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Detained

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of:

MAYORGA, Luis Josue

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security

Respondents.

File No.: '26CV4387 JES VET

[redacted]

Petition for Writ of Habeas Corpus to Challenge Unlawful Incarceration and Order to Show Cause Within Three Days

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

Petitioners respectfully petition this Honorable Court for a writ of habeas corpus to release Petitioner from detention.

INTRODUCTION

1. Petitioner was detained by Immigration and Customs Enforcement ("ICE") on June 30, 2026, and subsequently transferred to the Otay Mesa Detention Center pending removal proceedings. The Petitioner entered the United States with TPS, then his wife and their 2 children followed a few months later. Shortly after this, the family submitted their familial asylum application. Later, in 2025, Petitioner's TPS status was terminated. Then, in mid-June 2026, the Petitioner received a letter notifying him of a court date on 6/30/26. When the Petitioner and his family reported to their court date, the Petitioner was detained by ICE, and his wife was placed on supervision.

2. Petitioner is a citizen and national of Venezuela who entered the United States on or about July 2, 2022, under Temporary Protected Status (TPS).

3. Petitioner fled Venezuela with his family after [redacted] Petitioner subsequently applied for asylum along with his wife and two minor children (ages

16 and 15) and was residing peacefully in the United States while awaiting his removal and relief proceedings.

4. In mid-June 2026, Petitioner was directed to report for an immigration court appearance on June 30, 2026. Upon reporting, Petitioner was taken into ICE custody without notice, while his wife was placed under supervision. Petitioner was charged as removable under INA § 212(a)(6)(A)(i) and INA § 212(a)(7)(A)(i)(I).

5. Petitioner now challenges his unlawful detention and continued detention, which has caused significant hardship to him and his family, and seeks relief to avoid prolonged separation from his wife, minor children, and community.

JURISDICTION

6. Petitioner is detained in the custody of Respondents at Otay Mesa Detention Center in San Diego, California

7. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2 (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act). The 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

VENUE

8. Venue is proper in this District because this is the district in which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless good cause additional time, not exceeding twenty days, is allowed." *Id.* Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963)

10. Petitioner is "in custody" for the purpose of 28 U.S.C. section 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct control.

STATEMENT OF FACTS

11. Petitioner is a 39-year-old citizen and national of Venezuela, born on [redacted].

12. In Venezuela, Petitioner and his family faced [redacted] forcing Petitioner, his wife (Andourey Natali Fernandez), and their two minor children (currently ages 16 and 15) to flee to Colombia.

13. After saving funds in Colombia, Petitioner entered the United States on or about July 2, 2022, under TPS, and was later joined by his wife and children. The family subsequently submitted a familial asylum application.

14. On January 22, 2023, DHS issued a Notice to Appear (NTA) charging Petitioner under INA § 212(a)(6)(A)(i) and INA § 212(a)(7)(A)(i)(I).

15. On September 10, 2024, the Miami Immigration Court administratively closed Petitioner's removal proceedings.

16. On June 20, 2025, DHS filed a Motion to Recalendar proceedings.

17. In mid-June 2026, Petitioner received notification to report to court on June 30, 2026. Upon reporting on June 30, 2026, Petitioner was abruptly detained by ICE, while his wife was placed under administrative supervision.

18. On July 6, 2026, DHS transferred Petitioner from Florida to the Otay Mesa Detention Center in San Diego, California, where he currently remains detained.

19. Petitioner's next Master Calendar hearing is scheduled for August 5, 2026, before the Otay Mesa Immigration Court.

20. Petitioner has one prior misdemeanor arrest/conviction for DUI from 2024 and no other criminal record. Petitioners pose no danger to the community nor a risk of flight.

21. Petitioner has established significant ties to the United States, including his wife, minor children, and a sister who is a Lawful Permanent Resident (LPR).

PARTIES

22. Petitioner Luis Josue MAYORGA is a 39-year-old citizen and national of Venezuela. He entered the U.S. in 2022 fleeing severe persecution and violence in Venezuela. He is married, has two minor children, and has pending affirmative/defensive applications for asylum. Since his arrest on June 30, 2026, Petitioner has remained in Respondents' physical custody.

23. Petitioner is currently residing in Respondents' custody at Otay Mesa Detention Center in San Diego, California

24. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Petitioner is detained. LaRose is responsible for the day-to-day operations and confinement of non-

citizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Petitioner and is named in his official capacity.

25. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts in the direction of Respondents Lyons and Mullin. ICE is responsible for local custody decisions relating to non-citizens, including arrest, detention, custody status, and removal. Respondent Divver is a custodian of Petitioner and is named in his official capacity.

26. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, having authority over Respondents LaRose and Divver. Respondent Lyons is a custodian of Petitioner and is named in his official capacity.

27. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has authority over all DHS operations and agencies, including ICE. Respondent Mullin is a custodian of Petitioner and is named in his official capacity.

28. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S.

29. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

30. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin (collectively, "Respondents") in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

31. Under IIRIRA, non-citizens present without inspection or seeking relief while residing in the United States are detained under 8 U.S.C. § 1226(a) and are entitled to individualized custody evaluations and bond determinations.

32. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

33. On information and belief, Petitioner alleges that Respondents detained him to divest him of his due process rights in his pending asylum and removal proceedings.

34. Petitioner has significant ties to the United States, including his family, and poses no flight risk or threat to public safety.

35. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention from Florida to California, to punish individuals for asserting rights.

LEGAL ARGUMENT

36. Courts have recognized the significance of the habeas statute in protecting individuals from unlawful detention, affording "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).

37. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.

38. "'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).

39 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 v. Davis*, 533 U.S. 678, 690 (2001).

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

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

41. Petitioner restates and incorporates by reference each allegation above.

42. The Fifth Amendment prohibits the federal government from depriving any person of liberty without due process. Due process protects all persons within the U.S. *Zadvydas*, 533 U.S. at 693.

43. Due process requires government action to be rational and non-arbitrary. *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007)

44. Petitioner has a vital liberty interest in remaining free from DHS custody while pursuing his asylum claims alongside his family.

45. Petitioner was detained unexpectedly upon attending a scheduled court date. The government identified no changed circumstances warranting his sudden incarceration.

COUNT TWO

Violation of Fifth Amendment Right to Due Process - Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.

46. Petitioner restates and incorporates by reference each allegation above.

47. Administrative rules will not be construed to have retroactive effect unless explicitly stated. *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994).

48. Respondents unlawfully subjected Petitioner to arbitrary and indefinite detention without proper statutory authority.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

49. Petitioner restates and incorporates by reference each allegation above.

50. Under the APA, courts shall hold unlawful agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A).

51. Respondents failed to provide a reasoned explanation for detaining Petitioner after he complied with court appearances. Detention without considering Petitioner's specific reliance interests and pending asylum claim is arbitrary and capricious.

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Unlawful Detention and Abuse of Discretion

52. Petitioner restates and incorporates by reference each allegation above.

53. Respondents made no individualized finding that Petitioner is a flight risk or a danger to the community.

54. Categorical detention without written notice or consideration of individualized circumstances constitutes an abuse of discretion under 5 U.S.C. § 706(2)(A).

COUNT FIVE

Violation of the Administrative Procedure Act – Violation of 8 U.S.C. § 1225(b).

55. Petitioner restates and incorporates by reference each allegation above.

56. Subjecting Petitioner to mandatory or summary detention mechanisms while his regular removal and asylum proceedings were pending is unlawful and arbitrary.

COUNT SIX

Violation of the Fourth Amendment of the Constitution

57. Petitioner restates and incorporates by reference each allegation above.

58. The Fourth Amendment protects against unreasonable searches and seizures. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984).

59. Petitioner did not receive neutral judicial determination of probable cause for his arrest or continued detention following his court appearance on June 30, 2026.

COUNT SEVEN

Violation of Fifth Amendment Right to Due Process – Procedural Due Process

60. Petitioner restates and incorporates by reference each allegation above.

61. The government's detention of Petitioner without adequate notice, a fair hearing, or an individualized bond redetermination hearing violates his Fifth Amendment rights.

COUNT EIGHT

ICE failed to comply with its own regulations in revoking Mr. Fuentes Luis' conditional parole release under 8 C.F.R. § 212.5, violating the Administrative Procedures Act and Due Process.

62. When ICE detained Petitioner on or about January 22, 2026, it did not say that it was revoking his conditional parole, so it is unclear whether a revocation occurred. Either way, the government's actions violate the Administrative Procedures Act and Due Process.

63. Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43

(1983)). For a challenged agency action to be upheld, the agency "must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

64. Here, regardless of whether the agency formally revoked Petitioner's release, it violated the APA. If the agency did not revoke his release, then it inexplicably violated its own release decision by detaining Petitioner. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Petitioner already had an asylum application pending, and had no criminal record, yet the agency decided to detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there was a "rational" reason for this choice, given that Petitioner filed an asylum application and complied with all the conditions of his release. This was the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

65. But assuming the agency had revoked his release, it also violated the APA. Per ICE regulations, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); see also 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated

"upon accomplishment of the purpose for which parole was authorized"); Y-Z-L-H, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of parole when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may only revoke parole and re-detain a noncitizen when the parole's purpose is served or no humanitarian reasons warrant it and the noncitizen receives written notice.

66. None of this occurred here. Because "the purpose of Petitioners' release" was to allow him to apply for asylum, that purpose has not yet "been served" because his asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A). And the humanitarian reasons for release—to avoid unnecessary detention when an asylum seeker poses no danger or flight risk—remains the same. Put differently, "upon Petitioner's entry into the United States, Respondents determined that Petitioner was suitable for release. Respondents have not provided a reasoned explanation or any changed circumstances that would justify their current departure from their prior decision." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146 (D. Or. 2025).

67. Under the APA, "[i]t is Respondents' burden to provide a reasoned explanation for their action". Id. Again, Petitioner was only allegedly stopped for

a traffic violation and given a warning of tinted windows, while driving to his son's daycare, and ICE agents happened to be accompanying the highway Trooper.

68. What's more, Petitioner never received any written notification of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his release, this decision violated both the statute and the regulation and was "not in accordance with law" under the APA. 5 U.S.C. § 706(2)(A).

69. Several courts have released petitioners on this basis. See *Faizyan v. Casey*, Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) (reaching the same conclusion as to the revocation of a petitioner's release on his own recognizance); *Lopez v Marrero*, 3:26-cv-2077-JES-VET. ALSO See *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

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COUNT NINE

The Due Process Clause required notice and a chance to be heard before release was revoked.

70. Additionally, "the revocation of Petitioner's release without justification or consideration of his individualized circumstances violates the Due Process Clause." *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Petitioner was "entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted" before ICE revoked his release. Id. at *7. Due process demands a hearing prior to the government's decision to terminate a person's liberty. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional right to due process. Accordingly, this Court should grant the instant petition for a writ of habeas corpus, and order Petitioner's immediate release. A post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.

71. "The Fifth Amendment guarantees that '[n]o person shall be ... deprived of life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their

presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).

72. "Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those considerations here, Respondents violated the Due Process Clause by revoking release with no notice or hearing.

73. First, Petitioner has a private interest in remaining free, which developed over the 4 years 3 months he resided in the United States. His interest is heightened given the amount of time he has been free, living and working in the U.S. and that he has a U.S. citizen child he has been raising. It does not matter that release is temporary or discretionary. "For example, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that 'the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others ... [thus it] must be seen within the protection of the [Fifth] Amendment.'" *Id.*

74. "Second, the risk of an erroneous deprivation of such interest is high as Petitioner's release was revoked without providing [him] a reason for revocation or giving [him] an opportunity to be heard." *Salazar*, 2025 WL 3063629, at *4. "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Perez*, 2025 WL 3171742, at *5. But here, "[s]ince DHS's initial determination that Petitioner should be released because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Id.*

75. "Third, the Government's interest in detaining Petitioner without notice, reasoning, and a hearing is low." *Salazar*, 2025 WL 3063629, at *5 (cleaned up). "Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).

76. Thus, because Respondents did not provide "proper notice, reasoning, and a pre-deprivation hearing" before revoking release, Petitioner's detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

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COUNT TEN

This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a detention-based habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Petitioner hereby requests such a hearing on any material, disputed facts.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;

(5) Issue a Writ of Habeas Corpus with an order to Respondents for the immediate release of Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

(7) In the alternative, issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;

(8) Order an evidentiary hearing and grant such further relief as the Court deems just, equitable, and appropriate; and

(9) Grant all other further relief this Court deems just or proper.

Respectfully Submitted,

/S/ Mario Portugal
Mario Portugal, Esq.
Attorney for the Petitioner