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DETAINED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of:

GARCIA-CASTRO, Elmer

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.

File No.: **'26CV4544 RBM DDL**

A [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release Petitioner from detention.

INTRODUCTION

1. Petitioner was detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center pending removal proceedings since or about July 4, 2025.

2. Petitioner filed Form I-589 seeking asylum, withholding of removal, and protection under the Convention Against Torture in his removal proceedings.

3. Petitioner is a citizen of Honduras who entered the United States in October 2022, through the Southern Border in McAllen, Texas, out of fear for his life.

4. Petitioner has resided continuously in the United States since 2022 and worked as a mechanic. He is the father of three children, who were included as derivatives in his Form I-589.

5. On or about July 4, 2025, Petitioner came to the attention of ICE. ICE alleged that he was present in the United States without having been admitted or paroled and charged him as removable under INA § 212(a)(6)(A)(i).

6. Petitioner challenges his continued detention, which has caused substantial hardship to him and his family. The Court previously granted habeas relief and ordered a bond hearing, but Petitioner remained detained. Petitioner later submitted a second habeas petition pro se and without counsel; that filing was

denied because it did not comply with the Court's required legal form and filing format, and the Court did not adjudicate the merits of his continued-detention claims.

JURISDICTION

7. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center.

8. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act. The 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.

VENUE

9. Venue is proper in this District because this is the district in which Petitioner was confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

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

10. 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 return "within three days unless good cause additional time, not exceeding twenty days, is allowed." *Id.*

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. Petitioner is "in custody" for the purpose of 28 U.S.C. section 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention center in Otay Mesa, California. He is under Respondents' and their agents' direct control.

STATEMENT OF FACTS

12. Petitioner is a 37-year-old citizen and national of Honduras. Petitioner is a citizen of Honduras who entered the United States for the first time through the Southern Border in 2022.

13. Petitioner has resided in the United States since 2022, where he established substantial community ties and worked as a mechanic.

14. Petitioner is the father of three children who depend on him for emotional and financial support and were included as derivatives in his protection application.

15. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center pending immigration removal proceedings. Petitioner remains detained at Otay Mesa Detention Center.

16. Petitioner was detained in DHS custody since or about July 4, 2025. Petitioner is still in DHS custody and requests release. Petitioner poses no danger or flight risk.

17. Petitioner is the parent of three children, all of whom are minors.

18. Petitioner has no past criminal history. Petitioner has significant ties to the United States, including his family, his work, his friends, and his home.

19. Petitioner fears returning to Honduras because members of [redacted] and [redacted]

20. Petitioner sought asylum, withholding of removal, and protection under the Convention Against Torture based on those threats. On December 10, 2025, the Immigration Judge granted DHS's motion to pretermit his applications, and Petitioner appealed that ruling to the Board of Immigration Appeals.

21. On July 4, 2025, Mr. Garcia-Castro was issued a Notice to Appear.

22. Petitioner has remained in DHS custody since or about July 4, 2025. In November 2025, through counsel, he filed a petition for writ of habeas corpus in

Case No. 3:25-cv-03287-AGS-VET. On January 8, 2026, the Court granted the writ and directed Respondents to provide a bond hearing pursuant to 8 U.S.C. § 1226(a). Petitioner remained detained after the resulting custody proceedings. On May 1, 2026, acting pro se and without counsel in the federal action, Petitioner submitted a second petition for writ of habeas corpus in Case No. 3:26-cv-02787-AGS-VET. On June 15, 2026, the Court denied that pro se petition because it was not presented in the required legal form and filing format. The denial did not adjudicate the merits of Petitioner's statutory or constitutional challenge to his continued detention.

PARTIES

23. Mr. Garcia-Castro ("Petitioner") is a 37-year-old citizen and national of Honduras who entered the United States in 2022 after fleeing gang threats and violence. He has no criminal convictions and has remained in Respondents' custody since July 4, 2025.

24. Mr. Garcia-Castro 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.

25. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. Garcia-Castro 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 Mr. Garcia-Castro and is named in his official capacity.

26. 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 Mr. Garcia-Castro and is named in his official capacity.

27. 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 Mr. Garcia-Castro and is named in his official capacity.

28. 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 her 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 Mr. Garcia-Castro and is named in her official capacity.

29. 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.

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. 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 or automatically subject to expedited removal. *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.*

33. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a

custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

34. 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).

35. Respondents have continued to detain Mr. Garcia-Castro despite the prior order granting habeas relief, the ensuing custody proceedings, his lack of criminal history, and his substantial family and community ties.

36. Petitioner has significant ties to the United States, including his home, his friends, and his family, and has demonstrated good moral character while being in the United States.

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.

LEGAL ARGUMENT

38. Courts have recognized the significance of the habeas statute in protecting individuals from unlawful detention, which affords "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400

(1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination of petitions).

39. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.

40. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

41. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

42. In the immigration context, the Supreme Court has recognized two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

43. The test for procedural due process claims, the *Mathews* test balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21CV-01812 TLN AC, 2023

WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (using *Mathews* factors to assess a habeas petitioner's due process claims and collecting cases doing the same). Here, each factor weighs in Petitioner's favor, and Petitioner's release is justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no danger to the community, nor is a flight risk.

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

44. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

45. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

46. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

47. Moreover, Mr. Garcia-Castro has a vital liberty interest in remaining free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension "has a substantial private interest in remaining out of custody" which includes an interest in "...obtaining necessary medical care, [and] maintaining her relationships in the community..."). Before ICE detained him, Mr. Garcia-Castro was working, supporting his family financially, and maintaining substantial community ties.

48. Even if the initial decision to release a non-citizen from DHS custody is discretionary, "...after that individual is released from custody, he has a protected liberty interest in remaining out of custody." *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

49. Here, Mr. Garcia-Castro was detained in a hasty manner. Before his detention, he had been living in the United States since 2022. He has no prior criminal conviction and has developed significant family, work, and community

ties. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest). Nor has the government identified any materially changed circumstances that would warrant detaining Mr. Garcia-Castro.

COUNT TWO

Violation of Fifth Amendment Right to Due Process - Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.

50. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

51. Administrative rules "will not be construed to have retroactive effect unless their language requires this result." *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a "new provision attaches new legal consequences to events completed before its enactment" the new provision is not retroactive unless it is unmistakably clear.

52. The January 2025 designation does not unmistakably state that it applies retroactively to individuals, such as Petitioner, who entered the United States before its effective date. The designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).

53. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997) (requiring statutory language to be "so clear that it could sustain only one interpretation").

54. Accordingly, Respondents unlawfully subjected Mr. Garcia-Castro to indefinite detention.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

55. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

56. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

57. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make "an informed

adjudication . . . based on an evaluation of the factors underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

58. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

59. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

60. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief, Respondents' intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("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.").

61. In deciding to detain Mr. Garcia-Castro, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

62. The arbitrary and capricious detention of Mr. Garcia-Castro was not made in furtherance of an enumerated reason set forth in the regulations and causes Mr. Garcia-Castro irreparable harm. For these reasons, the Court should find that the decision to detain Mr. Garcia-Castro is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

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COUNT FOUR

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

63. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

64. Under the APA, a court shall "hold unlawful and set aside agency action..." that is "...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity..." 5 U.S.C. § 706(2)(A)-(B).

65. 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)).

66. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found

and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

67. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious or an abuse of discretion. *See id.* at *10.

68. By detaining Mr. Garcia-Castro without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

69. Respondents have made no finding that Petitioner is a danger to the community.

70. Respondents have made no finding that Petitioner is a flight risk.

71. On information and belief, by detaining Mr. Garcia-Castro categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Mr. Garcia-Castro's specific facts or circumstances that support his detention.

COUNT FIVE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1225(b)

72. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

73. Under the APA, a court shall "hold unlawful and set aside agency action..." that is "...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity..." 5 U.S.C. § 706(2)(A)-(B).

74. Congress has made it clear that the expedited removal statute does not apply and may not be applied to individuals who were "paroled" into the United States. 8 U.S.C. § 1225(b). It further applies to the non-citizens seeking admission. Id. § 1225(b)(2).

75. Because Mr. Garcia-Castro is not subject to the January 2025 Designation, Respondents' use of the January 2025 designation to detain him while his INA section 240 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.

COUNT SIX

Violation of the Fourth Amendment of the Constitution

76. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

77. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

78. The Fourth Amendment requires that arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other

extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

79. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

80. Mr. Garcia-Castro did not receive any judicial determination of probable cause for his arrest or continued detention by the Respondents.

81. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Garcia-Castro did not pose any danger to any person in the community at large, and in fact, has a fear of returning to his home country for fear of death from the gangs threatening him and his colleagues in his line of work.

82. Respondents' arrest of Mr. Garcia-Castro constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT SEVEN

Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V.

83. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

84. The government may not deprive a person 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 the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

85. Mr. Garcia-Castro has a fundamental interest in liberty and being free from official restraint.

86. The government's detention of Petitioner without notice or an opportunity to be heard before detention violates his right to due process.

87. The government's detention of Petitioner without a meaningful bond and custody redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

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PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

(6) Grant such further relief as the Court deems just, equitable, and appropriate; and

(7) Grant any and all other further relief this Court deems just or proper.

Respectfully Submitted,

/S/ Mario Portugal
Mario Portugal, Esq.
Attorney for the Petitioner