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Detained

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

In the Matter of:

RINCON BOHORQUEZ, Omar Jose

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.: **'25CV1375 AGS MSB**

A

**Consolidated Petition for Writ
of Habeas Corpus & Injunction To
Produce Respondent**

**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 remedy Petitioner's unlawful detention and transfer to EL Salvador by Respondents, as follows:

INTRODUCTION

1. Petitioner was detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center pending removal proceedings. Petitioner was removed from the country on March 15, 2025, pursuant to the Alien Enemies Act.
2. Before being removed from the county on March 15, 2025, Petitioner was detained in immigration custody for over seven even though no neutral decisionmaker—whether a federal judge or immigration judge ("IJ")—has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.
3. Petitioner's prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.
4. As such, Petitioner respectfully requests that this Court issue a writ of habeas corpus, to produce Respondent to the individual hearing scheduled on May 9, 2025, at 1 pm.
5. The Respondent is now detained in El Salvador, and all relevant factors indicate that ICE is required to physically produce the Respondent via injunction in advance of hearings for attorney-client preparation. Pursuant to due process and INA § § 240(b)(2)(A), (b)(4). Relevant factors include difficulties communicating at a distance, such as time differences, interpreter challenges, lack of VAV at detention location, etc. Also, the necessity for medical or psychological evaluation.
6. The Respondent was transferred to El Salvador on March 15, 2025. Respondent pro bono counsel is based in San Diego, California. Respondent's Counsel address is 1455 Frazee Road,

Suite 500, San Diego, CA 92108. The Respondent's right to counsel will be interfered with if he remains in El Salvador.

7. Alternatively, Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release 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.

JURISDICTION

8. Petitioner was detained in the custody of Respondents at Otay Mesa detention center but was transferred to El Salvador on March 15, 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.

10. Judicial review of challenges to prolonged immigration detention has been preserved by Congress. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (determining that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see*

also id. at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal”) (internal quotation marks and brackets omitted).

VENUE

11. 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

12. Petitioner is a noncitizen who was detained at Otay Mesa detention center pending immigration removal proceedings for over seven months. Petitioner is pursuing the following claims in removal proceedings: his I-589 application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”).

13. Petitioner was detained in DHS custody since August 2024 before being removed from the country to El Salvador on March 15, 2025.

14. Petitioner has not been provided a bond hearing before a neutral decisionmaker to determine whether their prolonged detention is justified based on danger or flight risk.

15. The Immigration Court lacks jurisdiction and authority to provide Petitioner with a bond hearing to determine whether Petitioner’s detention is justified. *See* 8 U.S.C. §§ 1225(b); 1226(c). There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before a neutral decisionmaker.

16. Absent intervention by this Court, Petitioner cannot and will not be provided with a bond hearing by a neutral decisionmaker to assess Petitioner’s continued detention.

LEGAL ARGUMENT

17. 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).

18. 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.

19. “‘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)).

20. 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).

21. 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.

22. Detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529-30. “[O]nce the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged” (cleaned up) *Rodriguez Diaz v. Garland*, 53

F.4th 1189, 1091 (9th Cir. 2022) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)).

23. 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, requiring this Court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention, especially because Petitioner has been removed from the country, and continues to be detained in El Salvador. As an alternative, the Respondent's injunction should be granted to produce the Respondent for his individual hearing on June 20. 2025, at 1 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mario Portugal", with a stylized flourish at the end.

Mario Portugal, Esq.

Attorney for the Respondent

PROOF OF SERVICE

Respondent's Name: **Omar Jose RINCON BOHORQUEZ**

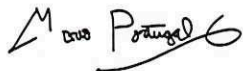
Respondent's File No: A 

On 05/09/2025, Denisse Alvarado, served a copy of this RESPONDENT'S CONSOLIDATED PETITION FOR WRIT OF HABEAS CORPUS & INJUNCTION., to the Department of Homeland Security, Immigration and Customs Enforcement, Office of the Chief Counsel, at 500 12th Street, S.W., Stop 5902, Washington, DC 20536, by:

☐ Personal delivery

☐ First-class mail

☒ Electronic mail.



Signature

05/09/2025

Date