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DETAINED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of:

MOSQUERA MARTINEZ, Wilson Alejandro

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, Senior Official Performing the Duties of Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security,

Respondents.

Case No.: **'26CV4407 RSH JLB**

A No.: A [redacted]

PETITION FOR WRIT OF HABEAS CORPUS; TEMPORARY RESTRAINING ORDER FOR EMERGENCY STAY OF REMOVAL; AND ORDER TO SHOW CAUSE WITHIN THREE DAYS

28 U.S.C. § 2241

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
EMERGENCY STAY OF REMOVAL AND ORDER TO SHOW CAUSE

Petitioner Wilson Alejandro MOSQUERA MARTINEZ respectfully petitions this Honorable Court for a writ of habeas corpus, emergency preservation of this Court's jurisdiction, and an order to show cause requiring Respondents to justify his ongoing detention and any imminent removal consequences flowing from a defective and restricted credible-fear process.

INTRODUCTION

1. This is an emergency habeas action brought by a detained Colombian national whose pending credible-fear screening and ongoing detention under civil immigration custody deprive him of a meaningful opportunity to be heard, consult counsel, and present legally material facts supporting asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").

2. Mr. Mosquera Martínez is thirty-four years old, a native and citizen of Colombia, and a native Spanish speaker. [redacted] His removal would inflict grave and irreparable harm on a family that has no state protection.

3. [redacted]

4. Mr. Mosquera Martínez entered the United States near Tecate on July 10, 2026, and was apprehended by U.S. Customs and Border Protection on July 11, 2026. He was subsequently transferred to the Otay Mesa Detention Center, where he remains detained while his Credible Fear Interview (CFI) remains pending.

5. The ongoing detention and screening process risk failing to adequately develop or analyze the legally decisive facts: extortion connected to imputed criminal involvement/political social group, targeted gang violence, state inability or unwillingness to protect him, and the documented pattern of gang impunity in Colombia.

6. Mr. Mosquera Martínez does not ask this Court to reweigh the ultimate merits of his protection claims. He seeks habeas relief from unlawful custody and emergency relief to preserve this Court's jurisdiction against arbitrary detention and expedited removal while his fear screening proceeds.

7. The right at stake is fundamental: a detained person facing potential return to a country where he credibly fears death or torture must receive a fair, meaningful, and non-arbitrary process before the Government uses detention to remove him.

8. Because expedited removal may follow rapidly should a negative finding occur without proper administrative oversight, immediate relief is necessary. The Court should issue an order to show cause within the time required by 28 U.S.C. § 2243, stay removal and transfer absent the Court's approval, and order release or, at a minimum, a prompt individualized custody hearing.

JURISDICTION

9. This Court has jurisdiction under 28 U.S.C. §§ 1331, 2241, 2242, and 2243; Article I, § 9, cl. 2 of the United States Constitution; the Fifth Amendment; the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. § 1651.

10. Habeas corpus is available to test the legality of executive detention. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

11. Under 28 U.S.C. § 2243, the Court must forthwith award the writ or issue an order to show cause unless it appears from the petition that the person detained is not entitled to relief.

12. This Petition challenges present custody and the procedures rendering that custody unlawful; it does not seek direct appellate review of a final removal order.

13. The Court may grant declaratory and injunctive relief ancillary to habeas where necessary to ensure that the remedy is meaningful. *Nken v. Holder*, 556 U.S. 418, 426-27 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 966-68 (9th Cir. 2011).

VENUE

14. Venue is proper in this District because Mr. Mosquera Martínez is detained at the Otay Mesa Detention Center in San Diego, California, within the Southern District of California. *Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

15. Respondents exercise custody and control over Petitioner in this District.

CUSTODY AND THE REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243

16. Petitioner is in custody for purposes of 28 U.S.C. § 2241 because Respondents physically confine him at the Otay Mesa Detention Center.

17. Section 2242 requires an application to allege facts concerning the detention, custodian, and authority. This Petition identifies the custodians and demonstrates that Petitioner's detention is unlawful.

18. Section 2243 requires expeditious treatment. The Court should issue the writ or an order to show cause forthwith.

STATEMENT OF FACTS

19. Petitioner Wilson Alejandro MOSQUERA MARTINEZ was born on [redacted] in Colombia. He is thirty-four years old, male, and a native Spanish speaker. By profession, he worked as a taxi driver in Colombia.

20. [redacted]

21. [redacted]

22. [redacted]

23. [redacted]

24. [redacted]

25. [redacted]

26. On July 10, 2026, Mr. Mosquera Martínez crossed the U.S. border near Tecate. He walked until exhausted and fell asleep. A U.S. Customs and Border Protection agent encountered and detained him on July 11, 2026. Due to language barriers, he presented his Colombian passport.

27. After being held in a short-term processing facility for 4 to 5 days, DHS transferred Mr. Mosquera Martínez to the Otay Mesa Detention Center, where he has been detained since mid-July 2026.

28. Mr. Mosquera Martínez's Credible Fear Interview (CFI) is currently pending.

29. Mr. Mosquera Martínez poses no danger to the community, has no criminal convictions, and has every incentive to appear for all immigration proceedings.

PARTIES

30. Petitioner Wilson Alejandro MOSQUERA MARTINEZ is a detained noncitizen in ICE custody at the Otay Mesa Detention Center in San Diego, California.

31. Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center, the facility where Petitioner is detained. He is a custodian of Petitioner and is named in his official capacity.

32. Respondent Patrick Divver is the ICE Field Office Director for the San Diego Field Office. He exercises authority over ICE detention, custody, transfer, and removal operations affecting Petitioner and is named in his official capacity.

33. Respondent Todd M. Lyons is the Senior Official Performing the Duties of Director of U.S. Immigration and Customs Enforcement. He exercises authority over ICE and its detention and removal operations and is named in his official capacity.

34. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security. He exercises authority over DHS components, including ICE and USCIS, and is named in his official capacity.

EXHAUSTION AND JUSTICIABILITY

35. Petitioner is currently subject to mandatory/civil detention while awaiting his Credible Fear Interview. Administrative mechanisms do not provide an adequate remedy against prolonged, unconstitutional civil detention or procedural defects in pre-CFI processing.

36. Judicial intervention is necessary now because physical custody is ongoing, and any procedural deficiency during upcoming expedited removal screening could render removal imminent and defeat meaningful judicial review.

LEGAL ARGUMENT

I. Habeas Relief and an Order to Show Cause Are Required Forthwith

37. Section 2243 requires swift judicial action when a habeas petition is presented. *Fay v. Noia*, 372 U.S. 391, 400 (1963); *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000). The Court should order Respondents to show cause within three days.

II. Due Process Requires a Meaningful Opportunity to Be Heard

38. Noncitizens within the United States are protected by the Due Process Clause of the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), Petitioner's fundamental interest in liberty and protection from persecution outweighs any government administrative convenience.

III. The Fear Regulations Require Fair and Complete Screening

39. Pursuant to 8 C.F.R. § 208.30, fear interviews must be non-adversarial, allow representation, and elicit all relevant facts. Mr. Mosquera Martínez's claim involving extortion, violent gang retaliation, and state inability to protect must be fully developed without procedural barriers.

IV. Extortion linked to Imputed Motives and Gang Violence Supports Protection

40. Harm inflicted by gang members after police involvement can constitute persecution on account of a protected ground (e.g., imputed political opinion or social group membership). *Grava v. INS*, 205 F.3d 1177 (9th Cir. 2000).

V. CAT Protection Analysis Requires Evaluation of Official Acquiescence and Country Conditions

41. CAT protection requires evaluating whether public officials would acquiesce or display willful blindness to gang violence and extortion. *Zheng v. Ashcroft*, 332 F.30 1186 (9th Cir. 2003); *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052 (9th Cir. 2006).

VI. Petitioner's Continued Detention Is Arbitrary Without an Individualized Custody Determination

42. Civil immigration detention must be reasonably related to legitimate non-punitive purposes. *Zadvydas*, 533 U.S. at 690. Mr. Mosquera Martínez has no criminal record, poses no danger, and has no history of flight risk.

VII. A Stay of Removal and Transfer Is Necessary to Preserve Jurisdiction

43. A stay is warranted under *Nken v. Holder*, 556 U.S. 418 (2009), to prevent irreparable harm (removal to face death threats in Colombia) and preserve the Court's jurisdiction.

CAUSES OF ACTION

COUNT ONE:

Violation of Fifth Amendment Procedural Due Process (Pending CFI Processing and Risk of Arbitrary Summary Removal).

87. Petitioner realleges and incorporates by reference each preceding paragraph.

88. The Fifth Amendment prohibits Respondents from depriving Petitioner of liberty without due process of law.

89. Petitioner had a protected liberty interest in fair procedures before his detention and imminent removal consequences became tied to a negative fear determination.

90. Respondents violated due process by proceeding without a credible fear interview (CFI) after Petitioner asked for the CFI within a reasonable time.

91. Respondents further violated due process by failing to elicit, develop, and fairly analyze the material facts concerning Petitioner's political opinion, the pretextual prosecution, mixed-motive nexus, official action and acquiescence, and the country-conditions evidence.

92. The deprivation is ongoing because Petitioner remains detained and faces imminent removal based on the defective process.

COUNT TWO:

Violation of the Administrative Procedure Act and 8 C.F.R. § 208.30.

Petitioner realleges and incorporates by reference each preceding paragraph.

94. Under the APA, a court shall hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, not in accordance with the law, contrary to constitutional right, in excess of statutory authority, or without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D).

95. Respondents and their agents failed to comply with the governing regulations, which require a non-adversarial interview, a meaningful understanding of the process, an opportunity for representation, competent interpretation, a material-facts summary, and an opportunity to correct errors. 8 C.F.R. § 208.30(d); 8 C.F.R. § 208.31(c).

96. The withholding of the CFI was arbitrary and capricious because it failed to consider important aspects of the problem, including political opinion as a protected ground, the pretextual

prosecution, mixed motive, futility of reporting, and official acquiescence. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

97. The agency's decision lacked a rational connection between the facts found and the choice made. *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019).

98. The Court should declare the process unlawful and order appropriate habeas and equitable relief, including a corrected process and preservation of Petitioner's presence in this District.

COUNT THREE:

Violation of Fifth Amendment Substantive and Procedural Due Process (Unlawful and Arbitrary Civil Detention).

99. Petitioner realleges and incorporates by reference each preceding paragraph.

100. Civil detention must be reasonably related to legitimate governmental purposes and must not be arbitrary or punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

101. Respondents detain Petitioner without a meaningful individualized determination that he presents a danger or a flight risk that cannot be addressed through reasonable conditions.

102. Petitioner has every incentive to appear and has family who depend on him. Detention under these circumstances, especially when tethered to a flawed fear process, violates due process.

103. The Court should order release or, at a minimum, a constitutionally adequate custody hearing at which Respondents bear the burden of justifying continued detention by clear and convincing evidence.

COUNT FOUR:

Violation of Non-Refoulement Principles and Due Process (Failure to Adequately Safeguard CAT and Asylum Claims).

Petitioner realleges and incorporates by reference each preceding paragraph.

105. The United States may not remove a person to a country where he is more likely than not to face persecution on account of a protected ground or torture with official consent or acquiescence. INA § 241(b)(3); 8 C.F.R. §§ 1208.16 and 1208.17.

106. The fear-screening process exists to prevent unlawful return by screening for protection claims. A defective screening process creates an unacceptable risk of refoulement.

107. Respondents violated due process by withholding the CFI without a legally adequate analysis of political-opinion nexus, official action and acquiescence, and the documented risk of torture in Russia.

108. The Court should stay removal and require Respondents to provide a meaningful process before any return to Colombia.

COUNT FIVE:

Suspension Clause and All Writs Act (28 U.S.C. § 1651) — Preservation of Habeas Jurisdiction.

109. Petitioner realleges and incorporates by reference each preceding paragraph.

110. The Suspension Clause protects the availability of habeas corpus as a meaningful remedy against unlawful executive detention. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

111. If Respondents remove or transfer Petitioner before this Court adjudicates the legality of his custody and the process, habeas relief may become ineffective or impossible.

112. The All Writs Act authorizes the Court to issue orders necessary or appropriate in aid of its jurisdiction, including a temporary stay of removal and transfer. 28 U.S.C. § 1651(a).

113. The Court should prohibit transfer outside this District and removal from the United States absent further order of the Court.

COUNT SIX:

Entitlement to Temporary Restraining Order Staying Removal and Transfer

114. Petitioner is likely to succeed, or at minimum raises serious questions, on his *Zadvydas*, due process, APA, and regulatory claims. Irreparable harm is immediate. Loss of physical liberty is irreparable. Transfer would impair counsel access and evidence gathering. Removal would likely defeat meaningful habeas review and deprive this Court of the ability to decide whether detention is lawful before the consequences become irreversible.

115. The balance of equities favors Petitioner. He seeks only preservation of the *status quo*, a lawful custody review, and release or supervision under reasonable conditions. Respondents suffer no cognizable harm from being required to comply with the Constitution and governing regulations.

116. The public interest favors lawful immigration enforcement, individualized custody decisions, accurate post-order review, preservation of habeas jurisdiction, and release under reasonable conditions when detention is not legally necessary.

117. The Court should therefore stay removal, prohibit transfer outside the District or to a location that frustrates counsel's access, absent advance notice and Court approval, and require Respondents to show cause within three days.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause requiring Respondents to show cause within three days why the writ should not be granted;

(3) Issue a temporary restraining order staying Petitioner's removal from the United States pending resolution of this habeas action and any related emergency motions;

(4) Prohibit Respondents from transferring Petitioner outside the Southern District of California without advance notice to Petitioner and leave of Court;

(5) Declare that Petitioner's detention and the lack of CFI violate the Fifth Amendment, the governing fear regulations, and the Administrative Procedure Act;

(6) Order Respondents to release Petitioner from custody under reasonable conditions of supervision;

(7) In the alternative, order Respondents to provide a prompt individualized custody hearing before a neutral adjudicator, with the Government bearing the burden of proving by clear and convincing evidence that continued detention is necessary;

(8) Grant such other and further relief as the Court deems just, equitable, and proper.

Respectfully Submitted,

//s// Mario Portugal
Attorney for Petitioner Wilson Alejandro MOSQUERA MARTINEZ