Leah L. Chavarria, Esq.
CA Bar # 297506
2251 San Diego Ave., STE B-200
San Diego, CA 92110
leah@hurwitzholt.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

H.L.[1], Petitioner,	Case No. '26CV4406 AGS MMP
v.	Agency No. [redacted]
Todd Blanche, Acting Attorney General of the United States, Department of Justice; Markwayne Mullin, Secretary of Homeland Security; Todd Lyons, Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; Patrick Divver, Field Office Director of the San Diego Immigration and Customs Enforcement Office; Jorge Velarde, Assistant Field Office Director of the Immigration and Customs Enforcement, Otay Mesa Detention Center; Christopher J. LaRose; Senior Warden, Otay Mesa Detention Center;	**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE WITHIN THREE DAYS**
Respondents.	

[1] Petitioner requests this petition move forward under this pseudonym. The federal government prohibits disclosure of the identity of asylum seekers and asylees without their consent, recognizing that such people or their family members may face harm if an asylee's name is disclosed. *See* 8 C.F.R. § 208.6; cf. Fed. R. Civ. P. 5.2(c) (limiting remote access to case files in cases actions involving "immigration benefits or detention"). Counsel for Petitioner has disclosed his full identity to the U.S. Attorney's office in San Diego, California.

INTRODUCTION

1. Petitioner, H.L. (A [redacted]), a Colombian national, is currently detained at the Otay Mesa Detention Facility. Petitioner was granted withholding of removal by an immigration judge in 2011 and cannot be returned to Colombia. Nevertheless, Immigration and Customs Enforcement ("ICE") detained him at a regularly scheduled annual check-in on July 1, 2026, in Miramar, Florida, claiming he would be removed to a third country. Throughout his 30 days re-detained, ICE has failed to notify him of any countries to which he may be returned and has not removed him to any other country despite transferring him between detention centers in Miramar and Miami, Florida, to El Paso, Texas, and then to the Otay Mesa Detention Center in California, where he is presently. He must be released because removal is not reasonably foreseeable and his detention is prolonged.

2. Petitioner asks this Court to find that his continued detention is unlawful; that he may not be transferred during the pendency of this petition; make an order to show cause; and order that he be released immediately in vindication of his constitutional rights.

JURISDICTION

3. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

5. 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.

6. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction. Petitioner is not contesting the commencement or adjudication of removal proceedings against him, nor is he raising an issue with respect to the execution of removal. Petitioner does challenge his re-detention. The petition is independent of the removal proceedings and all questions related to the commencement of removal proceedings or any part of the removal process. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g) and 1252(b)(9).

VENUE

7. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center

in the County of San Diego, which is within the jurisdiction of this District. Further, a substantial part of the events or omissions giving rise to his claims occurred in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

9. 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) (emphasis added).

PARTIES

Petitioner

10. Petitioner is a national of Colombia who is in custody at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

11. Respondent Todd Blanche, Acting U.S. Attorney General is sued in their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, they have the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Blanche is a legal custodian of Petitioner.

12. Respondent Markwayne Mullin, Secretary of U.S. Department of Homeland Security ("DHS") is sued in their official capacity as the Secretary of the DHS. In this capacity, Respondent Secretary is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Mullin is a legal custodian of Petitioner.

13. Respondent Todd Lyons is sued in his official capacity as the Senior Official Performing the Duties of the Director ICE. Respondent Lyons is the legal custodian of Petitioner.

14. Respondent Patrick Divver is sued in his official capacity as the Field Office Director of the San Diego ICE Office. Respondent Divver is a legal custodian of Petitioner and has authority to release him.

15. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a legal custodian of Petitioner and has direct authority to release him.

16. Respondent Christopher J. LaRose is sued in his official capacity as the Senior Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical custodian of Petitioner and has direct authority to release him.

STATEMENT OF FACTS

17. Petitioner is a 49-year-old Colombian citizen and national who has lived in the United States since age 11. He entered the United States on a tourist visa with his family and remained. He received F-1 student visas to study in the United States, and eventually graduated with an engineering degree in May 2002 from the University of Florida.

18. Some months after graduating with his bachelor of science degree, he began working for Fleet Lease Disposal, DBA: FLD, Inc. He has worked there for 24 years and presently is the IT Project Manager. The owner of FLD, Inc., and other co-workers have written support letters to assist in requesting his release from custody and verifying that he is not a danger or flight risk. Given 24 years of proven employment history with the same company, reliance on such commendations is not unreasonable.

19. Petitioner has substantial ties to the United States who are also in support of his immediate release from custody. His elderly mother, a lawful permanent resident, filed a family petition for him in 2021.[2] His elderly father is a U.S. citizen. He is a responsible and loving son who helps to care for his parents in their elderly age. And through his longtime partnership to his fiancée, he has taken responsibility to raise her U.S. citizen daughter who is now 20-years-old. Interestingly, because of his family relationships, if his removal proceedings were reopened, he would be eligible to apply for relief from removal pursuant to 8 U.S.C. § 1229b(b) (cancellation of removal).

20. According to Petitioner, his only criminal history involves an arrest on suspicion of trespassing when he was 18 years old, which did not result in a conviction.

21. In 2011, an immigration judge ordered Petitioner removed to Colombia but withheld his removal pursuant to 8 U.S.C. § 1231(b)(3) (withholding of removal). Ex. A, removal order.

22. Since the order of his removal in 2011, Petitioner has dutifully attended his required ICE check-ins pursuant to an Order of Supervision (Ex. B, Form I-220B) and he has received corresponding authorization to work lawfully in the United States. He presently has a valid employment authorization document,

[2] This type of a petition is authorized under 8 U.S.C. § 1153(a)(2), which does not allow for immediate processing and requires not only visa availability but other complications to adjust status from within the United States, which is why the benefit of such a petition is complicated and not always accessible.

approved by U.S. Citizenship and Immigration Services, issued April 30, 2025, and set to expire on April 29, 2030.

23. On July 1, 2026, Petitioner appeared for his regularly scheduled annual ICE check-in appointment pursuant to his Order of Supervision ("OSUP") and scheduling at the office in Miramar, Florida. Without warning, he was taken into custody. According to Petitioner's recollection (which is hazy from such terrible detention conditions), after a few hours he was taken from Miramar to a detention facility in Broward, Florida. He was given no information or documents. He spent about 48 hours in Broward, Florida. ICE transported him back to Miramar and then to the Krome Processing Center in Florida. He spent about 5 to 6 days in Krome. During this time, he had no access to a change of clothes, no shower, no blankets, and the bathroom was in the middle of a room with minimal walls around it for privacy. He believes around July 8, ICE transferred him to El Paso, Texas, where he was only fed bread and warm water and slept on concrete in a room with steel benches and about 40 people. After about 48 to 50 hours, ICE transferred him to the Otay Mesa Detention Center, where he remains.

24. On information and belief, prior to his detention, Petitioner was given no notice of ICE's intention to re-detain him, nor anything other than vague information about possible removal to a third country, but nothing specific as to exactly what country, nor specific information about why his OSUP was presumably revoked.

ICE appears to be attempting to execute his removal order by removing him to another country other than Colombia, however no movement toward such a goal has been communicated to Petitioner or his counsel in these 30 days since his detention. Petitioner is terrified for where ICE may attempt to send him and for how his family will fair without him.

25. On information and belief, ICE has provided no notice or information as to what it plans for Petitioner. Instead, he remains detained without being provided any reason or circumstance as to why.

LEGAL FRAMEWORK

A. The Government violated both due process and INA regulations by reimprisoning Petitioner without notice and an opportunity to be heard.

26. Due process rights extend to noncitizens present in the United States, including those subject to final removal orders. *Zadvydas*, 533 U.S. at 693–94; *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). The fundamental requirements of procedural due process are that a person be afforded notice and opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, (1976). If a noncitizen has been previously released, before reimprisonment, the regulations require the noncitizen "will be notified of the reasons for revocation of his or her release," and will be given "an initial informal interview promptly after his or her return to Service custody to afford

the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(*l*)(1); § 241.13(i)(3).

27. Courts have consistently interpreted these provisions to require findings prior to re-detention, as well as an opportunity to contest re-detention. *See, e.g., Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25- cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv- 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

28. Here, however, the Government did not: (1) provide Petitioner with notice that his OSUP would be revoked; (2) conduct a scheduled informal interview or afford Petitioner an opportunity to be heard; or (3) sufficiently demonstrate the changed circumstances that rendered his removal significantly likely in the reasonably foreseeable future. Petitioner is therefore entitled to relief and must be released.

B. To the extent Petitioner's detention in immigration custody is to effectuate removal to a third country, such efforts violate the Due

Process Clause because ICE has not given him sufficient notice of the proposed third country and an opportunity to request deferral or withholding of removal to that country under either statute or the Convention Against Torture.

29. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Noncitizens are thus entitled to "notice and an opportunity to be heard appropriate to the nature of the case." *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,313 (1950)). As relevant here, this means that purported noncitizens are entitled to notice that they are to be removed to a third country "within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Id.*

30. Petitioner has not been formally ordered removed to any country other than Colombia. As such, he has never had an opportunity to contest removal to any third country on the grounds that he may face persecution or torture if he is removed to that country. To the extent that Petitioner's detention is meant to facilitate his removal to a third country (*see generally Zadvydas*, 533 U.S. at 690, suggesting that detention following a removal order is intended to facilitate removal), if such a removal is accomplished in violation of her due-process rights, then her detention is illegal. This due-process claim "necessarily impl[ies] the invalidity of his confinement and removal" to a third country not yet named

in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus, his due-process claim is properly brought in a habeas petition, and a court order that he be released from detention is a proper remedy for such a violation.

C. Removal to third countries where Petitioner might face imprisonment violates the constitutional prohibition on "punitive" removal practices.

31. The U.S. Supreme Court long ago held that the government may not inflict upon individuals an "infamous punishment" atop deportation as a penalty for an immigration violation, absent criminal charges, a judicial trial, and related constitutional protections. *Wong Wing v. United States*, 163 U.S. 228, 236-38 (1896). More than a century later the Court reaffirmed the point, holding that while it is within the constitutional power of Congress to remove those unlawfully present in the United States, "punitive measures c[annot] be imposed upon [noncitizens]" merely by dint of their removal, as "all persons within the territory of the United States are entitled to the protection' of the Constitution.'" *Zadvydas*, 533 U.S. at 694 (quoting *Wong Wing*, 163 U.S. at 238).

32. Yet the purposes of the government's third-country removal program are substantially punitive. As one district court recently held, government officials have made public statements, judicially noticeable, that "offer evidence that third country deportation is occurring as a punishment." *Nguyen v. Scott*, ___ F. Supp. 3d ___, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025). These include an official video of President Donald J. Trump stating, "[I]f illegal aliens choose

to remain in America, they're remaining illegally and they will face severe consequences," with "punishments ... including ... sudden deportation in a place and manner solely of our discretion." *Nguyen v. Scott*, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025). "Other courts [too] across the country have recognized that the government is intentionally removing individuals to countries where they will be imprisoned" in facilities where "'torture is pervasive'" and "'human rights violations'" "'widespread,'" under "'horrific prison conditions [engineered] for the specific purpose of inflicting suffering.'" *Id.* at *24 (quoting cases).

33. Removal to such countries under the Government's current policy would thus violate the constitutional prohibition on punitive removal practices as well.

CAUSES OF ACTION

COUNT ONE
Violation of Regulation
8 C.F.R. § 241.13(i)(2) and Due Process

34. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

35. An agency's failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

36. DHS regulations authorize the revocation of an order of release only when "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

37. The regulation at 8 C.F.R. § 241.13(i)(2) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

38. This regulation places the burden on the government to demonstrate that there are new circumstances which now establish that removal is reasonably foreseeable, consistent with the requirements of *Zadvydas*.

39. Respondents have violated 8 C.F.R. § 241.13(i)(2) and Petitioner's due process rights by detaining Petitioner without evidence of changed circumstances or that his removal is reasonably foreseeable.

COUNT TWO
Violation of Revocation Regulation
8 C.F.R. § 241.4(l) and Due Process

40. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

41. An agency's failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347

U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

42. The regulation at 8 C.F.R. § 241.4(*l*) authorizes the revocation of release only where there has been a violation of the conditions of release or there has been a determination that "i) The purposes of release have been served; (ii) [t]he [noncitizen] violates any condition of release; (iii) [i]t is appropriate to enforce a removal order or to commence removal proceedings against an [noncitizen]; or (iv) [t]he conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate."

43. The regulation at 8 C.F.R. § 241.4(l) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

44. None of the circumstances under 8 C.F.R. § 241.4(l) have been met, constituting a violation of the regulation and Due Process.

COUNT THREE
Violation of Regulation
8 C.F.R. § 241.4(l)(2) and Due Process

45. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

46. An agency's failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347

U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

47. The regulation at 8 C.F.R. § 241.4(l)(2) authorizes the revocation of release only by the Executive Associate Commissioner or the District Director when revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.

48. Petitioner's revocation was completed without giving him access to any paperwork regarding such release. It is therefore impossible to verify whether the revocation is authorized by the officials identified in 8 C.F.R. § 241.4(l)(2).

49. The regulation at 8 C.F.R. § 241.4(l) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process. *Hammouda v. Department of Homeland Security*, No. 4:25-CV- 2696, 2026 WL 91465 (N.D. Ohio Jan. 13, 2026).

50. None of the circumstances under 8 C.F.R. § 241.4(*l*)(2) have been met, in violation of the regulation at 8 C.F.R. § 241.13(i)(3) and in violation of Due Process.

COUNT FOUR
Third Country Removal in Violation of Due Process and the Convention Against Torture

51. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

52. Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Due Process requires notice and an opportunity to respond before Petitioner is removed to a third country. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 320, 70 S. Ct. 652, 660, 94 L. Ed. 865 (1950).

54. "Failing to notify individuals who are subject to deportation that they have the right to apply ... for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

55. Article III of the Convention Against Torture bars the removal of any individual to a country where they face a clear probability of torture.

56. Petitioner must be provided notice and an opportunity to seek protection under Article III of the Convention Against Torture before he may be removed to a third country. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025).

57. Removing Petitioner to a third country without notice and the opportunity to apply for protection from removal violates Due Process and Article III of the Convention Against Torture.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an order directing Respondents to show cause why the writ should not be granted;

(3) Order the government not to transfer Petitioner during the pendency of this petition;

(4) Order Respondents to return to Petitioner all property confiscated from him during his arrest and processing into detention, including but not limited to any personal identification, employment authorization document, medical insurance card, money, and documents he received upon entry and release into the United States.

(5) Issue a writ of habeas corpus ordering Respondents to IMMEDIATELY RELEASE Petitioner Respondents are ordered to Petitioner under conditions prescribed pursuant to 8 U.S. Code § 1231(a)(3) and (7), with required status reports to verify timely release;

(6) Enjoin and restrain Respondents from re-detaining Petitioner unless he receives due process as required under 8 C.F.R. §§ 241.4(*l*)(1), 241.13(i)(3) and the Due Process Clause of the Fifth Amendment, and any other applicable statutory and regulatory procedures;

(7) Restrain and enjoin Respondents from removing Petitioner to a third country unless Respondents adhere to the following procedures:

a. provide Petitioner and his counsel a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

b. if Petitioner does assert a fear-based claim for relief from removal, Respondents must provide Petitioner a meaningful opportunity to be heard on his fear-based claim before an immigration judge in compliance with due process;

(8) Grant any other relief that is just and practicable; and

(9) If Petitioner prevails, Petitioner requests reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

Respectfully submitted,

Dated: July 31, 2026

/s/ *Leah L. Chavarria*
Leah L. Chavarria
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, H.L., and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 31st day of July, 2026.

/s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Petitioner