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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE NIXON LOPEZ CALVA,

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.: '26CV4677 JLS VET

[redacted]

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

1. Petitioner, Jose Nixon Lopez Calva, petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his detention by the Department of Homeland Security and alleges as follows:

INTRODUCTION

2. Petitioner Jose Nixon Lopez Calva is a native and citizen of Ecuador 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 detention by the Department of Homeland Security after Respondents knowingly permitted him to remain at liberty in the United States for years while actively administering his immigration proceedings and repeatedly authorizing his employment, before abruptly depriving him of that longstanding liberty without prior notice, without identifying any changed circumstances, and without providing a pre-deprivation hearing.

4. Petitioner entered the United States without inspection on or about 2001 and has resided in this country for approximately twenty-five years. He married his wife in 2017, and she subsequently became a lawful permanent resident approximately three years ago. Petitioner has longstanding family and community ties in the United States and is the beneficiary of a pending I-130 Petition for Alien Relative filed on his behalf.

5. On July 13, 2021, an Immigration Judge denied Petitioner's application for asylum and ordered Petitioner removed. Petitioner timely appealed that decision to the Board of Immigration Appeals ("BIA") on August 9, 2021. The BIA received Petitioner's appellate brief on September 26, 2022, while DHS's briefing period expired without DHS filing a brief. Nearly five years later, Petitioner's appeal remains pending and the removal order has not become administratively final.

6. Throughout the pendency of those proceedings, Respondents knew Petitioner's identity and immigration posture yet permitted him to continue residing and working openly in the United States. The Government repeatedly renewed Petitioner's employment authorization on an annual basis, affirmatively authorizing his continued employment while his immigration proceedings remained pending.

7. In 2026, while Petitioner was sitting in his parked vehicle outside his regular workplace in New Jersey waiting to begin work, ICE officers approached him and demanded documentation establishing his lawful presence in the United States. Petitioner was not committing any offense, attempting to flee, engaging in evasive conduct, or otherwise doing anything that provided an individualized basis to suspect that he was unlawfully present in the United States.

8. ICE officers thereafter arrested Petitioner. No administrative warrant was shown or presented to Petitioner before his arrest. At the time of the encounter, Petitioner provided the officers with his valid driver's license, Employment Authorization Document, and Social Security card. Respondents nevertheless took Petitioner into custody without prior notice, without providing any individualized explanation for his detention, and without identifying any changed circumstances demonstrating why Petitioner's detention had suddenly become necessary after years of knowingly permitting him to remain at liberty while actively administering his immigration case and repeatedly authorizing his employment.

9. Petitioner was subsequently transferred to the Otay Mesa Detention Center in San Diego, California, where he presently remains detained.

10. Respondents' actions violate the Due Process Clause of the Fifth Amendment. By knowingly permitting Petitioner to remain at liberty for years while actively administering his immigration proceedings and repeatedly authorizing his employment, Respondents engaged in affirmative governmental conduct giving rise to a substantial liberty interest in Petitioner's continued freedom from physical restraint.

11. The Constitution does not permit Respondents to abruptly deprive Petitioner of that longstanding liberty without prior notice, without identifying materially changed circumstances, and without providing an opportunity to be heard before a neutral decisionmaker. Before taking Petitioner into physical custody, Respondents provided no notice, no meaningful opportunity to be heard, and no individualized determination that Petitioner posed a danger to the community or a risk of flight.

12. Petitioner's detention also resulted from an interior immigration arrest during which no administrative warrant was shown or presented to Petitioner. Petitioner was sitting outside his established workplace when ICE officers approached and detained him for immigration questioning. Respondents must therefore establish that the seizure and subsequent arrest complied with the Constitution and the statutory requirements governing interior immigration arrests, including 8 U.S.C. §§ 1226(a) and 1357(a)(2).

13. Absent intervention by this Court, no neutral adjudicator will review the legality of Petitioner's detention or the antecedent seizure and arrest that resulted in his physical confinement. Petitioner therefore respectfully requests that this Court declare his detention unlawful and order his immediate release or, in the alternative, require Respondents to provide a constitutionally adequate custody hearing.

CUSTODY

14. 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

15. 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.

16. 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).

17. 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.

18. 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).

19. 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).

20. 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

21. Petitioner, Jose Nixon Lopez Calva, is a native and citizen of Ecuador currently detained at the Otay Mesa Detention Center in San Diego, California.

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

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

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

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

26. All Respondents are named in their official capacities.

STATEMENT OF FACTS

27. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California. Petitioner is a native and citizen of Ecuador who entered the United States without inspection on or about 2001 and has resided in the United States for approximately twenty-five years.

28. Petitioner married his wife in 2017. His wife subsequently became a lawful permanent resident approximately three years ago. Petitioner has longstanding family and community ties in the United States and is the beneficiary of a pending I-130 Petition for Alien Relative filed on his behalf.

29. On July 13, 2021, an Immigration Judge in Newark, New Jersey denied Petitioner's application for asylum and ordered Petitioner removed.

30. Petitioner timely appealed the Immigration Judge's decision to the Board of Immigration Appeals ("BIA") on August 9, 2021. The BIA received Petitioner's appellate brief on September 26, 2022. DHS's briefing period expired without DHS filing a brief.

31. Petitioner's appeal remains pending before the BIA. Accordingly, the Immigration Judge's removal order has not become administratively final.

32. Throughout the pendency of his immigration proceedings, Respondents knew Petitioner's identity and immigration posture yet permitted him to continue residing and working openly in the United States.

33. During this period, the Government repeatedly renewed Petitioner's employment authorization on an annual basis, affirmatively authorizing him to continue working while his immigration proceedings remained pending.

34. On July 14, 2026, Petitioner was sitting in his parked vehicle outside his regular workplace in New Jersey waiting to begin work when ICE officers approached him and demanded documentation establishing his lawful presence in the United States.

35. At the time ICE officers approached him, Petitioner was not committing any offense, attempting to flee, engaging in evasive conduct, or otherwise doing anything that provided an individualized basis to suspect that he was unlawfully present in the United States. When questioned by the officers, Petitioner provided his valid driver's license, Employment Authorization Document, and Social Security card. ICE officers thereafter arrested Petitioner. No administrative warrant was shown or presented to Petitioner before his arrest.

36. Respondents provided no prior notice, no individualized explanation, and identified no changed circumstances demonstrating why Petitioner's detention had suddenly become necessary after years of knowingly permitting him to remain at liberty while actively administering his immigration proceedings and repeatedly authorizing his employment.

37. Petitioner was afforded no opportunity to contest the deprivation of his longstanding liberty before being taken into custody.

38. Petitioner was subsequently transferred to the Otay Mesa Detention Center in San Diego, California, where he presently remains detained.

39. At no point prior to Petitioner's detention did Respondents provide notice that his longstanding liberty would be revoked, afford him an opportunity to challenge that decision before a neutral decisionmaker, or make any individualized determination that Petitioner posed a danger to the community or a risk of flight.

REQUIREMENTS OF 28 U.S.C. § 2243

40. 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).

41. 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).

42. 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

43. 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.

44. Petitioner's claim challenges Respondents' failure to provide constitutionally adequate process before depriving him of his longstanding liberty. Although an administrative custody proceeding may address whether Petitioner should remain detained going forward, it

cannot retroactively provide the process required before he was taken into physical custody or remedy the deprivation that had already occurred.

45. 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 deprive Petitioner of his longstanding liberty through civil immigration detention. That question falls outside the agency's adjudicatory competence and is properly resolved through habeas review.

46. Exhaustion is also futile because the administrative process cannot adjudicate Petitioner's claim that his July 14, 2026 arrest itself violated the statutory and constitutional requirements governing immigration arrests and seizures or that Respondents deprived him of his longstanding 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.

47. 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 years during which Respondents knowingly permitted Petitioner to remain at liberty while actively administering his immigration proceedings and repeatedly authorizing his employment 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

48. 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.

49. Petitioner entered the United States without inspection on or about 2001 and was not apprehended or detained in connection with that entry. Approximately twenty-five years later, on July 14, 2026, Respondents arrested Petitioner in the interior of the United States while he was

sitting in his parked vehicle outside his regular workplace in New Jersey waiting to begin work. His present detention therefore follows a new interior arrest rather than detention associated with his initial entry. Accordingly, Petitioner's present 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)").

50. 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).

51. 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).

52. 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.

53. 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.

54. 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.*

55. 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.

56. This distinction is particularly important where immigration officers seize an individual in the interior of the United States for immigration questioning. The subsequent

discovery or confirmation that an individual lacks lawful immigration status does not establish that officers possessed constitutionally adequate grounds to seize him before making that discovery or confirmation. 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.

57. 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.

58. Where the Government knowingly permits a noncitizen to remain at liberty for years while affirmatively administering his immigration proceedings and repeatedly authorizing his employment, that course of governmental conduct gives rise to a substantial liberty interest in remaining free from physical detention. The fact that the Government may possess statutory authority to detain the individual does not eliminate the constitutionally protected liberty interest arising from its longstanding and affirmative conduct while permitting him to remain at liberty.

59. That liberty interest is particularly significant here. Respondents knew Petitioner's identity and immigration posture, knew that his appeal remained pending before the BIA, and nevertheless permitted him to continue residing and working openly in the United States for years while repeatedly renewing his employment authorization on an annual basis. During that period, Petitioner maintained longstanding family, employment, and community ties before Respondents abruptly took him into physical custody.

60. Once the Government has knowingly permitted such longstanding liberty while engaging in affirmative conduct recognizing and administering the individual's continued presence in the United States, the Due Process Clause requires constitutionally adequate

procedures before the Government may abruptly deprive him of that liberty through 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).

61. 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 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.

62. 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.

63. Accordingly, Respondents may not lawfully deprive Petitioner of his longstanding liberty after years of knowingly permitting him to remain at liberty while actively administering his immigration proceedings and repeatedly authorizing his employment, without constitutionally adequate pre-deprivation process. Nor may Respondents sustain Petitioner's present detention through an arrest that failed to comply with the statutory and constitutional 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

Detention Without Constitutionally Adequate Pre-Deprivation Process

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

65. 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).

66. Petitioner entered the United States without inspection on or about 2001 and thereafter remained at liberty in the United States. By the time of Petitioner's removal proceedings, Respondents knew his identity and immigration posture. Following the Immigration Judge's July 13, 2021 denial of his application for asylum and resulting removal order, Petitioner timely appealed to the BIA, where his appeal remains pending. Throughout that period, Respondents permitted Petitioner to continue residing and working openly in the United States while repeatedly renewing his employment authorization on an annual basis.

67. Respondents' conduct was not limited to mere inaction or an inability to locate Petitioner. Respondents knew Petitioner's identity and immigration posture, continued administering his pending immigration proceedings, and repeatedly renewed his employment authorization while permitting him to remain physically at liberty and work openly in the United States.

68. Respondents' years of affirmative governmental conduct while knowingly permitting Petitioner to remain physically at liberty gave rise to a substantial 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). Respondents knew Petitioner's identity and immigration posture, continued administering his immigration proceedings, and repeatedly renewed his employment authorization while permitting him to live and work openly in the United States. Having maintained that course of conduct for years, Respondents could not abruptly deprive Petitioner of his longstanding liberty without constitutionally adequate process.

69. Respondents abruptly deprived Petitioner of his longstanding liberty on July 14, 2026, when ICE officers arrested him in New Jersey while he was sitting in his parked vehicle outside his regular workplace waiting to begin work. Respondents provided no prior notice that he would be taken into physical custody, afforded him no opportunity to contest his detention before a neutral decisionmaker, and made no individualized determination before his arrest that Petitioner posed a danger to the community or a risk of flight.

70. Respondents have identified no changed circumstances arising during the years in which they knowingly permitted Petitioner to remain at liberty while administering his immigration proceedings and repeatedly renewing his employment authorization that justified his sudden detention. Petitioner was not engaged in any criminal or unlawful activity when ICE officers arrested him while he was sitting in his parked vehicle outside his regular workplace waiting to begin work, and Respondents provided no individualized explanation for why his longstanding liberty was being terminated.

71. Respondents' failure to provide constitutionally adequate process before detaining Petitioner created an obvious risk of erroneous deprivation. A pre-deprivation hearing would have required Respondents to identify and substantiate any individualized basis for depriving Petitioner of his longstanding liberty and would have afforded Petitioner an opportunity to contest whether detention was necessary based on danger to the community or risk of flight.

72. A post-deprivation custody proceeding cannot remedy the deprivation of liberty that occurred when Respondents 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 longstanding liberty without the process constitutionally required before that deprivation occurred.

73. By detaining Petitioner without constitutionally adequate pre-deprivation process, Respondents deprived Petitioner of his longstanding 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)

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

75. 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).

76. 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).

77. 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).

78. Here, Respondents knowingly permitted Petitioner to remain physically at liberty for years while actively administering his immigration proceedings and repeatedly renewing his employment authorization. Respondents knew Petitioner's identity and immigration posture, yet continued permitting him to reside and work openly in the United States before abruptly taking him into physical custody on July 14, 2026.

79. Respondents identify no reasoned basis for abruptly reversing that longstanding course of conduct and taking Petitioner into physical custody after years of knowingly permitting him to remain at liberty while actively administering his immigration proceedings and repeatedly renewing his employment authorization. Respondents provided no prior notice, no individualized explanation, and no opportunity for Petitioner to contest the basis for his detention before his liberty was deprived.

80. Respondents' decision to detain Petitioner without identifying any changed circumstances, providing a reasoned explanation, or affording him constitutionally adequate pre-

deprivation process constitutes arbitrary and capricious agency action and an abuse of discretion within the meaning of 5 U.S.C. § 706(2)(A).

81. Accordingly, Respondents' decision to 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

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

83. 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.

84. 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."

85. 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.

86. On July 14, 2026, ICE officers approached Petitioner while he was sitting in his parked vehicle outside his regular workplace in New Jersey waiting to begin work and thereafter took him into custody. Petitioner was not engaged in any unlawful activity and is unaware of any individualized basis for the officers to have stopped or arrested him.

87. No administrative warrant was shown or presented to Petitioner before his arrest. Petitioner does not presently possess any Form I-200 or other administrative warrant purportedly authorizing his arrest. Accordingly, to the extent Respondents contend that Petitioner's arrest was authorized by an administrative warrant, Respondents should be required to produce that warrant and establish that it was issued before Petitioner was taken into custody.

88. 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 longstanding family, employment, and community ties in the United States and was sitting in his parked vehicle outside his regular workplace waiting to begin work when ICE officers approached him. Nothing about those circumstances indicated that Petitioner was likely to flee or escape before a warrant could be obtained.

89. Petitioner had lived and worked openly in the United States for years while Respondents knew his identity and immigration posture and repeatedly renewed his employment authorization. Nothing about the circumstances of Petitioner's July 14, 2026 encounter indicated that he was attempting to flee, evade immigration authorities, or otherwise escape before a warrant could be obtained. Accordingly, to the extent Petitioner's arrest was not preceded by a valid administrative warrant, Respondents lacked authority under 8 U.S.C. § 1357(a)(2) to arrest Petitioner without a warrant unless the statutory requirements for a warrantless arrest were satisfied.

90. Accordingly, to the extent 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

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

92. 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).

93. 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.

94. 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.

95. On July 14, 2026, ICE officers approached Petitioner while he was sitting in his parked vehicle outside his regular workplace in New Jersey waiting to begin work. The officers detained Petitioner and ultimately took him into immigration custody. Petitioner was not engaged in any unlawful activity at the time of the encounter and is unaware of any individualized basis the officers possessed before the stop to suspect that he was unlawfully present in the United States.

96. Based on the circumstances presently known to Petitioner, before approaching and detaining him, the officers had not observed Petitioner engaging in any unlawful activity, attempting to flee, attempting to evade immigration authorities, or otherwise engaging in conduct indicating that he was unlawfully present in the United States. Petitioner was simply sitting in his parked vehicle outside his regular workplace waiting to begin work.

97. 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.

98. To the extent Respondents detained Petitioner for immigration questioning without reasonable suspicion supported by specific and articulable facts particularized to him, the officers lacked the individualized reasonable suspicion required by the Fourth Amendment. Petitioner's mere presence in a parked vehicle outside his workplace did not provide an objectively reasonable basis to suspect that he was unlawfully present in the United States.

99. 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). Accordingly, to the extent the evidence establishes that Petitioner's apparent Hispanic ethnicity was used as a basis for detaining him for immigration questioning in the absence of individualized reasonable suspicion, that circumstance further supports Petitioner's Fourth Amendment claim.

100. 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.

101. 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.

102. 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.

103. 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' 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 detention without constitutionally adequate pre-deprivation process is unlawful under the Constitution and governing immigration detention framework;

E) Declare that Respondents' actions in 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 14, 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) Order Respondents to produce with their Return Petitioner's Form I-200, Warrant for Arrest of Alien, including the date and time of its issuance; Form I-213, Record of Deportable/Inadmissible Alien; Form I-286, Notice of Custody Determination; and any reports, records, or other documents identifying the factual and legal basis for Petitioner's July 14, 2026 stop, seizure, arrest, and detention;

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

K) Order Respondents to return Petitioner's personal property and identity documents, including his Employment Authorization Document, driver's license, Social Security card, and any other personal belongings confiscated in connection with his detention;

L) 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;

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

N) 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

O) 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 17, 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 to me directly by Petitioner, as well as my review of available immigration records and supporting documents.

Based on my review of that information, 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 Petitioner's circumstances and the procedural history of his detention.

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

Dated: August 17, 2026