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Detained

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of:

PIRELA ASCON, Diany Yackelin

Petitioner,

v.

Warden of the Otay Mesa
Detention Facility, Current or Acting Field
Office Director, San Diego Field Office,
United States Immigration and Customs
Enforcement; Current or Acting Director,
United States Immigration and Customs
Enforcement; Current or Acting Secretary,
United States Department of Homeland
Security; and Current or Acting United
States Attorney General,

Respondents.

File No.: **'25CV1111 LL BLM**

A 

**Consolidated Petition for Writ
of Habeas Corpus & Injunction**

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release Petitioner from detention and an injunction to obtain medical records due to Petitioner's medical condition, as follows:

INTRODUCTION

1. Petitioner was detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center pending removal proceedings. Petitioner was to be removed from the country on April 30, 2025, however, Petitioner fainted during the process of removal and was taken to the Otay Mesa infirmary for medical treatment.
2. Before the attempted removal from the county on April 30, 2025, Petitioner was detained in immigration custody since April 8, 2025.
3. Petitioner, through counsel, filed ICE Form I-246 on August 8, 2025, for a Stay of Removal based on humanitarian reasons. Petitioner's minor sibling requires follow up treatment and observation for various physiological and behavioral issues.
3. Petitioner's medical complications stem from her pregnancy. Petitioner's partner is a U.S. citizen.
4. As such, Petitioner respectfully requests that this Court issue a writ of habeas corpus, to release Petitioner so she can seek medical treatment for her medical complications and her pregnancy.
5. Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release due to medical concerns within 30 days unless Respondents schedule a hearing before an IJ where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk

that Petitioner's release would present; and (2) if the government cannot meet its burden, the IJ shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

6. Additionally, Petitioner requests an injunction to obtain copies of the relevant medical records from Otay Mesa Detention Center concerning her medical complications on April 30, 2025, and confirming the Petitioner's pregnancy.

JURISDICTION

8. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center from April 8, 2025, until her attempted removal on April 30, 2025.

9. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

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

STATEMENT OF FACTS

11. Petitioner is a noncitizen who was detained at Otay Mesa detention center pending immigration removal proceedings.

12. Petitioner was detained in DHS custody since April 8, 2025, before her attempted removal from the country April 30, 2025.

13. During Petitioner's attempted removal, she experienced health complications due to her pregnancy and required medical attention.

14. Petitioner is still in DHS custody and requests release due to her medical complications. Her release is justified on medical grounds and Petitioner poses no danger or flight risk.

15. Absent intervention by this Court, Petitioner cannot and will not be released in order to seek medical attention, nor will she be able to obtain copies of the medical records from Otay Mesa Detention Center concerning her medical complications and her pregnancy.

LEGAL ARGUMENT

16. Courts have recognized the significance of the habeas statute in protecting individuals from unlawful detention, which affords "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination of petitions).

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

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

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

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

21. The test for procedural due process claims, the *Mathews* test balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting cases doing the same). Here, each factor weighs in Petitioner’s favor, and Petitioner’s release is justified due to her medical complications stemming from her pregnancy. Petitioner poses no danger to the community nor is a flight risk.

22. Additionally, the Petitioner’s injunction should be granted to have Otay Mesa Detention Center produce the medical records concerning her medical complications and her pregnancy. To be granted a preliminary injunction, one must establish “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence

of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

23. Here, each factor tips in Petitioner’s favor. Petitioner is likely to succeed on the merits of her claim to obtain copies of her protected health information (“PHI”) from Otay Mesa Detention Center. Seeing as Petitioner and her attorneys of record are requesting a release of her PHI in writing from Otay Mesa Detention Center, Petitioner can show her likelihood of obtaining said records by providing written authorization from Petitioner herself and her legal representatives. Second, Petitioner will suffer irreparable if copies of her medical records are not released by Otay Mesa Detention Center. The harm she will suffer due to her pregnancy and the medical complications she faced during her attempted removal cannot be compensated by monetary damages. The physical, emotional, and mental harm Petitioner will suffer without knowing the exact nature of her medical complications is sufficiently serious, especially when her complications stem from pregnancy. The physical harm to Petitioner herself and her child is potentially permanent and sufficiently serious to demonstrate irreparable harm if Petitioner does not obtain copies of her medical records. Finally, the balance of equities clearly tips in Petitioner’s favor and an injunction is in the public interest. Petitioner’s interest in her own health and well-being during her pregnancy clearly outweighs the government’s and Otay Mesa Detention Center’s interest in holding her medical records. An order for her medical records to be released so Petitioner can obtain copies prevents further physical, emotional, and mental harm to Petitioner and her family, and furthers public health.

24. Thus, Petitioner should be granted a preliminary injunction to obtain copies of her relevant medical records from Otay Mesa Detention Center.


Respectfully Submitted,

//s// Mario Portugal

Mario Portugal, Esq.
Attorney for the Petitioner

PROOF OF SERVICE

Petitioner's Name: **Diany Yackelin PIRELA ASCON**

Petitioner's File No: A 

On 05/01/2025, Denisse Alvarado, served a copy of this CONSOLIDATED PETITION FOR WRIT OF HABEAS CORPUS & INJUNCTION, to the Department of Homeland Security, Immigration and Customs Enforcement, Office of the Chief Counsel, at 880 Front Street, Suite 2246 San Diego, CA 92101, by:

☐ Personal delivery

☐ First-class mail

☒ Electronic mail.

//Denisse Alvarado//

Signature

05/01/2025

Date