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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LUCIO PEREZ-MENDEZ,

Petitioner,

v.

CHRISTOPHER LaROSE, Warden, Otay Mesa Detention Center;

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security;

David J. VENTURELLA, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement;

Todd BLANCHE, Attorney General of the United States, U.S. Department of Justice.

Respondents

Case No.: **'26CV4646 CAB BJW**

[redacted]

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

1. Petitioner, Lucio Perez-Mendez, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and alleges as follows:

INTRODUCTION

2. Petitioner, Lucio Perez-Mendez, is a native and citizen of Mexico currently detained at the Otay Mesa Detention Center in San Diego, California.

3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his continued immigration detention following his re-arrest in the interior of the United States after a prolonged period of liberty in the community following his prior release from immigration custody.

4. Petitioner entered the United States without inspection more than twenty years ago and thereafter resided in the interior of the United States. In approximately 2018, immigration authorities encountered Petitioner and took him into custody. Petitioner was initially detained for approximately one day at a U.S. Customs and Border Protection facility in San Clemente, California, and was thereafter transferred to a U.S. Customs and Border Protection facility in Chula Vista, California, where he remained detained for approximately one week.

5. Immigration authorities thereafter released Petitioner from custody and instructed him to report to Immigration and Customs Enforcement on the second floor of the Federal Building in downtown San Diego. Petitioner complied with those instructions and appeared for three consecutive monthly reporting appointments. At his third reporting appointment, immigration officials informed Petitioner that he was no longer required to continue reporting.

6. Following his release from immigration custody and completion of the reporting requirements imposed upon him, Petitioner remained at liberty in the United States for approximately eight years. During that period, immigration authorities did not require Petitioner to resume reporting and did not return him to immigration custody.

7. On July 30, 2026, while Petitioner was stopped on the side of a road in the vicinity of Escondido, California, U.S. Customs and Border Protection officers approached Petitioner, questioned him regarding his immigration status, and took him into immigration custody.

8. At no point before Petitioner's re-detention did Respondents provide Petitioner with notice, an opportunity to be heard, or an individualized custody determination before a neutral decisionmaker.

9. Respondents' continued detention of Petitioner is unlawful. Immigration authorities previously took Petitioner into custody, affirmatively released him into the community subject to reporting requirements, observed his compliance with those requirements, and ultimately informed him that further reporting was unnecessary. Following that release, Petitioner remained at liberty for approximately eight years. Those circumstances gave rise to a significant liberty interest protected by the Due Process Clause.

10. Respondents could not lawfully deprive Petitioner of his previously granted liberty without first providing constitutionally adequate procedural safeguards. The Constitution does not permit the government to detain first and justify later.

11. By re-detaining Petitioner without constitutionally adequate pre-deprivation process, Respondents deprived Petitioner of his liberty in violation of the Due Process Clause of the Fifth Amendment.

12. Absent intervention by this Court, no neutral adjudicator will review whether Respondents lawfully deprived Petitioner of his previously granted liberty without constitutionally adequate pre-deprivation process. Petitioner therefore respectfully requests that this Court declare his re-detention unlawful and order his immediate release or, in the alternative, require Respondents to provide a constitutionally adequate custody hearing.

CUSTODY

13. Petitioner is currently in the legal and physical custody of Respondents and is detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of this Court.

JURISDICTION AND VENUE

14. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

15. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the Constitution, laws, or treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

16. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

17. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

18. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Petitioner's immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

19. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction because Petitioner challenges only the legality of his detention, not the validity of removal proceedings or any removal order. Federal courts have consistently recognized that habeas corpus remains available to review the statutory and constitutional basis of immigration detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241.

PARTIES

20. Petitioner, Lucio Perez-Mendez, is a native and citizen of Mexico currently detained at the Otay Mesa Detention Center in San Diego, California.

21. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego, California, is Petitioner's immediate custodian, and is responsible for Petitioner's confinement.

22. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security (DHS).

23. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

24. Respondent Todd Blanche is the Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

25. All Respondents are named in their official capacities.

STATEMENT OF FACTS

26. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Mexico who entered the United States without inspection more than twenty years ago and thereafter resided in the interior of the United States.

27. In approximately 2018, immigration authorities encountered Petitioner and took him into custody. Petitioner was initially detained for approximately one day at a U.S. Customs and Border Protection facility in San Clemente, California, and was thereafter transferred to a U.S.

Customs and Border Protection facility in Chula Vista, California, where he remained detained for approximately one week.

28. Immigration authorities thereafter released Petitioner from custody and instructed him to report to Immigration and Customs Enforcement on the second floor of the Federal Building in downtown San Diego. Petitioner complied with those instructions and appeared for three consecutive monthly reporting appointments.

29. At Petitioner's third reporting appointment, immigration officials informed him that he was no longer required to continue reporting. Petitioner was not placed in removal proceedings at that time and remained at liberty in the United States.

30. Following his release from immigration custody and completion of the reporting requirements imposed upon him, Petitioner remained at liberty in the United States for approximately eight years. During that period, immigration authorities did not require Petitioner to resume reporting and did not return him to immigration custody.

31. Petitioner has substantial family ties to the United States, including three United States citizen children, currently ages twelve, twelve, and seven. Given his more than twenty years of continuous physical presence in the United States and his United States citizen children, Petitioner may be eligible to seek cancellation of removal under INA § 240A(b), 8 U.S.C. § 1229b(b), subject to establishing the remaining statutory requirements.

32. On July 30, 2026, Petitioner was stopped on the side of a road in the vicinity of Escondido, California, when a U.S. Customs and Border Protection vehicle approached. CBP officers questioned Petitioner regarding his immigration status and requested immigration documentation before taking him into custody.

33. Petitioner had not been attempting to enter the United States, had not recently crossed the border, and had not attempted to flee or evade the officers before they approached and questioned him.

34. Petitioner was not shown or served with an administrative warrant before he was taken into custody. Petitioner does not presently possess the administrative records relating to his

arrest and therefore cannot determine whether a Form I-200 had been issued before he was taken into custody. The existence and timing of any administrative warrant authorizing Petitioner's arrest are matters reflected in records maintained by Respondents.

35. Following Petitioner's arrest, DHS initiated removal proceedings against him. Those proceedings were docketed on August 5, 2026, and Petitioner is presently scheduled for a Master Calendar Hearing on August 31, 2026.

36. Following his arrest, Petitioner was detained at the Otay Mesa Detention Center in San Diego, California, where he remains in Respondents' custody.

37. Respondents provided Petitioner no prior notice, no opportunity to be heard, and no individualized custody determination before a neutral decisionmaker before taking him back into immigration custody.

38. At no point before Petitioner's re-detention did DHS provide Petitioner with any constitutionally adequate pre-deprivation process concerning the revocation of the liberty he had enjoyed following his prior release from immigration custody.

39. Despite Petitioner's prior release from immigration custody, his compliance with the reporting requirements imposed upon him, and his approximately eight years of subsequent liberty in the community, Respondents re-detained Petitioner without any pre-deprivation individualized determination regarding danger, flight risk, changed circumstances, or the necessity of detention.

40. Respondents afforded Petitioner no meaningful opportunity to be heard before a neutral decisionmaker regarding whether detention was necessary before revoking his previously granted liberty.

REQUIREMENTS OF 28 U.S.C. § 2243

41. Under 28 U.S.C. § 2243, the Court "must" grant the petition for a writ of habeas corpus or issue an order to show cause ("OSC") "forthwith," unless the petitioner is not entitled to relief. If an OSC is issued, the statute requires that Respondents file a return "within three

days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

42. Federal courts have long emphasized the importance of habeas corpus as a protection against unlawful restraint. The Supreme Court has described the Great Writ 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).

43. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain a prompt and expeditious remedy. As the Ninth Circuit has explained, "The statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). The court cautioned that delays in habeas proceedings risk creating the impression "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

44. In habeas corpus proceedings, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive prudential exhaustion where "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Here, exhaustion should be excused because the available administrative process is inadequate to remedy Petitioner's pre-deprivation due-process claim and because his continued detention causes irreparable harm.

45. Petitioner's claim challenges Respondents' failure to provide constitutionally adequate process before revoking his previously granted liberty. Although an administrative custody proceeding may address whether Petitioner should remain detained going forward, it

cannot retroactively provide the process required before his re-detention or remedy the deprivation that had already occurred.

46. Moreover, no statutory exhaustion requirement applies to Petitioner's constitutional claim. The claim presents a pure question of constitutional law concerning the procedures required before the government may revoke previously granted liberty through re-detention. That question falls outside the agency's adjudicatory competence and is properly resolved through habeas review.

47. Exhaustion is also futile because the administrative process cannot adjudicate Petitioner's claim that his July 30, 2026 arrest itself violated the statutory requirements governing immigration arrests or that Respondents deprived him of his previously granted liberty without constitutionally adequate pre-deprivation process. Those claims concern the legality of the detention itself and cannot be remedied through a subsequent administrative custody determination.

48. Petitioner suffers irreparable harm for each additional day he remains unlawfully detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied after the fact. Continued incarceration following approximately eight years during which Petitioner remained at liberty after his release from immigration custody magnifies that ongoing harm. Courts routinely excuse exhaustion where prolonged or unlawful detention inflicts irreparable injury. Petitioner's ongoing detention therefore further warrants waiver of prudential exhaustion.

LEGAL FRAMEWORK

49. The Immigration and Nationality Act distinguishes between detention at the time of entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225, 1226.

50. Petitioner entered the United States more than twenty years ago and was not encountered by immigration authorities at or near the time of entry. His present detention followed an arrest in the interior of the United States decades after his entry. Accordingly,

Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), rather than the inspection-stage detention provisions of INA § 235(b). *Rodriguez Vazquez v. Bostock*, No. 25-6842, slip op. at 10 (9th Cir. July 30, 2026) ("aliens present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A)").

51. Section 1226(a) authorizes the arrest and detention of a noncitizen pending a decision on removal "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). R*odriguez Vazquez* confirms that § 1226(a) "permits (but does not require) the government upon a warrant to arrest and detain" a noncitizen pending a removal decision. *Rodriguez Vazquez*, slip op. at 26. Immigration officers may depart from the warrant requirement only under the limited circumstances Congress expressly authorized for warrantless arrests, including where the officer has reason to believe that the noncitizen is unlawfully present and "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

52. Thus, absent satisfaction of a statutory exception permitting a warrantless arrest, a valid administrative warrant must exist before the arrest and provide the authority for taking the noncitizen into custody. Unlawful presence alone does not authorize immigration officers to arrest first and obtain a warrant later. Where an arrest is made without a valid warrant and without probable cause to believe that the noncitizen is likely to escape before a warrant can be obtained, the arrest and resulting detention violate 8 U.S.C. §§ 1357(a)(2) and 1226(a). See *Moreno Cristin v. Armant*, No. 5:26-cv-04024-DTB, Dkt. 10 at 6–8 (C.D. Cal. July 29, 2026).

53. An administrative warrant issued after a noncitizen has already been seized cannot retroactively authorize the earlier arrest. The regulation implementing § 1226(a) contemplates a prospective arrest and provides that the warrant authorizes an immigration officer to arrest the noncitizen and take him into custody. 8 C.F.R. § 236.1(b)(1). As the Supreme Court has recognized, a warrant under § 1226(a) is one "leading to the alien's arrest." *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018); see also *Matter of Q. Li*, 29 I&N Dec. 66, 69 n.4 (BIA

2025). Accordingly, a subsequently issued Form I-200 cannot retroactively supply statutory authority for an arrest that was not authorized when it occurred.

54. Separately, the Fourth Amendment prohibits immigration officers from detaining an individual for questioning regarding immigration status absent reasonable suspicion supported by specific and articulable facts. A seizure must rest upon specific, objective facts establishing a particularized basis for suspecting the individual actually stopped. *Brown v. Texas*, 443 U.S. 47, 51–52 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Apparent Hispanic or Mexican ancestry, standing alone, cannot supply the individualized reasonable suspicion necessary to justify an immigration stop. *Brignoni-Ponce*, 422 U.S. at 885–87; *Montero-Camargo*, 208 F.3d at 1134–35.

55. The Ninth Circuit has further recognized that immigration detentions and interrogations based upon racial or ethnic profiling may constitute egregious violations of the Fourth Amendment. *Sanchez v. Sessions*, 904 F.3d 643, 655–57 (9th Cir. 2018). A stop made solely on the basis of ethnicity constitutes an egregious Fourth Amendment violation, and race or ethnicity alone can never provide the reasonable suspicion necessary to justify an immigration detention. *Id.*

56. The legality of an immigration seizure must be determined from the specific and articulable facts known to the officers when the seizure occurred. Information concerning an individual's immigration status obtained only through questioning or investigation following the seizure cannot retroactively supply the individualized reasonable suspicion necessary to justify the initial detention. Otherwise, the Government's eventual discovery that an individual lacks lawful immigration status would effectively eliminate the Fourth Amendment's requirement that the seizure itself be justified at its inception.

57. This distinction is particularly important where immigration officers encounter an individual in the interior of the United States without prior knowledge of his immigration status. The subsequent discovery that an individual lacks lawful immigration status does not establish

that officers possessed constitutionally adequate grounds to seize him before making that discovery. Where an unconstitutional immigration seizure directly results in the individual's arrest and continuing physical detention, the seizure is the means through which the Government obtained physical custody over the individual. Nor may the Government rely upon generalized characteristics shared by broad segments of the population as a substitute for particularized facts connecting the individual seized to unlawful presence. See *Montero-Camargo*, 208 F.3d at 1134–35.

58. The Due Process Clause protects all persons within the United States from arbitrary detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001). Freedom from government custody, detention, or other forms of physical restraint lies at the core of the liberty protected by the Constitution.

59. Where the Government has previously taken a noncitizen into immigration custody and thereafter affirmatively released him into the community, that release gives rise to a significant liberty interest in remaining free from physical detention. The fact that the Government may initially possess discretion to detain or release the individual does not eliminate the constitutionally protected liberty interest arising from the Government's subsequent exercise of that discretion in favor of release.

60. That liberty interest is particularly significant where, as here, the Government released the individual subject to reporting requirements, the individual complied with those requirements, immigration officials thereafter informed him that further reporting was unnecessary, and the Government permitted him to remain at liberty for approximately eight years.

61. Once such liberty has been granted, the Due Process Clause requires constitutionally adequate procedures before the Government may revoke that liberty through renewed civil immigration detention. In determining what process is constitutionally required, courts consider the private interest affected, the risk of erroneous deprivation and probable value of additional

safeguards, and the Government's interests under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

62. A post-deprivation custody proceeding does not cure the constitutional injury caused by the Government's failure to provide constitutionally required process before taking an individual back into custody. Likewise, a later bond hearing addressing whether the individual presently poses a danger or flight risk does not cure an arrest and detention that were unlawful when effectuated.

63. The Administrative Procedure Act prohibits agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must act within the authority conferred by Congress and comply with the procedures governing the exercise of that authority.

64. Accordingly, Respondents may not lawfully re-detain Petitioner after his prior release from immigration custody and approximately eight years of liberty without constitutionally adequate pre-deprivation process. Nor may Respondents sustain Petitioner's present detention through an arrest that failed to comply with the statutory requirements governing interior immigration arrests. Where the Government failed to follow the procedures authorizing detention under § 1226(a), courts have ordered immediate release from custody. See *Moreno Cristin v. Armant*, No. 5:26-cv-04024-DTB, Dkt. 10 at 8 (C.D. Cal. July 29, 2026).

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

Re-Detention Without Constitutionally Adequate Pre-Deprivation Process

65. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all preceding paragraphs.

66. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. CONST. amend. V. This protection applies to all persons within the United States, including

noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

67. In approximately 2018, immigration authorities took Petitioner into custody and detained him for approximately one week. Immigration authorities thereafter affirmatively released Petitioner into the community and instructed him to report to Immigration and Customs Enforcement on the second floor of the Federal Building in downtown San Diego. Petitioner complied with those instructions and appeared for three consecutive monthly reporting appointments. At his third reporting appointment, immigration officials informed Petitioner that he was no longer required to continue reporting.

68. Following his release from immigration custody and completion of the reporting requirements imposed upon him, Petitioner remained at liberty in the United States for approximately eight years. During that period, immigration authorities did not require Petitioner to resume reporting and did not return him to immigration custody.

69. Petitioner's prior release from immigration custody, his compliance with the reporting requirements imposed upon him, the Government's subsequent decision that further reporting was unnecessary, and his approximately eight years of liberty in the community gave rise to a significant liberty interest in remaining free from physical detention protected by the Due Process Clause. See *Zadvydas*, 533 U.S. at 690; *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Courts in this District have repeatedly recognized that a prior release from immigration custody gives rise to a constitutionally protected liberty interest in remaining out of custody. See *Marquez Portillo v. Casey*, No. 3:26-cv-04390-JES-BJW, Dkt. 7 at 2 (S.D. Cal. Aug. 11, 2026); *Ramos-Garcia v. Casey*, No. 3:26-cv-03957-BAS-DEB, Dkt. 6 at 2–3 (S.D. Cal. July 20, 2026).

70. On July 30, 2026, Respondents deprived Petitioner of that previously granted liberty by taking him back into immigration custody. Before doing so, Respondents provided Petitioner no notice, no opportunity to be heard, and no individualized custody determination before a neutral decisionmaker.

71. Respondents identified no changed circumstances before Petitioner's re-detention demonstrating that detention had become necessary. Petitioner had previously complied with every reporting requirement imposed upon him, and immigration officials themselves informed him that further reporting was unnecessary.

72. Before depriving Petitioner of his previously granted liberty through renewed civil immigration detention, due process required constitutionally adequate procedures at a meaningful time and in a meaningful manner. See *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). Petitioner's substantial interest in remaining free from physical detention, the severe consequences of an erroneous deprivation of that liberty, and the availability of pre-deprivation procedures required Respondents to provide constitutionally adequate process before taking him back into custody.

73. A post-deprivation custody proceeding cannot remedy the deprivation of liberty that occurred when Respondents re-detained Petitioner without constitutionally adequate pre-deprivation process. The constitutional injury challenged here is not merely the absence of a subsequent bond hearing, but Respondents' deprivation of Petitioner's previously granted liberty without the process constitutionally required before that deprivation occurred.

74. By re-detaining Petitioner without constitutionally adequate pre-deprivation process, Respondents deprived Petitioner of his liberty in violation of the Due Process Clause of the Fifth Amendment.

COUNT 2

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

75. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

76. Under the Administrative Procedure Act, a court shall "hold unlawful and set aside agency action" that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

77. Agency action is arbitrary and capricious where the agency fails to consider relevant factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

78. An agency must provide a reasoned explanation for its actions based on the facts and circumstances of the individual case. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019).

79. Here, Respondents re-detained Petitioner after immigration authorities had previously taken him into custody, affirmatively released him into the community, required him to report to ICE, observed his compliance with those reporting requirements, and thereafter informed him that further reporting was unnecessary. Petitioner subsequently remained at liberty for approximately eight years.

80. Respondents provided no reasoned explanation before reversing their prior course and taking Petitioner back into immigration custody. Nor did Respondents identify any changed circumstances demonstrating that detention had become necessary after approximately eight years of liberty in the community and Petitioner's prior compliance with every reporting requirement imposed upon him.

81. By re-detaining Petitioner without a reasoned explanation for the reversal of the Government's prior decision to release him, without considering his demonstrated compliance with immigration reporting requirements, and without constitutionally adequate process before depriving him of his previously granted liberty, Respondents acted arbitrarily, capriciously, and contrary to law.

82. Accordingly, Respondents' decision to re-detain Petitioner must be held unlawful and set aside under 5 U.S.C. § 706(2)(A).

COUNT 3

Violation of 8 U.S.C. §§ 1226(a) and 1357(a)(2)

Unlawful Arrest and Resulting Detention

83. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

84. INA § 236(a) authorizes the arrest and detention of a noncitizen pending a decision on removal "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). The warrant contemplated by § 1226(a) provides the authority for the arrest and therefore must precede the arrest.

85. Congress authorized warrantless civil immigration arrests only in limited circumstances. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant where the officer has reason to believe both that the noncitizen is in the United States in violation of immigration law and that the noncitizen "is likely to escape before a warrant can be obtained for his arrest."

86. Accordingly, unlawful presence alone does not authorize a warrantless civil immigration arrest. Where no administrative warrant has been issued before the arrest, the Government must satisfy the independent statutory requirement that the particular individual was likely to escape before a warrant could be obtained.

87. On July 30, 2026, CBP officers encountered Petitioner while he was stopped on the side of a road in the vicinity of Escondido, California, questioned him regarding his immigration status, and took him into custody. Petitioner was not shown or served with an administrative warrant before he was arrested.

88. Petitioner does not presently possess the administrative records relating to his arrest and therefore cannot determine whether a Form I-200 had been issued before he was taken into custody. Whether and when any administrative warrant authorizing Petitioner's arrest was issued are matters reflected in records maintained by Respondents.

89. Based on the circumstances known to Petitioner, there was no indication that he was likely to escape before a warrant could be obtained. Petitioner had resided in the United States for more than twenty years, has three United States citizen children, and had previously complied with every reporting requirement imposed upon him by immigration authorities. Indeed, when

previously instructed to report to ICE, Petitioner appeared for three consecutive monthly reporting appointments and ceased reporting only after immigration officials themselves informed him that further reporting was unnecessary.

90. If no valid administrative warrant had been issued before Petitioner's arrest, Respondents were required to satisfy the statutory requirements for a warrantless arrest under 8 U.S.C. § 1357(a)(2), including the requirement that the arresting officers had reason to believe Petitioner was likely to escape before a warrant could be obtained. Any administrative warrant issued only after Petitioner had already been seized could not retroactively authorize the earlier arrest.

91. Accordingly, if Petitioner's arrest was not preceded by a valid administrative warrant, Respondents must establish that the warrantless arrest satisfied the requirements of 8 U.S.C. § 1357(a)(2), including that the arresting officers had reason to believe Petitioner was likely to escape before a warrant could be obtained.

COUNT 4

Violation of the Fourth Amendment

Unlawful Seizure Without Reasonable Suspicion

92. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

93. The Fourth Amendment protects persons within the United States against unreasonable seizures. U.S. CONST. amend. IV. Except at the border and its functional equivalents, immigration officers may not detain an individual for questioning regarding immigration status unless they possess reasonable suspicion supported by specific and articulable facts that the individual may be unlawfully present in the United States. United States v. Brignoni-Ponce, 422 U.S. 873, 881–84 (1975).

94. Reasonable suspicion must provide a "particularized and objective basis" for suspecting the particular individual who is stopped. *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc); see also *Brown v. Texas*, 443 U.S. 47, 51–52 (1979). A

detention based upon generalized characteristics or circumstances shared by substantial numbers of innocent persons does not satisfy that requirement.

95. Apparent Mexican or Hispanic ancestry, standing alone, does not provide reasonable suspicion to stop an individual for immigration questioning. *Brignoni-Ponce*, 422 U.S. at 885–87; *Montero-Camargo*, 208 F.3d at 1134–35.

96. On July 30, 2026, Petitioner was stopped on the side of a road in the vicinity of Escondido, California, when CBP officers approached him, questioned him regarding his immigration status, and requested immigration documentation.

97. Before approaching and questioning Petitioner, the officers had not observed Petitioner entering or attempting to enter the United States, crossing the border, fleeing, attempting to evade immigration authorities, or otherwise engaging in conduct indicating that he was unlawfully present in the United States.

98. Petitioner is unaware of any specific and articulable facts known to the officers before the encounter that provided a particularized and objective basis to suspect that he was unlawfully present in the United States.

99. To the extent Respondents detained Petitioner for immigration questioning based solely upon his apparent Hispanic or Mexican ancestry, the officers lacked the individualized reasonable suspicion required by the Fourth Amendment.

100. The Ninth Circuit has recognized that immigration detention and interrogation based upon racial or ethnic profiling may constitute an egregious Fourth Amendment violation. *Sanchez v. Sessions*, 904 F.3d 643, 655–57 (9th Cir. 2018). Thus, if discovery establishes that Petitioner's apparent Hispanic or Mexican ancestry was the sole basis for detaining him for immigration questioning, the seizure constituted the type of ethnicity-based immigration detention prohibited by the Fourth Amendment.

101. Any information concerning Petitioner's immigration status obtained only after he had already been seized cannot retroactively provide reasonable suspicion for the initial seizure. The constitutionality of the seizure must be determined from the facts known to the officers

when the seizure occurred. Petitioner's actual immigration status, if discovered only as a consequence of the challenged detention and questioning, cannot itself establish that the officers possessed reasonable suspicion before the seizure occurred.

102. Accordingly, to the extent Petitioner was seized for immigration questioning without reasonable suspicion based upon specific and articulable facts particularized to him, the seizure violated the Fourth Amendment.

103. Petitioner's subsequent arrest and present physical detention resulted directly from the challenged seizure. Before that encounter, Petitioner was at liberty in the community. The seizure resulted in his arrest, and that arrest resulted in the physical custody he now challenges under 28 U.S.C. § 2241. A subsequent determination concerning Petitioner's immigration status cannot retroactively cure an unconstitutional seizure through which Respondents obtained physical custody over him. Petitioner therefore requests that this Court grant habeas relief and order his immediate release from Respondents' custody.

104. Immediate release would restore the liberty Petitioner possessed immediately before the challenged seizure. A later custody proceeding would not determine whether Respondents lawfully acquired physical custody over Petitioner in the first instance and cannot retroactively supply the reasonable suspicion required when the seizure occurred. Accordingly, where Petitioner's present detention is the direct consequence of the unconstitutional seizure challenged here, release is an appropriate habeas remedy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing Respondents to show cause, within three days of the filing of this Petition, why the relief requested should not be granted, and set a hearing within five days of Respondents' return, consistent with 28 U.S.C. § 2243;

C) Declare that Respondents' re-detention of Petitioner without constitutionally adequate pre-deprivation process, and his resulting continued detention, violate the Due Process Clause of the Fifth Amendment;

D) Declare that Respondents' continued detention of Petitioner following his re-detention without constitutionally adequate pre-deprivation process is unlawful under the Constitution and governing immigration detention framework;

E) Declare that Respondents' actions in re-detaining Petitioner without a reasoned explanation, without an individualized justification, and without complying with governing procedures were arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);

F) Set aside Respondents' unlawful action under the Administrative Procedure Act pursuant to 5 U.S.C. § 706(2)(A);

G) Declare that, if Petitioner's July 30, 2026 arrest was not preceded by a valid administrative warrant, Respondents were required to satisfy the statutory requirements for a warrantless arrest under 8 U.S.C. § 1357(a)(2), including the requirement that the arresting officers had reason to believe Petitioner was likely to escape before a warrant could be obtained;

H) Declare that, to the extent Petitioner was seized for immigration questioning without reasonable suspicion supported by specific and articulable facts particularized to him, the seizure violated the Fourth Amendment;

I) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;

J) Order Respondents to return Petitioner's personal property and identity documents, including his driver's license and any other personal belongings confiscated in connection with his detention;

K) In the alternative, order a constitutionally adequate custody hearing at which DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence, and the

neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any bond imposed;

L) Enjoin Respondents from transferring Petitioner outside this District without prior approval of this Court;

M) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other basis authorized by law; and

N) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
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Counsel for Petitioner

Dated: August 14, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided directly to me by Petitioner during my personal visit with him at the Otay Mesa Detention Center on August 11, 2026.

Based on my personal communication with Petitioner during that visit, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect the information provided to me by Petitioner.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
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Counsel for Petitioner

Dated: August 14, 2026