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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE FERMIN MARQUEZ PORTILLO,

Petitioner,

v.

Jeremy Casey, Warden at Imperial Regional Detention Facility;

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

David J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the United States, U.S. Department of Justice.

Respondents

Case No.: '26CV4390 WQHBJW

A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Petitioner, Jose Fermin Marquez Portillo, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and alleges as follows:

INTRODUCTION

2. Petitioner, Jose Fermin Marquez Portillo, is a native and citizen of El Salvador currently detained at the Imperial Regional Detention Facility in Imperial County, California.

3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his re-detention by the Department of Homeland Security after having been previously released from immigration custody and permitted to reside at liberty in the United States for nearly two years.

4. Petitioner entered the United States without inspection in July 2024 and was encountered by immigration authorities shortly thereafter. On July 30, 2024, DHS released Petitioner from immigration custody pursuant to a Form I-220A, Order of Release on Recognizance, subject to specified conditions. Thereafter, DHS permitted Petitioner to remain at liberty in the United States.

5. Following his release, Petitioner resided openly in the United States from July 30, 2024, until June 28, 2026. During that period, Respondents permitted him to remain at liberty and did not revoke his release or identify any basis requiring his return to immigration detention.

6. Despite Petitioner's prior release and prolonged period of liberty, Respondents abruptly revoked his liberty on June 28, 2026, when ICE officers stopped Petitioner in Miami, Florida, while he was driving home after shopping and placed him into immigration custody. Respondents provided no prior notice, no individualized explanation, no opportunity to contest the revocation of his liberty before a neutral decisionmaker, and no pre-deprivation hearing.

7. Petitioner was subsequently transferred to the Imperial Regional Detention Facility in Imperial County, California, where he presently remains detained.

8. Respondents' actions violate the Due Process Clause of the Fifth Amendment. By affirmatively releasing Petitioner from immigration custody and permitting him to remain at liberty in the community for nearly two years, the government created a substantial liberty

interest in Petitioner's continued freedom from physical restraint that could not be revoked without constitutionally adequate process.

9. The Constitution does not permit the government to revoke that liberty interest through summary re-detention without prior notice and a meaningful opportunity to be heard before a neutral decisionmaker. Respondents also identified no materially changed circumstances justifying the abrupt revocation of Petitioner's previously granted liberty.

10. Petitioner therefore respectfully requests that this Court declare his re-detention unconstitutional and order his immediate release under the same conditions that governed his liberty before June 28, 2026. In the alternative, and only if the Court declines to order immediate release, Petitioner requests a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that his continued detention is necessary because he presents a danger to the community or a risk of flight.

CUSTODY

11. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Imperial Regional Detention Facility in Calexico, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

12. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

13. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the Constitution, laws, or treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747

(2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

15. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

16. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Petitioner's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

17. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction because Petitioner challenges only the legality of his detention, not the validity of removal proceedings or any removal order. Federal courts have consistently recognized that habeas corpus remains available to review the statutory and constitutional basis of immigration detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241.

PARTIES

18. Petitioner, Jose Fermin Marquez Portillo, is a native and citizen of El Salvador currently detained at the Imperial Regional Detention Facility in Imperial County, California.

19. Respondent Jeremy Casey is the Warden of the Imperial Regional Detention Facility in Calexico, California, Petitioner's immediate custodian, and is responsible for Petitioner's confinement. Respondent Casey is sued in his official capacity.

20. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS).

21. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

22. Respondent Todd Blanche is the Acting Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

23. All Respondents are named in their official capacities.

STATEMENT OF FACTS

24. Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California. Petitioner is a native and citizen of El Salvador who entered the United States without inspection in July 2024.

25. Shortly after his entry, immigration authorities encountered Petitioner and took him into immigration custody. On July 30, 2024, DHS released Petitioner from custody pursuant to a Form I-220A, Order of Release on Recognizance, subject to specified conditions. (*Ex.* 1.)

26. Following his release, Petitioner remained at liberty in the United States from July 30, 2024, until June 28, 2026. During that period, DHS did not revoke his release or identify any basis requiring his return to immigration detention.

27. Petitioner complied with the conditions imposed upon his release and lived openly in the community without any allegation that he posed a danger to the community or a risk of flight.

28. On June 28, 2026, Petitioner was driving home after shopping in Miami, Florida, when ICE officers stopped him and placed him into immigration custody.

29. Respondents provided Petitioner with no prior notice that his liberty would be revoked, no individualized explanation for his re-detention, and no opportunity to contest the revocation of his liberty before a neutral decisionmaker.

30. Respondents did not provide Petitioner with a pre-deprivation hearing before returning him to immigration detention and identified no materially changed circumstances arising after his release that justified revoking his previously granted liberty.

31. Following his arrest, Petitioner was transferred to the Imperial Regional Detention Facility in Calexico, California, where he presently remains detained.

32. At no point prior to Petitioner's re-detention did Respondents make an individualized determination that detention was necessary because Petitioner posed a danger to the community or a risk of flight.

33. As a result, Petitioner remains detained following the summary revocation of his previously granted liberty without constitutionally adequate pre-deprivation process.

REQUIREMENTS OF 28 U.S.C. § 2243

34. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled to relief. If an OSC is issued, the statute requires that Respondents file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

35. Federal courts have long emphasized the importance of habeas corpus as a protection against unlawful restraint. The Supreme Court has described the Great Writ 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).

36. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain a prompt and expeditious remedy. As the Ninth Circuit has explained, "The statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). The court cautioned that delays in habeas proceedings risk creating the

impression "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

37. Exhaustion should be excused because Petitioner's claim challenges the constitutionality of Respondents' failure to provide pre-deprivation process before revoking his previously granted liberty. No administrative proceeding can retroactively provide the process constitutionally required before Petitioner's re-detention or remedy the deprivation that has already occurred.

38. No statutory exhaustion requirement applies to Petitioner's constitutional claim. Moreover, the claim presents a pure question of constitutional law concerning the procedures required before the government may revoke previously granted liberty through re-detention. That question falls outside the agency's adjudicatory competence and is properly resolved through habeas review.

39. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied after the fact. Continued incarceration following Petitioner's prior release from federal custody magnifies that ongoing harm. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing detention therefore further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

40. The Immigration and Nationality Act distinguishes between detention at the time of entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225, 1226.

41. Section 235 governs inspection-stage detention of individuals encountered at or near the time of entry while their admissibility is being determined. By contrast, Section 236(a) governs the arrest and detention of noncitizens who have already entered the United States and are later taken into custody pending removal proceedings.

42. Once the federal government releases a noncitizen from immigration custody and permits him to reside at liberty in the United States, the Due Process Clause protects the liberty interest created by that release. The government may not revoke that previously granted liberty through re-detention without constitutionally adequate process.

43. Federal courts have repeatedly recognized that where the government releases a noncitizen from immigration custody and later re-detains that individual after a prolonged period of liberty, the Constitution requires that the government provide constitutionally adequate process before revoking that previously granted liberty.

44. The Due Process Clause protects all persons within the United States from arbitrary detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Freedom from physical restraint lies at the core of the liberty protected by the Constitution.

45. Immigration detention is civil in nature and is permissible only when justified by legitimate governmental interests, such as ensuring appearance at proceedings or protecting the community. *Id.* at 690–91.

46. By permitting Petitioner to reside openly in the United States from July 30, 2024, until June 28, 2026, the government created a substantial liberty interest in Petitioner's continued freedom from physical restraint. Respondents' abrupt re-detention of Petitioner without prior notice, without any identified changed circumstances, and without constitutionally adequate pre-deprivation process violated the Due Process Clause.

47. Where the government has previously released a noncitizen from custody and permitted him to reside at liberty in the community, that release reflects a determination that detention was not necessary to serve those purposes. Once that liberty has been granted, it cannot be revoked without constitutionally adequate process. Respondents' re-detention of Petitioner without prior notice, without any individualized determination, and without identifying any changed circumstances therefore violated the Due Process Clause.

48. The Administrative Procedure Act prohibits agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must provide a reasoned explanation for its actions based on the relevant facts and circumstances.

49. Re-detaining a noncitizen after a prolonged period of liberty—without prior notice, without identifying any changed circumstances, and without providing an individualized justification—constitutes arbitrary and unlawful agency action.

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

50. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs.

51. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. This protection applies to all persons within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

52. Petitioner was previously released from immigration custody on July 30, 2024, and permitted to reside at liberty in the United States until June 28, 2026. On that date, ICE officers stopped Petitioner in Miami, Florida, while he was driving home after shopping and returned him to immigration detention without prior notice, without a pre-deprivation hearing, and without identifying any materially changed circumstances justifying the revocation of his liberty. Nothing in the record indicates that Petitioner poses a danger to the community or a risk of flight.

53. Having previously released Petitioner from custody and allowed him to live at liberty in the community, the government created a substantial liberty interest in Petitioner's continued freedom from detention. Re-detention without notice, without an individualized determination, and without an opportunity to be heard constitutes an arbitrary deprivation of that liberty in

violation of the Due Process Clause. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

COUNT 2

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Not in Accordance with Law and in Excess of Statutory Authority)

54. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

55. Under the Administrative Procedure Act, a court shall "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

56. Agency action is arbitrary and capricious where the agency fails to consider relevant factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

57. An agency must provide a reasoned explanation for its actions based on the facts and circumstances of the individual case. *Dep't of Com. v. New York,* 139 S. Ct. 2551, 2569 (2019).

58. Here, Respondents have re-detained Petitioner after previously releasing him from immigration custody on July 30, 2024, and permitting him to remain at liberty until June 28, 2026. Respondents have provided no reasoned explanation for this re-detention and have identified no materially changed circumstances that would justify revoking Petitioner's liberty.

59. Respondents have further failed to provide any individualized assessment justifying Petitioner's detention. They have not identified any facts indicating that Petitioner poses a danger to the community or a risk of flight.

60. By re-detaining Petitioner in the interior of the United States, without explanation, without identifying any changed circumstances, and without providing any individualized justification, Respondents have acted arbitrarily and capriciously and in excess of their statutory authority.

61. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents' return, consistent with 28 U.S.C. § 2243;

C) Pending adjudication of this action, enjoin Respondents from transferring Petitioner outside the Southern District of California or removing Petitioner from the United States absent prior authorization from this Court, in order to preserve this Court's jurisdiction;

D) Declare that Petitioner's continued detention without prior notice, without an individualized determination, and without any identified change in circumstances violates the Due Process Clause of the Fifth Amendment;

E) Declare that Respondents lack lawful authority to re-detain Petitioner without constitutionally adequate process after previously releasing him into the United States and permitting him to reside at liberty;

F) Declare that Respondents' re-detention of Petitioner without lawful authority, without an individualized justification, and without a reasoned explanation was arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2);

G) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to 5 U.S.C. § 706(2)(A);

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

I) Order Respondents to restore Petitioner to the *status quo ante litem*, including releasing him under the same conditions that existed prior to his re-detention and returning all of his documents and personal belongings at the time of release, consistent with this Court's prior orders in materially similar cases;

J) Enjoin Respondents from re-arresting or re-detaining Petitioner absent compliance with constitutional requirements, including constitutionally adequate notice, identification of any changed circumstances, and a meaningful pre-deprivation hearing before a neutral decisionmaker;

K) In the alternative, order Respondents to provide Petitioner with a constitutionally adequate custody hearing, at which DHS bears the burden of establishing by clear and convincing evidence that Petitioner's continued detention is necessary, and at which the neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any bond or other conditions of release;

L) Declare that Respondents lack authority to detain Petitioner under INA § 235(b), and that any detention must proceed, if at all, under INA § 236(a);

M) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other basis authorized by law; and

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

Respectfully submitted,

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Counsel for Petitioner

Dated: July 31, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided by Petitioner's family members and my review of available immigration records and supporting documents, including Petitioner's Form I-220A and detention information.

Based on that information, and to the best of my knowledge, information, and belief, I declare under penalty of perjury that the factual allegations contained in this Petition are true and correct.

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Dated: July 31, 2026