Robert F. Jacobs, Esq. (CSB# 195344)
ROBERT F. JACOBS & ASSOCIATES, PLC
12631 Imperial Hwy., Suite A-113
Santa Fe Springs, CA 90670
Phone: (562) 462-1424
Fax: (562) 462-1380
Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HERNANDEZ-HERNANDEZ, Enrique [A[redacted]

Petitioner,

v.

WARDEN (OR FACLITY ADMINISTRATOR), OTAY MESA ICE PROCESSING CENTER; PATRICK DIVVER, ACTING FIELD OFFICE DIRECTOR OF ICE ENFORCEMENT AND REMOVAL OPERATIONS, SAN DIEGO FIELD OFFICE; MARKWAYNE MULLIN, SECRETARY OF U.S. DEPARTMENT OF HOMELAND SECURITY; DAVID VENTURELLA, SENIOR OFFICIAL PERFORMING DUTIES OF DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TODD BLANCHE, ATTORNEY GENERAL OF THE UNITED STATES.

Respondents.

Civil Action No.: '26CV4422 LL MSB

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

ENRIQUE HERNANDEZ-HERNANDEZ ("Petitioner"), respectfully petitions this Court for a Writ of Habeas Corpus under 28 U.S.C. § 2241 challenging his unlawful immigration detention.

Petitioner's continued detention violates the Due Process Clause because detention is not reasonably related to any legitimate governmental purpose. Petitioner has resided in the United States since 2000 as a seventeen-year-old minor, has extensive family and community ties, is married to a wife who has Deferred Action for Childhood Arrivals ("DACA") protection, and they have a U.S. Citizen son together age 13.

Petitioner had his removal case administratively closed in 2013 due to prosecutorial discretion. However, in 2018 he was subject to ineffective assistance of counsel ("IAC") when the government re-calendared proceedings, but his attorney did not notify him, and the Immigration Judge ("IJ") ordered him removed *in absentia* when he did not appear. Then in 2025, while still unaware of the removal order, he was detained and immediately deported. When attempting to return, he was detained and charged in U.S. District Court with illegal reentry after a removal order. Counsel filed a Motion to Reopen *In Absentia* due to IAC and, on June 5, 2026, the IJ revoked the removal order and reopened proceedings. Subsequently, the District Court dismissed the illegal entry after removal charge and transferred him to ICE custody where he remains.

Petitioner is eligible for adjustment of status in the U.S. through his USC sister's I-130 Petition that was filed April 30, 2001, under INA § 245(i). Section 245(i) was passed by Congress to permit immigrants who have a family petition filed on or before April 30, 2001 to adjust status in the U.S. without leaving the country. He has no arrests or convictions besides a no driver's license misdemeanor and one failure to appear.

Furthermore, Congress created the DACA program that his wife is receiving to protect children brought to the U.S. before the age of 16, who attended school, and have no disqualifying

crimes. Detaining a long-term resident with adjustment of status eligibility while adjudication remains pending undermines the objectives of that statutory scheme.

Less restrictive alternatives to detention, including release under an order of supervision, GPS monitoring, telephonic reporting, bond, or other conditions, would fully satisfy the government's interests while avoiding the substantial hardship caused by continued incarceration.

Petitioner was the victim of IAC and has been in federal custody for ten months now. He does not have any significant criminal convictions, he has long-term residence and family ties, and the family petition and adjustment of status has been in process essentially for over twenty-five years and has not been through any delay by the Petitioner.

Petitioner's current detention is therefore arbitrary, punitive, and contrary to the Fifth Amendment and the Supreme Court's mandate in Zadvydas v. Davis, 533 U.S. 678 (2001).

Petitioner seeks immediate release under reasonable supervision, or alternatively an expedited individualized custody hearing, attorney fees if otherwise authorized, and any other relief the court deems just and proper because continued detention constitutes irreparable constitutional injury. Courts within this District routinely recognize that habeas petitions challenging unlawful immigration detention warrant prompt review where liberty interests are at stake and the Government bears the burden of justifying confinement.

Petitioner is in the custody of the Department of Homeland Security, and the Immigration and Customs Enforcement ("ICE") District Director for the San Diego District, Patrick Divver. He is detained at the ICE Detention Facility in Otay Mesa, California.

I. NATURE OF THE ACTION

Petitioner applied for political asylum and cancellation of removal (42B) in immigration court. In 2013, the government successfully moved to administratively close his case due to

favorable prosecutorial discretion primarily to allow him to adjust status in the U.S. under INA § 245(i) when the approved I-130 family petition from his USC sister became current. In 2018, the government moved to re-calendar the case, and he was the victim of IAC when his attorney did not notify him, and a removal order was entered against him. In 2025, ICE detained and immediately removed him solely because of the removal order he had no knowledge of.

He was not hiding from the government. He was simply waiting for the visa to become current pursuant to the government's request to close his case that the IJ granted.

Upon returning he was detained at the border and charged with attempted illegal entry after removal. On June 5, 2026, the IJ revoked and rescinded the underlying removal order and reopened removal proceedings. On July 1, 2026, the U.S. District Judge dismissed the sole criminal charge. However, instead of being released to attend immigration court removal hearings out of custody, he was transferred to the Otay Mesa ICE detention facility where he remains. He has now been in Federal custody for over ten months.

II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241(c)(1) and (3); Art. I, § 9, Cl. 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Petitioner is being unlawfully detained. The court may grant relief pursuant to the habeas statute, 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the All Writs Act, 28 U.S.C. § 1651. This action arises under the U.S. Constitution and the INA, 8 U.S.C. § 1101 *et seq.*

Venue is proper in this District because Petitioner is detained by ICE in Otay Mesa California within the Southern District of California.

Because habeas relief is intended to be swift, Petitioner respectfully requests review on an expedited basis consistent with this Court's authority under 28 U.S.C. § 2243.

III. BACKGROUND

Current Counsel did not represent Petitioner in any proceedings below and does not have a complete copy of his file. Thus, not all existing documentation can be provided here.

Petitioner is a forty-two (42) year old, male, native and citizen of Mexico. He entered the U.S. on or about April 16, 2000, as a seventeen (17) year old minor and he has continuously resided in the U.S. for the past twenty-six (26) years. Petitioner and his wife have one U.S. Citizen ("USC") child together, M[redacted] (age 13). Petitioner married his wife on August 25, 2018. His wife has DACA.

Back on April 30, 2001, Petitioner's USC sister, Guadalupe Hernandez, filed a family petition for him, qualifying him under the INA § 245(i) law to adjust status in the U.S. (*See* A – I-130 Approval Notice) (*See* B – Cover Page of I-485 Package completely prepared).

On September 27, 2007, Petitioner was served a Notice to Appear and placed into Removal Proceedings. Petitioner previously filed an I-589 and 42B application with the immigration court. His permanent address and phone number with the court for some time and more importantly with all his attorneys was always the address and phone number of his petitioning USC sister. On March 8, 2013, the government filed an Unopposed Motion for Administrative Closure that was granted. (*See* C – Motion for Administrative Closure). Petitioner has never changed his permanent address and phone number with his attorney since that date. Petitioner was patiently waiting for the visa to become current to re-calendar his case.

However, on or about June 7, 2025, Petitioner was detained and removed the same day by ICE pursuant to an *in absentia* Removal Order, he was unaware of, issued February 6, 2018.

Upon an attempted re-entry on October 3, 2025, Petitioner was detained facing federal criminal illegal entry after removal charges with the Federal District Court in San Diego. (Case No. 25CR4081-JLS). Petitioner was represented by the Federal Public Defender's office.

On October 6, 2025, Petitioner's family hired Counsel to research the possibility of a Motion to Reopen the unknown *In Absentia* Order. After many difficulties contacting prior counsel and requesting the court file, and never receiving a response to an EOIR FOIA or USCIS FOIA, Counsel reviewed the court file and determined a Motion could be filed. On March 28, 2026, Counsel was hired. On May 12, 2026, Counsel filed a Motion to Reopen *In Absentia* that complied with *Matter of Lozada,* due to allegations of IAC, and included the entire I-485 package that Petitioner is eligible for.

On June 5, 2026, the IJ granted our Motion to Reopen. (*See* D – IJ's Order Reopening Case).

On or about June 25, 2026, Petitioner was transferred to the ICE Otay Mesa Detention Center where he remains.

On July 1, 2026, the U.S. District Judge dismissed the criminal illegal entry charges against him. (*See* E – District Judge Janis Sammartino's Order Dismissing the Information). However, after all this, he was not released from ICE and his next detained immigration court hearing is August 6, 2026.

IV. CONSTITUTIONAL, STATUTORY AND REGULATORY FRAMEWORK

A. DETENTION HERE IS A VIOLATION OF DUE PROCESS AND ARBITRARY INTERFERENCE WITH THE STATUTORY INA § 245(i) ADJUSTMENT OF STATUS PROCESS.

A writ of habeas corpus is "available to every individual detained within the United States." Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004) (*citing* U.S. Const., Art. I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The petitioner bears the burden of demonstrating that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." Id. § 2241(c)(3).

1. CONTINUED DETENTION FOR A CHILDHOOD ARRIVAL WITH NO SIGNIFICANT CONVICTIONS ELIGIBLE TO ADJUST STATUS IN THE U.S. UNDER INA § 245(I) THROUGH AN APPROVED FAMILY PETITION IN PROCESS SINCE APRIL 30, 2001, WITH A USC CHILD AND DACA WIFE, IS UNREASONABLE AND UNNECESSARY WHERE LESS RESTRICTIVE ALTERNATIVES FULLY SATISFY GOVERNMENT INTERESTS.

2. THIS DETENTION IS BASED ON A FUNDAMENTALLY DEFECTIVE PROCEEDING.

The immigration judge here reopened a removal order, found that Petitioner demonstrated prima facie eligibility for relief and, once the order was reopened, the legal premise supporting the removal order, and later the criminal prosecution, ceased to exist.

Detention, as in here, ceases serving the purpose of effectuating removal and instead becomes punitive or arbitrary where DHS itself created a statutory mechanism that permits and

encourages beneficiaries of family petitions filed on or before April 30, 2001 to remain in the U.S. and process their Lawful Permanent Resident applications here through adjustment of status under INA § 245(i), but then then incarcerates and does not release cooperating applicants, with no convictions or removal priorities, while USCIS adjudication remains pending.

Congress enacted INA § 245(i) for family beneficiaries to stay in the U.S. and adjust status here, and any detention during the ordinary USCIS delay undermines Congress' purpose. Especially here where Petitioner has no dangerousness, has long residence, a history of compliance, equities, and family and community ties.

Petitioner here was the victim of IAC resulting in an unknown removal order, a shocking detention, and deportation. He has already suffered prolonged detention in federal criminal custody since October 3, 2025 until Counsel could expose the IAC, and reopen removal proceedings. Prolonged detention becomes constitutionally problematic where the delay is government created rather than caused by dilatory tactics of the immigrant.

Although not an adjustment of status statute, Congress recognized that stays, deferred action, and abeyance are legitimate mechanisms for preventing removal in immigration cases. See 8 U.S.C. § 1227(d)(2)-(4).

Detention here is arbitrary and capricious in relation to DHS's own policy objectives, particularly here where USCIS has approved the I-130 Petition, the IJ has reviewed and recognized the I-485 Package and eligibility for adjustment of status, there is prima facie evidence of a meritorious application, no flight risk, and no danger to the community. He was not arrested by ICE in 2025 for committing a crime or immigration violation, or a border stop, absconding, or after fugitive operations, but rather for being the victim of IAC and being unaware of a removal order *in absentia*.

3. THE GOVERNMENT ITSELF ABANDONED THE CRIMINAL PROSECUTION.

If the United States agrees the IJ's order is no longer sufficient to support criminal imprisonment, why is it sufficient to justify continued civil detention without an individualized hearing?

4. DUE PROCESS REQUIRES AN INDIVIDUALIZED DETERMINATION HERE.

In this particular case, categorical detention is arbitrary because the original removal order has been vacated and the respondent has a viable path to lawful permanent residence.

Petitioner's continued detention also causes irreparable harm due to his USC son who is just 13 years old and who's father was unexpectedly spontaneously arrested by ICE, and who has been in federal custody since October 3, 2025, almost ten months now.

The detention causes caregiving disruption, emotional destabilization, financial hardship and loss of supervision and support to the son and his DACA wife who has had to manage the household as a single mother.

5. DETENTION NO LONGER SERVES ITS REGULATORY PURPOSE.

Removal is no longer imminent because proceedings have restarted, Petitioner has a pending defense to removal though adjustment of status and the case will remain pending until visa availability and other relief can be adjudicated.

Detention becomes unreasonable where DHS has not meaningfully accounted for pending Congressionally permitted adjudications and individualized alternatives such as an order of supervision or other alternatives to detention.

B. REMOVAL BEFORE ADJUDICATION OF THE PENDING ADJUSTMENT OF STATUS RELIEF WOULD DEPRIVE PETITIONER OF MEANINGFUL ACCESS TO THE STATUTORY AND REGULATORY PROCESS.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Removable aliens, even those unlawfully in the United States, are entitled to due process protections. *See* Matthews v. Diaz, 426 U.S. 67 (1976)("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.").

From a substantive due process perspective, Petitioner's indefinite detention violates his fundamental liberty interests. *See e.g.* Phan v. Reno, 56 F.Supp 1149 (W.D. Wash. 1999); Nguyen v. Fasano, 84 F.Supp.2d 1099 (S.D. Cal. 2000).

1. CONGRESS AND DHS HAVE ALREADY RECOGNIZED PETITIONER'S WIFE AS DESERVING OF HUMANITARIAN PROTECTION THROUGH DACA, AND FAMILY UNITY SUPPORTS RELIEF HERE.

Petitioner's wife has already been granted DACA, and she was vetted by USCIS. (*See* F). Her DACA status demonstrates family equities, stability, hardship and the likelihood of a legal pathway for Petitioner too.

Petitioner's detention and pending removal is unconstitutional because Petitioner is not a flight risk and does not present a danger to society. DHS granted humanitarian protection to the spouse arising from her childhood arrival, but now detains and seeks to remove his financial support of the family despite his long residence and pending relief.

Conversely, Petitioner has lived and worked in the U.S. since 2000, and has a DACA wife with a teenage USC son. Petitioner is fully employed as a granite countertop installer, and is a homeowner who needs to be released to continue to maintain and support his family.

V. REQUESTED RELIEF

Petitioner requests that this Court assume jurisdiction and issue a writ of habeas corpus and order DHS to immediately release him from custody under reasonable conditions of supervision set out in 8 U.S.C. § 1231(a)(3). Other alternative relief could include less restrictive alternatives such as release under ISAP or other Alternatives to Detention (ATD's), GPS, telephonic monitoring or periodic reporting. Alternatively, order a prompt individualized custody hearing. Alternatively, issue an Order to Show Cause why the Court should not grant the Writ, under 28 U.S.C. § 2243.

Petitioner also requests that the Court hold that his detention violates his statutory rights, and his rights to substantive and procedural due process through the United States Constitution.

Petitioner also requests that the Court award Petitioner's attorneys' fees and costs under EAJA and grant any other relief that the Court deems just and proper.

On those bases, as well as the statutory basis above, Petitioner requests that the Court order DHS to release him immediately under the conditions of supervision set out in 8 U.S.C. § 1231(a)(3).

Dated: August 3, 2026

Respectfully submitted,
ROBERT F. JACOBS & ASSOCIATES, PLC

By: _____
Robert F. Jacobs, Esq.
Attorney for Petitioner
Enrique HERNANDEZ-HERNANDEZ

EXHIBITS

A. **I-130 APPROVAL NOTICE (USC SISTER)(4/30/2001)(§ 245(i) ELIGIBILITY)**

B. **COVER PAGE OF COMPLETED I-485 ADJUSTMENT OF STATUS PACKAGE UNDER INA § 245(i)**

C. **GOVERNMENT'S MOTION TO ADMINISTRATIVELY CLOSE CASE (3/8/13)**

D. **IMIGRATION JUDGE'S *IN ABSENTIA* ORDER OF REMOVAL (2/6/2018)**

E. **IJ'S ORDER GRANTING MOTION TO REOPEN (6/5/2026)**

F. **U.S. DISTRICT JUDGE DISMISSING INFORMATION (RE: ATTEMPTED ILLEGAL ENTRY AFTER REMOVAL ORDER)(7/1/2026)**

G. **IMMIGRATION COURT HEARING NOTICE (OTAY MESA)(8/6/2026)**

VERIFICATION

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, ROBERT F. JACOBS declare:

I am an attorney duly licensed to practice law in all of the courts of the State of California, and I am the attorney for petitioner in this matter. I have written and read the foregoing: EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241; MEMORANDUM OF POINTS AND AUTHORITIES; WRIT OF VERIFICATION; EXHIBITS, and all the facts alleged therein, not otherwise supported by citation to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8/3/2026, at Santa Fe Springs, California.

By: _____
Robert F. Jacobs, Esq.
Attorney for Petitioner
Enrique Hernandez-Hernandez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ENRIQUE HERNANDEZ-HERNANDEZ,

Petitioner,

v.

WARDEN (OR FACLITY ADMINISTRATOR), OTAY MESA ICE PROCESSING CENTER; PATRICK DIVVER, ACTING FIELD OFFICE DIRECTOR OF ICE ENFORCEMENT AND REMOVAL OPERATIONS, SAN DIEGO FIELD OFFICE; MARKWAYNE MULLIN, SECRETARY OF U.S. DEPARTMENT OF HOMELAND SECURITY; DAVID VENTURELLA, SENIOR OFFICIAL PERFORMING DUTIES OF DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TODD BLANCHE, ATTORNEY GENERAL OF THE UNITED STATES.

Respondents.

PROOF OF SERVICE

I, Alyssa Ledezma, declare:

I am over the age of 18 years and not a party to the above-entitled matter. My business address is: 12631 Imperial Hwy., Suite A-113, Santa Fe Springs, CA 90670.

On August 3, 2026, I served the foregoing document entitled: **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND MOTION FOR TEMPORARY RESTRAINING ORDER PREVENTING REMOVAL PENDING ADJUDICATION OF APPLICATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS IN SUPPORT THEREOF; WRIT OF VERIFICATION; EXHIBITS,** by placing a true and correct copy in a sealed envelope with prepaid postage and depositing it for collection and mailing via United States Mail and/or overnight delivery, addressed as follows:

United States Attorney for the Southern District of California
Attn: Civil Process Clerk
880 Front Street, Room 6293
San Diego, CA 92101

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
San Diego (Otay Mesa)
7488 Calzada de la Fuente
San Diego, California 92154

Electronic Service was additionally completed by transmitting a copy via email to counsel for Respondents where known.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 08/03/2026 at Santa Fe Springs, California.

Because service has been effected pursuant to Federal Rule of Civil Procedure 4(i), Petitioner respectfully requests prompt review consistent with the expedited procedures contemplated by 28 U.S.C. § 2243.

Alyssa Ledezma