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Detained

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of: **CERNA-CARRANZA, Darwin Jesus** 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.: '26CV4578 JES JLB A [redacted] **Petition for Writ of Habeas Corpus and Order To Show Cause Within Three Days** **Challenge to Unlawful Incarceration: Request for Declaratory and Injunctive Relief**

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 has been detained since or about July 6, 2026, by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center pending removal proceedings.

2. Petitioner is a citizen of Honduras who entered the United States for the last time through the Southern Border –at the age of 17– around June 26, 2022, and turned himself in to CBP. Petitioner was sent to a shelter until his father picked him up to be with his family. He was thereafter issued parole and released on his own recognizance.

3. Petitioner has resided continuously in the U.S. for more than 4 years, spending most of his time in the United States. He has no family in Honduras.

4. On July 1, 2026, Petitioner came to the attention of ICE during a traffic stop in Florida. It was determined that Mr. Cerna Carranza was not in possession of valid immigration documents. He was charged as removable under INA § 212(a)(6)(A)(i), Alien Present Without Admission or Parole.

5. Petitioner now challenges his continued detention, which has caused significant hardship to him, and seeks relief to avoid separation from his girlfriend and the community he has called home.

JURISDICTION

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

7. 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

8. 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

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 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).

10. 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

11. Petitioner is a 21-year-old citizen and national of Honduras who entered the United States for the first time through the Southern Border in June 2022. Mr. Cerna-Carranza turned

himself in to CBP. After turning himself in, he was sent to a shelter until his father picked him up to be with his family.

12. Petitioner has resided in the United States for more than 4 years, where he has established deep ties to the community.

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

14. Petitioner has been detained in DHS custody since July 1, 2026. Petitioner is still in DHS custody and requests release. Petitioner poses no danger or flight risk.

15. In June 2022, Petitioner turned himself in to CBP and complied with the terms of his processing.

16. Petitioner has no criminal record.

17. Petitioner acknowledged that he is not in possession of any valid documents and stated that he last entered the United States on or about June 26, 2022.

18. Petitioner has ties to the United States, including his girlfriend, and has demonstrated good moral character.

19. On July 1, 2026, Mr. Cerna Carranza was issued a Notice to Appear.

20. On July 1, 2026, the Petitioner was taken into custody and continues to be detained.

PARTIES

21. Mr. Cerna-Carranza ("Petitioner") is a 21-year-old citizen and national of Honduras. He first came to the USA in June 2022. He turned himself in to U.S. Customs and Border Protection. Upon his entry to the United States, immigration officers processed him as an unaccompanied minor. He is single. He has a sponsor in the U.S. He was detained by ICE while

riding as a passenger in a car. He has no criminal conviction. Since the arrest on or about July 1, 2026, Mr. Cerna Carranza has remained in Respondents' custody.

22. Mr. Cerna-Carranza 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.

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

24. 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. Cerna-Carranza and is named in his official capacity.

25. 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. Cerna-Carranza and is named in his official capacity.

26. Respondent Kristi 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. Cerna-Carranza and is named in her official capacity.

27. 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.

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

30. 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.*

31. 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)).

32. 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).

33. On information and belief, Mr. Cerna Carranza alleges that Respondents detained him for the purpose of divesting him of his due process rights in his pending immigration proceedings.

34. Petitioner has ties to the United States, including his girlfriend, and has demonstrated good moral character.

35. 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

36 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).

37. 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.

38. "'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)).

39. 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).

40. 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.

41. 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 he 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.

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

43. 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.

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

45. Moreover, Mr. Cerna-Carranza 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..."). While on release from DHS custody, Mr. Cerna-Carranza was building his emotional support system and his life.

46. 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)).

47. Here, Mr. Cerna-Carranza was detained on an ordinary car ride. He did not expect to be taken into custody since he had been living in the United States continuously for more than 29 years and had a reasonable expectation of liverty. *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. Cerna-Carranza

COUNT TWO

Violation of Fifth Amendment Right to Due Process -

Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.

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

49. 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.

50. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date and were already in removal proceedings. The designation's language thus does not "require that it be applied retroactively." See *INS v. St Cyr*, 533 U.S. 289, 291 (2001).

51. 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").

52. Accordingly, Respondents unlawfully subjected Mr. Cerna-Carranza 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)

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

54. 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).

55. 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).

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

57. 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).

58. 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.").

59. In deciding to detain Mr. Cerna-Carranza, 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).

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

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

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

62. 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).

63. 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)).

64. 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).

68. 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.

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

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

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

68. On information and belief, by detaining Mr. Cerna-Carranza 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. Cerna-Carranza's specific facts or circumstances that support his detention.

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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)

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

70. 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).

71. 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 non-citizens seeking admission. Id. § 1225(b)(2).

72. Because Mr. Cerna-Carranza 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, and capricious.

COUNT SIX

Violation of the Fourth Amendment of the Constitution

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

74. 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).

75. 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).

76. 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).

77. Mr. Cerna-Carranza did not receive any judicial determination of probable cause for his arrest or continued detention by the Respondents.

78. 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. Cerna-Carranza did not pose any danger to any person in the community at large.

79. Respondents' arrest of Mr. Cerna-Carranza 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.

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

81. 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).

82. Mr. Cerna-Carranza has a fundamental interest in liberty and being free from official restraint.

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

84. 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.

COUNT EIGHT

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

85. When ICE detained Petitioner on or about July 1, 2026, it did not say that it was revoking his conditional parole, so it is unclear whether a revocation occurred. Either way, the government's actions violate the Administrative Procedures Act and Due Process.

86. 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)).

87. 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).

88. 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); see 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.

89. 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—remains 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). 67. 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 and given a warning of tinted windows, while driving to his son's daycare, and ICE agents happened to be accompanying the highway Trooper.

90. 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).

91. 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).

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COUNT NINE

The Due Process Clause required notice and a chance to be heard before release was revoked.

92. 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.

93. "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).

94. "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.

95. 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 child he has been raising. 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.*

96. "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.*

97. "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).

98. 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.

COUNT TEN

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

99. 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.

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 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 a Writ of Habeas Corpus with an order to Respondents for the immediate release of Petitioner from custody;

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

(7) In the alternative, issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;

(8) Order an evidentiary hearing and grant such further relief as the Court deems just, equitable, and appropriate; and

(9) Grant all other further relief this Court deems just or proper.

Respectfully Submitted,

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