MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C.
1455 Frazee Road, Ste. 500
San Diego, California 92108
Telephone: (858)833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLORES MARTINEZ, Francisco,

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

CASE NO.: '26CV4412 RSH JLB

A# [redacted]

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

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Mr. Francisco Flores Martinez is a 37-year-old citizen and national of Mexico who entered the United States over 30 years ago, fleeing cartel violence and severe poverty in his home country. Upon entering, he settled in the United States, where all of his siblings reside in California. He is married to a U.S. citizen and has resided in Sarasota, Florida, operating his own construction (drywall) business for many years while diligently paying his taxes.

2. On or around July 7, 2026, Mr. Flores Martinez attended his scheduled probation appointment in Florida, stemming from a minor traffic infraction (running a red light with expired documentation). Upon arrival, ICE agents stationed inside the office detained him. Following his arrest, Respondents transferred him across multiple facilities—from Tampa, Clearwater, and Jacksonville, Florida—to the Otay Mesa Detention Center in San Diego, California, where he arrived shortly thereafter.

3. The government's decision to detain Mr. Flores Martinez without conducting an individualized determination regarding whether he poses a flight risk or a danger to the community violates the Fifth Amendment's Due Process Clause and the Administrative Procedure Act (APA). Mr. Flores Martinez has deep ties to the United States,

gainful employment, family support, and no history of violent crimes. Thus, this Court should grant the writ and order his release or immediately schedule a hearing to determine the lawfulness of his continued detention.

JURISDICTION

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

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).

6. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See Demore v. Kim, 538 U.S. 510, 516-17 (2003); Zadvydas v. Davis, 533 U.S. 678, 687 (2001); Y-Z-L-H v. Bostock, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025); Garcia v. Andrews, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025).

7. 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., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable

powers.

VENUE

8. Venue is proper because Petitioner is in Respondents' legal and physical custody at Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' legal and physical custody, including his current and ongoing detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the Court otherwise has personal jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

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 for good cause additional time, not exceeding twenty days, is allowed." *Id.*

10. 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).

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

PARTIES

12. Mr. Francisco Flores Martinez ("Petitioner") is a 37-year-old citizen and national of Mexico. He came to the USA and entered without inspection around 1996 to seek asylum, withholding of removal, or protection under the Convention Against Torture after fleeing persecution in Mexico on account of his political opinion and membership in a particular social group. The persecution he fears includes [redacted]

[redacted] He has had no departures since his arrival. He has a US citizen swife.

13. Mr. Flores Martinez is currently residing in Respondents' custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

14. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Ms. Arias Tovar 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.

15. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent Divver is a custodian of Petitioner and is named in his official capacity.

16. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority over the actions of Respondents LaRose and

Divver. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Petitioner and is named in his official capacity.

17. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is charged with faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Petitioner and is named in his official capacity.

18. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens.

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. Petitioner has no administrative remedies to exhaust, as DHS will argue mandatory detention and the immigration court concludes they have no jurisdiction to offer bond in cases like Petitioner where they are arriving aliens and/or have not been admitted or inspected.

22. Petitioner was transferred to Otay Mesa Detention Center around July 7, 2026.

23. Petitioner is also challenging the unlawfulness of Respondents' decision to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

24. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and restore his liberty.

LEGAL FRAMEWORK

25. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

26. The "motivation for the enactment of the Refugee Act" was the

United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

27. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

28. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinions and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

29. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States

or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

30. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

31. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

32. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

33. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter*

of V-X-, 26 I&N Dec. 147 (BIA 2013).

34. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who entered the country without inspection were not considered detained under 8 U.S.C. § 1225. *See* Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). *See id.*

35. 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 because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

36. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary

"to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

37. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.

FACTUAL BACKGROUND

38. Petitioner was born in Mexico. He came to the United States on or around 1996, without inspection. He has had a reasonable expectation of liberty since 1996, and no material change of circumstances warranted detention.

39. Petitioner is in the process of filing his adjustment of status application based on the family petition from his U.S. citizen wife.

40. Petitioner attended his immigration court hearings. His next court hearing is on August 12, 2026.

41. He worked and lived in the U.S. for approximately 30 years until he was re-detained on or around July 7, 2026.

42. He has a US citizen wife.

43. Petitioner does not pose a danger to the community as he has no criminal record, no crimes of violence, CIMTs, or aggravated felonies. He has no intention of fleeing. His continued detention is unnecessary,

and Petitioner respectfully requests that the petition be granted and he be released while his immigration proceedings continue.

CLAIMS FOR RELIEF

I. Count 1: ICE failed to comply with its own regulations in revoking Mr. Flores Martinez' conditional parole release under 8 C.F.R. § 212.5, violating the Administrative Procedures Act and Due Process.

44. When ICE detained Petitioner on or about July 7, 2026, it did not say that it was revoking his conditional parole, so it is unclear whether a material change of circumstances occurred. Either way, the government's actions violate the Administrative Procedures Act and Due Process.

45. 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)).

46. 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).

47. 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); s*ee 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.

48. 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—remain 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). 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, running a red light and having an expired driver's license, and given a hearing and parole while driving to his work, and ICE agents detained him while attending his parole.

49. 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).

50. 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);

II. Count 2: The Due Process Clause required notice and a chance to be heard before detention.

51. 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.

52. "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).

53. "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.

54. 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 wife. 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.*

55. "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.*

56. "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).

57. 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.

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

58. 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.

IV. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody, subject to the conditions of his preexisting release;
2. Order that prior to any re-detention of Petitioner, Petitioner is entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted. Respondents should bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing; and
3. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 3, 2026

/s/ Mario Portugal
Mario Portugal, Esq.
Attorney for Petitioner