitioner has no administrative forum in which to be heard on danger or flight risk at all.

43. The risk of error is further magnified because detained noncitizens are frequently unrepresented, may lack English proficiency, and are confined in conditions that severely hamper their ability to gather evidence and prepare. See *Santosky v. Kramer*, 455 U.S. 745, 763 (1982).

44. Third, the government's interest in continuing to detain Petitioner without any neutral review is minimal. See *Mathews*, 424 U.S. at 335. The interest at stake is not the government's ability to detain Petitioner at all, but its asserted ability to detain him indefinitely without any individualized review. The cost of providing an individualized inquiry is minimal; immigration judges conduct custody hearings as a matter of routine.

45. Petitioner's individual circumstances confirm the point. He has lived in the United States for twenty-three years without a single criminal conviction or charge. He has family ties in this country, including United States citizen sister and another sister who is a LPR. He has never failed to appear for any proceeding, because he has never before been placed in proceedings. Nothing in his record suggests danger, and no neutral adjudicator has ever been asked to consider it.

B. DETENTION IS LIKELY TO CONTINUE AND WILL LENGTHEN AS PETITIONER PURSUES RELIEF.

46. Petitioner's removal proceedings are at their earliest stage. His first master calendar was on July 29, 2026, and he has not yet filed his applications for relief, and no merits hearing has been scheduled. His detention will therefore continue for a substantial and presently indeterminate period.

47. Petitioner should not be penalized for pursuing the relief the immigration laws afford him. Noncitizens should not be punished for pursuing legitimate proceedings to seek relief, and a noncitizen cannot fairly be told that he may shorten his detention by abandoning his claim for protection. Courts should not count continuances against a noncitizen where they are obtained in good faith to prepare a removal case, including efforts to obtain counsel. See *Hernandez Gomez v. Becerra*, No. 23-CV-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr. 4, 2023).

48. Because Respondents' position admits of no custody hearing at any point, the constitutional defect in Petitioner's detention does not cure itself with the passage of time. It compounds.

C. RESPONDENTS HAVE UNLAWFULLY SUBJECTED PETITIONER TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2).

49. The Immigration and Nationality Act prescribes three principal frameworks for the detention of noncitizens.

50. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. Section 1226(a) permits the Attorney General to arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States," and to release that person on bond or conditional parole. Noncitizens detained under § 1226(a) are entitled to a custody determination and may seek redetermination of that custody before an Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Noncitizens who fall within the enumerated criminal grounds are subject to mandatory detention under § 1226(c).

51. Second, 8 U.S.C. § 1225(b) provides for the detention of noncitizens in connection with inspection upon application for admission. Section 1225(b)(1) governs expedited removal of certain inadmissible arriving noncitizens. Section 1225(b)(2)(A) provides that if "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a."

52. Third, 8 U.S.C. § 1231(a)–(b) governs the detention of noncitizens who have been ordered removed.

53. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Petitioner is not subject to expedited removal, has no criminal convictions bringing him within § 1226(c), and is not subject to a final order of removal.

54. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

55. Section 1225 is directed at the inspection of persons applying for admission. That is reflected in its title—"Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"—and in the operative text of § 1225(b)(2)(A), which is triggered by a determination of "the examining immigration officer" concerning "an alien seeking admission."

56. For decades following IIRIRA, noncitizens who entered without admission or parole and were placed in § 1229a removal proceedings received custody hearings unless their criminal history rendered them ineligible under § 1226(c). Respondents' present position departs from that settled practice.

57. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an IJ has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. Id. Petitioner has not sought a bond hearing with an IJ because it would be futile.

58. Petitioner was not an alien seeking admission, and no examining immigration officer made any determination concerning his admission. Petitioner entered the United States on or about May 2003 and has resided here continuously for approximately twenty-three years. He was arrested on June 29, 2026 during a vehicle stop on a street in Miami, Florida, in the course of ordinary interior enforcement and not in connection with any inspection or application for admission.

59. Section 1226(a) is the provision that speaks to Petitioner's circumstances. He was apprehended in the interior and is detained pending a decision on whether he is to be removed. That is the situation § 1226(a) addresses by its terms.

60. Because § 1225(b)(2) does not reach Petitioner, Respondents' decision to hold him in custody under that provision exceeds Respondents' statutory authority. Petitioner is detained under § 1226(a) and is entitled to a custody redetermination before an Immigration Judge. His immediate release is the appropriate remedy; in the alternative, Petitioner asks this Court to order Respondents to schedule him for a bond hearing.

VIII. CLAIM FOR RELIEF

COUNT ONE: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

61. Petitioner re-alleges and incorporates by reference the paragraphs above. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

62. To justify Petitioner's detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, taking into account whether alternatives to detention could sufficiently mitigate that risk.

63. Respondents have provided no such hearing and, under the position Respondents have taken, will never provide one.

64. For these reasons, Petitioner's detention without a hearing before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment.

COUNT TWO: VIOLATION OF THE INA

65. Petitioner re-alleges and incorporates by reference the paragraphs above.

66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior

to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §1225(b)(1), § 1226(c), or § 1231.

67. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

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

3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within ten days unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision; and

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

Respectfully submitted,

Date: July 30, 2026

/s/ Cynthia Bautista

Cynthia Bautista, Esq.

Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF

PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: July 30, 2026

/s/ Cynthia Bautista
Cynthia Bautista, Esq.