UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

FRANCISCO JAVIER OJEDA PERALTA
AGENCY No [redacted]

PETITIONER,

v.

MARKWAYNE MULLIN,

Secretary, U.S. Department of Homeland Security, et. al.,

RESPONDENTS.

PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FRANCISCO JAVIER OJEDA-PERALTA,

Petitioner,

v.

Kristi NOEM, in her official capacity as Secretary of Homeland Security, Christopher J. LAROSE, in his official capacity as Warden of Otay Mesa Detention Center, Gregory J. ARCHAMBEAULT, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; and Pamela BONDI, U.S. Attorney General; IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. '26CV4795 JLS DDL

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Francisco Javier Ojeda Peralta, petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully and states as follows:

INTRODUCTION

1. Petitioner Francisco Javier Ojeda Peralta is an Ecuadorian asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He was persecuted in Ecuador and properly and timely submitted an asylum application to the United States Citizenship and Immigration Service.

2. Petitioner was last and arbitrarily detained on August 10, 2026.

3. On or about May 8, 2022 Mr. Ojeda Peralta entered the United States and was paroled by Customs and Border Protection. He was placed on ATD and has been issued call in letters for appointments with Immigration and Customs Enforcement and Mr. Ojeda Peralta faithfully attended each and every immigration court hearing he was required to attend. Petitioner properly submitted his asylum application to the United States Citizenship and Immigration Service. He was subsequently granted employment authorization. His asylum application remains pending.

4. Respondent was apprehended while driving to work. He had a valid employment authorization document, driver's license and informed the Department of Homeland Security that he had an I-589 pending. Despite this, he was taken into custody on August 10, 2026. This is especially concerning where record checks would have revealed that an I-589 application for asylum was pending with Respondent's own agency.

5. The U.S. Constitution requires the Respondents provide at least the rights available to him when he filed his application for asylum.

6. The Constitution protects Mr. Ojeda Peralta.—and every other person present in this country—from arbitrary deprivations of his liberty, and guarantees due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

7. Mr. Ojeda Peralta seeks declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by DHS since being unlawfully detained on August 10, 2026, without first being provided a due process hearing to determine whether incarceration is justified.

8. Absent review in this Court, no other neutral adjudicator will examine Mr. Ojeda's plight: Respondents will continue—unchecked—to detain his unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

9. For the reasons outlined below, Mr. Ojeda Peralta's arrest and inability to contest his arbitrary detention violate his statutory and constitutional rights, including Due Process protections under the U.S. Constitution. Mr. Ojeda Peralta respectfully requests that this Court should grant the instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to prevent such harms from recurring. Mr. Ojeda Peralta also asks this Court to find that Respondents' attempts to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district.

JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq.

11. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).

12. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-LH v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andre*ws, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

13. This 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., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

14. Venue is proper because Petitioner is in Respondents' legal and physical custody at Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondents' legal and physical custody, including his current and ongoing detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition must be addressed to the federal district court of confinement);

Wairimu v. Dir., Dep't of Homeland Sec., No. 19-CV-174-BTMMDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the Court otherwise has personal jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.

15. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

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

16. 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 for good cause additional time, not exceeding twenty days, is allowed." Id.

17. 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).

18. Mr. Ojeda Peralta 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 San Diego, California. He is under Respondents' and their agents' direct control

PARTIES

19. Mr. Ojeda Peralta ("Petitioner") is a 41-year-old citizen of Nicaragua born on the [redacted]. He arrived in the U.S. on or about May 8, 2022, with his wife and daughter to seek asylum, withholding of removal, or protection under the Convention Against Torture after fleeing persecution in Ecuador. On August 10, 2026 on his way to work Petitioner was arrested and since that date has remained in Respondent's custody. He has a Master Calendar Hearing scheduled August 27, 2026 at 8am. He has a asylum application pending that he submitted within one year of entering the United States on May 6, 2023. He has a nine year old daughter and a 14 month old US Citizen baby, [redacted] Ojeda Calderon born the [redacted], with his wife who also entered with him and requested asylum. They have lived at the same address for over two years and have presented income taxes and required.

20. Mr. Ojeda Peralta 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.

21. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. Ojeda Peralta is detained. LaRose is responsible for the day-to-day operations and confinement of noncitizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Ms. N.A. and is named in his official capacity.

22. Respondent Gregory Archambault is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Gregory Archambault is

Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

23. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

24. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

25. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

26. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. Petitioner has no administrative remedies to exhaust.

28. After Respondents' arrest of Mr. Ojeda Peralta, he then received a new NTA which was filed before the Otay Mesa Immigration Court to initiate his INA section 240 immigration proceedings while he remains detained at Otay Mesa Detention Center.

29. Respondent was paroled into the United States and released. He is now detained under 8 USC 1225(b)(1), a writ of habeas corpus is the sole avenue to vindicate Mr. Ojeda Peralta's constitutional, statutory, and regulatory rights and restore his liberty.

LEGAL FRAMEWORK

30. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

31. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

32. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

33. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinions and if they are unable or unwilling

to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

34. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

35. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

36. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

37. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

38. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

39. 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).

40. On information and belief, Mr. Ojeda Peralta avers that Respondent's used the ATD system to apprehend any and all immigrants possible with the purpose of divesting them of their due process rights in his properly filed asylum application.

41. 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 under the Refugee Act.

CLAIM FOR RELIEF

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

42. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs 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 nonarbitrary. See U.S. v. Trimble, 487 F.3d 752, 757 (9th Cir. 2007)

45. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." Id.

46. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, see id. §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, see id. § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, see id. §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, see id. § 1229a(c)(6)-(7).

47. Mr. Ojeda Peralta 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...").

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

49. Here, Mr. Ojeda Peralta. was not advised by DHS that they sought to take him into custody, depriving him of his liberty interest and the bundle of rights associated with his original pending asylum application in violation of due process. 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. Ojeda Peralta after he submitted his Asylum Application (Form I-589), declaration, and corroborating evidence to the United States Citizenship and Immigration Service.

COUNT TWO

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

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

51. 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).

52. 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)).

53. 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)

54. The INA provides that Respondents may, as they did in 2022 in Petitioner's case, release an individual from apprehension or custody based on an individualized determination of their danger and flight risk. See 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

55. 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.

56. By categorically revoking Mr. Ojeda Peralta's release from DHS custody, and detaining him without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

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

58. Respondents have made no finding that Petitioner is a flight risk because, in fact, he was arrested while his asylum application was pending.

59. On information and belief, by detaining Mr. Ojeda Peralta 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. Ojeda Peralta's specific facts or circumstances that support the revocation of his release from custody on his own recognizance.

60. Respondents have already considered Mr. Ojeda Peralta's facts and circumstances and determined that he was not a flight risk or danger to the community. On information and belief, there have been no changes to the facts of Mr. Ojeda Peralta's proceedings that justify this revocation of his release from DHS custody. The fact that Mr. Ojeda Peralta has previously been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider Mr. Ojeda Peralta, on an individualized basis, to be a danger to the community or a flight risk.

COUNT THREE

Violation of the Fourth Amendment of the Constitution

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

62. 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).

63. 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. McLaughl*in, 500 U.S. 44, 57 (1991).

64. 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).

65. MR. Ojeda Peralta at the moment of the arrest by Respondents, was lawfully present based on Respondents' prior grant of release from DHS custody. He did not receive any judicial determination of probably cause for his arrest or continued detention by Respondents.

66. 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. Ojeda Peralta was granted release from DHS custody in 2022 and did not pose any danger to any person in the community at large.

67. Respondents' warrantless arrest of Mr. Ojeda Peralta constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment

COUNT FOUR

VIOLATIONS OF THE FOURTH AMENDMENT OF THE CONSTITUTION

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

69. 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).

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71. 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).

72. Mr. Ojeda Peralta at the moment of the arrest by Respondents, was lawfully present based on Respondents' prior grant of release from DHS custody. He did not receive any judicial determination of probably cause for his arrest or continued detention by Respondents.

73. 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. Ojeda Peralta. was granted release from DHS custody in 2022 and did not pose any danger to any person in the community at large.

74. Respondents' warrantless arrest of Mr. Ojeda Peralta constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT FIVE

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

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

76. 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).

77. Mr. Ojeda Peralta has a fundamental interest in liberty and being free from official restraint.

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

79. 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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

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

c. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

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

e. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

f. Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

g. Alternatively issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 7 days to meaningfully consider his eligibility for release from DHS custody;

h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

i. Grant any other and further relief that this Court deems just and proper.

DATED this 21 of August, 2026.

/s/ Stephanie M Alcala

Attorney for Petitioner