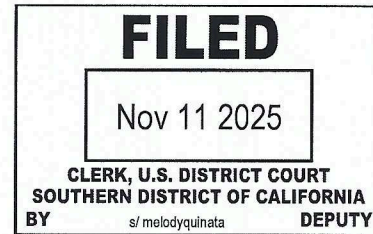


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Detained

Attorney for Antonio MARTINEZ OCAMPO



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

In the Matter of:

File No.: **'25CV3120 JO VET**

MARTINEZ OCAMPO, ANTONIO



Petitioner,

**Consolidated Petition for Writ of
Habeas Corpus and Order To Show
Cause Within Three Days**

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary,
U.S. Department of Homeland Security

Respondents.

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

PETITIONER'S PETITION FOR WRIT OF HABEAS
In the Matter of Antonio MARTINEZ OCAMPO

1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
3 release Petitioner from detention.
4

5 **INTRODUCTION**

6 1. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) at the Otay
7 Mesa Detention Center pending removal proceedings since or about August 7, 2025.

8 2. However, Petitioner has a pending I-130 application with USCIS.

9 3. Petitioner is a citizen of Mexico who entered the United States for the last time through
10 the Southern Border in 1999, and the immigration officer did not question him or request any
11 documentation. The officer simply let Mr. Martinez Ocampo return to the United States to be
12 with his family.
13

14 4. Petitioner has resided continuously in the U.S. for more than 25 years, spending most
15 of his adult life in the United States. He is the father of four U.S. citizens.

16 5. On or August 7, 2025, Petitioner came to the attention of ICE during routine A-File
17 review and docket management. It was determined that Mr. Martinez Ocampo was not in
18 possession of valid immigration documents. He was charged removable under INA §
19 212(a)(6)(A)(i), Alien Present Without Admission or Parole.
20

21 6. Petitioner now challenges his continued detention, which has caused significant
22 hardship to him and his family, and seeks relief to avoid separation from his U.S. citizen
23 children and the community he has called home for nearly two decades.
24

25 **JURISDICTION**

26
27 7. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center.
28

1 8. This action arises under the Due Process Clause of the Fifth Amendment of the U.S.
2 Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas
3 corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative
4 Procedure Act. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
5 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
6 § 1651.

8 VENUE

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

12 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

13 10. The Court must grant the petition for writ of habeas corpus or issue an order to show
14 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
15 U.S.C. 2243. If an OSC is issued, the Court must require Respondents to file return “within
16 three days unless 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
18 from unlawful detention. The Great Writ has been referred to as “perhaps the most important
19 writ known to the constitutional law of England, affording as it does a swift and imperative
20 remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

21 11. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because he was
22 arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention
23 center in Otay Mesa, California. He is under Respondents’ and their agents’ direct control.
24
25

26 STATEMENT OF FACTS

27 12. Petitioner is a 63-year-old citizen and national of Mexico.
28

1 Petitioner is a citizen of Mexico who entered the United States for the first time through the
2 Southern Border in 1980. Mr. Martinez Ocampo was granted voluntary departure by an
3 immigration judge on about January 4, 1999. After leaving the United States, he returned
4 through the Southern Border and the immigration officer did not question him or request any
5 documentation. The officer simply let Mr. Martinez Ocampo return to the United States to be
6 with his family.
7

8 13. Petitioner has resided in the United States for the more than 20 years, where he has
9 established deep ties to the community.

10 34. Petitioner is the father of six children, five of which are U.S. citizens and one of whom
11 is a DACA recipient, who depend on him for emotional and financial support.

12 14. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center pending
13 immigration removal proceedings. Petitioner remains detained at Otay Mesa Detention Center.

14 15. Petitioner was detained in DHS custody since August 7, 2025. Petitioner is still in DHS
15 custody and requests release. Petitioner poses no danger or flight risk.

16 16. Petitioner is the parent of six children, five of whom are United States Citizens, and one
17 of whom is a recipient of Deferred Action for Childhood Arrivals (DACA).
18

19 17. In January 1999, Petitioner was granted voluntary departure from an Immigration Judge
20 and complied with the terms of that order.

21 18. Petitioner was previously arrested on October 16, 2015, for a violation of California
22 Vehicle Code 23152(b) (DUI). Petitioner has no other criminal history since that arrest.
23

24 19. Petitioner acknowledged that he is not in possession of any valid documents and stated
25 that he last entered the United States on or about September 10, 1999.

26 20. Petitioner has significant ties to the United States, including his six children and wife,
27 and has demonstrated rehabilitation and good moral character since his prior arrest.
28

1 21. On August 7, 2025, the Petitioner requested a custody redetermination hearing, and it
2 was granted by the immigration judge (IJ). However, the Department of Homeland Security
3 (DHS) has reserved its appeal, and the Respondent continues to be detained. DHS filed the
4 baseless appeal on September 12, 2025.³⁶ Petitioner applied for I-130, being sponsored by his
5 daughter.

6 22. On August 7, 2025, Mr. Martinez Ocampo was issued a Notice to Appear.

7 23. Petitioner has been detained since or about August 7, 2025.

8 **PARTIES**

9 24. Mr. Martinez Ocampo (“Petitioner”) is a 63-year-old citizen and national of Mexico. He
10 first came to the USA in 1980. He was granted amnesty in 1986, but did not update his address
11 to receive letters, and his amnesty was revoked in 1995. In 1999, he went to Immigration Court
12 and was granted voluntary departure. Upon his return to the United States, immigration officers
13 did not ask for documentation or stop him for questioning. He is married. He has six children.
14 He was detained by ICE while driving. He has one criminal conviction. Since the arrest on or
15 about August 7, 2025, Mr. Martinez Ocampo has remained in Respondents’ custody.

16 25. Mr. Martinez Ocampo is currently residing in Respondents’ custody at Otay Mesa
17 Detention Center in San Diego, California, as of the time of the filing of this petition.

18 26. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa
19 Detention Center in San Diego, California, where Mr. Martinez Ocampo is detained. LaRose is
20 responsible for the day-to-day operations and confinement of non-citizens detained at that
21 facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a
22 custodian of Mr. Martinez Ocampo and is named in his official capacity.

23 27. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in San Diego,
24 California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for
25 local custody decisions relating to non-citizens charged with being removable from the U.S.,
26
27
28

1 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field
2 Office's area of responsibility includes San Diego and Imperial Counties in California.

3 Respondent Divver is a custodian of Mr. Martinez Ocampo and is named in his official
4 capacity.
5

6 28. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority
7 over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
8 decisions relating to non-citizens charged with being removable from the U.S., including the
9 arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian
10 of Mr. Martinez Ocampo and is named in his official capacity.
11

12 29. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over the
13 actions of all other DHS Respondents in this case, as well as all operations and federal agencies
14 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with
15 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
16 1103(a). Respondent Noem is a custodian of Mr. Martinez Ocampo and is named in her official
17 capacity.
18

19 30. Respondent ICE is responsible for local custody decisions relating to non-citizens
20 charged with being removable from the U.S., including the arrest, detention, custody status, and
21 removal of non-citizens.
22

23 31. Respondent DHS is the federal agency that has authority over the actions of ICE and all
24 other DHS Respondents.

25 32. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem
26 (collectively, "Respondents") all in their official capacities.
27
28

1 EXHAUSTION OF ADMINISTRATIVE REMEDIES

2 33. The IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who
3 entered the country without inspection were not considered detained under 8 U.S.C. § 1225 or
4 automatically subject to expedited removal. *See* Inspection and Expedited Removal of Aliens,
5 Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62
6 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under §
7 1226(a). *See id.*

8
9 34. Thus, in the decades that followed, most people who entered without inspection—unless
10 they were subject to some other detention authority—received bond hearings. That practice was
11 consistent with many more decades of prior practice, in which noncitizens who were not
12 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8
13 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
14 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
15

16 35. Immigration detention should not be used as a punishment and should only be used
17 when, under an individualized determination, a noncitizen is a flight risk because they are
18 unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533
19 U.S. 678, 690 (2001).
20

21 36. On information and belief, Mr. Martinez Ocampo alleges that Respondents detained him
22 for the purpose of divesting him of his due process rights in his properly filed cancellation of
23 removal for certain non-legal permanent residents.
24

25 37. Petitioner has significant ties to the United States, including his six children and wife,
26 and has demonstrated rehabilitation and good moral character since his prior arrest.
27
28

1 38. On August 7, 2025, the Petitioner requested a custody redetermination hearing, and it
2 was granted by the immigration judge (IJ). However, the Department of Homeland Security
3 (DHS) has reserved its appeal, and the Respondent continues to be detained. DHS filed the
4 baseless appeal on September 12, 2025.

5
6 39. On information and belief, Respondents are using the immigration detention system,
7 including extra-territorial transfer and detention, as a means to punish individuals for asserting
8 rights.

9
10 **LEGAL ARGUMENT**

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

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

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

21
22 43. Due process requires “adequate procedural protections” to ensure that the government’s
23 asserted justification for physical confinement “outweighs the individual's constitutionally
24 protected interest in avoiding physical restraint.” *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001)
25 (internal quotation marks omitted).
26
27
28

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

4 45. The test for procedural due process claims, the *Mathews* test balances: (1) the private
5 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
6 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
7 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No.
8 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
9 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
10 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting
11 cases doing the same). Here, each factor weighs in Petitioner’s favor, and Petitioner’s release is
12 justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no
13 danger to the community, nor is a flight risk.

14
15
16 **CAUSES OF ACTION**

17 **COUNT ONE**

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

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

22 47. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
23 federal government from depriving any person of “life, liberty, or property, without due process
24 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,
25 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
26 permanent.” *Zadvydas*, 533 U.S. at 693.

27 48. Due process requires that government action be rational and non-arbitrary. *See U.S. v.*
28 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

1 49. Moreover, Mr. Martinez Ocampo has a vital liberty interest in remaining free from DHS
2 custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal.
3 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June
4 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
5 apprehension “has a substantial private interest in remaining out of custody” which includes an
6 interest in “...obtaining necessary medical care, [and] maintaining her relationships in the
7 community...”). While on release from DHS custody, Mr. Martinez Ocampo was building his
8 emotional support system and his family.

9 50. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
10 “...after that individual is released from custody, he has a protected liberty interest in remaining
11 out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7
12 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
13 2084921, at *3 (N.D. Cal. July 24, 2025)).

14 51. Here, Mr. Martinez Ocampo was detained on an ordinary car ride. He did not expect to
15 be taken into custody since he had been living in the United States continuously for more than
16 20 years without an issue. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)
17 (requiring notice and an opportunity to be heard before deprivation of a legally protected
18 interest). Nor has the government identified any materially changed circumstances that would
19 warrant detaining Mr. Martinez Ocampo.

20 COUNT TWO

21 **Violation of Fifth Amendment Right to Due Process -**

22 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.**

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

25 53. Administrative rules “will not be construed to have retroactive effect unless their
26 language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When
27 a “new provision attaches new legal consequences to events completed before its enactment”
28 the new provision is not retroactive unless it is unmistakably clear.

54. The January 2025 designation does not unmistakably apply to individuals who entered
the United States prior to its effective date and were already in removal proceedings. The

1 designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*,
2 533 U.S. 289, 291 (2001).

3 55. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. §
4 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive
5 effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320,
6 328, n.4 (1997) (requiring statutory language to be "so clear that it could sustain only one
7 interpretation").

8 56. Accordingly, Respondents unlawfully subjected Mr. Martinez Ocampo to indefinite
9 detention.

10 **COUNT THREE**

11 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance**
12 **with Law and in Excess of Statutory Authority Violation of 8**
13 **C.F.R. § 239.2(c)**

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

16 58. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in
17 accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction
18 authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. §
19 706(2)(A)-(D).

20 59. Once a removal proceeding has been initiated, regulations enumerate the reasons for
21 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss,
22 the Immigration Judge must make "an informed adjudication . . . based on an evaluation of the
23 factors underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

24 60. The initiation of expedited removal proceedings is not an enumerated ground upon
25 which a removal proceeding may be dismissed.

26 61. It is a well-established administrative principle that "agency action taken without lawful
27 authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35
28 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*
Hooks v. Kitsap Tenant Support Servs., Inc., 816 F.3d 550, 555 (9th Cir. 2016) (invalidating
agency action because it was taken by unauthorized official).

62. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy sub silentio or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.”).

63. In deciding to detain Mr. Martinez Ocampo, Respondents further violated the APA by “entirely fail[ing] to consider an important aspect of the problem” – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering “particular reliance interests” is arbitrary and capricious in violation of the APA).

64. The arbitrary and capricious detention of Mr. Martinez Ocampo was not made in furtherance of an enumerated reason set forth in the regulations and causes Mr. Martinez Ocampo irreparable harm. For these reasons, the Court should find that the decision to detain Mr. Martinez Ocampo is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

COUNT FOUR

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

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

66. 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).

1 67. An action is an abuse of discretion if the agency “entirely failed to consider an important
2 aspect of the problem, offered an explanation for its decision that runs counter to the evidence
3 before the agency, or is so implausible that it could not be ascribed to a difference in view or the
4 product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
5 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
6 463 U.S. 29, 43 (1983)).

7 68. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for
8 its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
9 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

10 69. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
11 explained the process of discretionary release from custody in immigration cases and noted that
12 before revoking the release, the non-citizen must be given written notice of the impending
13 revocation, which must include a cogent description of the reasons. Under the APA, non-
14 citizens are entitled to determinations related to their release revocations that are not arbitrary,
15 capricious or an abuse of discretion. *See id.* at *10.

16 70. By detaining Mr. Martinez Ocampo without notice or consideration of his individualized
17 facts and circumstances, Respondents have violated the INA, implementing regulations, and the
18 APA.

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

20 72. Respondents have made no finding that Petitioner is a flight risk.

21 73. On information and belief, by detaining Mr. Martinez Ocampo categorically and without
22 notice, Respondents have further abused their discretion because, since the agency made its
23 initial custody determination, on information and belief, there have been no changes to Mr.
24 Martinez Ocampo’s specific facts or circumstances that support his detention.

25 COUNT FIVE

26 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance 27 with Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1225(b)**

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

1 75. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
2 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
3 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

4 76. Congress has made it clear that the expedited removal statute does not apply and may
5 not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It
6 further applies to the non-citizens seeking admission. *Id.* § 1225(b)(2).

7 77. Because Mr. Martinez Ocampo is not subject to the January 2025 Designation,
8 Respondents’ use of the January 2025 designation to detain him while his INA section 240
9 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.

10 **COUNT SIX**

11 **Violation of the Fourth Amendment of the Constitution**

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

14 79. The Fourth Amendment protects “[t]he right of the people to be secure in their persons .
15 . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has
16 recognized that immigration arrests and detentions are “seizures” within the meaning of the
17 Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
18 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
19 person).

20 80. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
21 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
22 determination can occur either before the arrest, in the form of a warrant, or promptly afterward,
23 in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a
24 person, including of a noncitizen, absent a neutral judicial determination of probable cause
25 violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
26 *McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of
27 detention, which includes weekends, unless there is a bona fide emergency or other
28 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

81. 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

1 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8
2 C.F.R. § 287.8(c)(2)(ii).

3 82. Mr. Martinez Ocampo did not receive any judicial determination of probable cause for
4 his arrest or continued detention by the Respondents.

5 83. The Government cannot salvage this seizure by invoking generalized immigration
6 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and
7 demands individualized justification for both the arrest and the extended detention. *See United*
8 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr.
9 Martinez Ocampo was granted voluntary departure in 1999 and did not pose any danger to any
10 person in the community at large.

11 84. Respondents’ arrest of Mr. Martinez Ocampo constitutes an unreasonable and unlawful
12 seizure in violation of the Fourth Amendment.

13 **COUNT SEVEN**

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

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

18 86. The government may not deprive a person of life, liberty, or property without due
19 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
20 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
21 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

22 87. Mr. Martinez Ocampo has a fundamental interest in liberty and being free from official
23 restraint.

24 88. The government’s detention of Petitioner without notice or an opportunity to be heard
25 before detention violates his right to due process.

26 89. The government’s detention of Petitioner without a meaningful bond and custody
27 redetermination hearing to determine whether he is a flight risk or danger to others violates his
28 right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;

- 1 (2) Issue an Order to Show Cause ordering Respondents to show cause why this
- 2 Petition should not be granted within three days;
- 3 (3) Declare that Petitioner's detention without an individualized determination
- 4 violates the Due Process Clause of the Fifth Amendment;
- 5 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
- 6 redetermination hearing violates the INA, APA, and Due Process;
- 7 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
- 8 custody;
- 9 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
- 10 district without the Court's approval;
- 11 (7) Issue an Order requiring Respondents to provide a bond and custody
- 12 redetermination hearing within 14 days to meaningfully consider his eligibility for
- 13 release from DHS custody;
- 14 (8) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal
- 15 Access to Justice Act, and on any other basis justified under law;
- 16 (9) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 17 (10) Grant any and all other further relief this Court deems just or proper.

18 Respectfully Submitted,

19 /S/ Mario Portugal
20 Mario Portugal, Esq.
21 Attorney for the Petitioner
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