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 12  
 13 UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

14 Jose Montero-Martinez,  
 15  
 16 Petitioner,  
 17  
 18 v.  
 19 John Mattos, NSDC Warden; Michael  
 20 Bernacke, Field Director, West Valley City  
 Office of ICE ERO; Todd Lyons, ICE  
 Acting Director; Kristi Noem DHS  
 Secretary; Pam Bondi, U.S. Attorney  
 General, et al.,  
 21 Respondents.

Case No. 2:25-cv-02391-CDS-DJA  
**First Amended § 2241 Petition**

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1 INTRODUCTION

2 This habeas petition challenges Petitioner Jose Montero Martinez’s detention  
3 in ICE custody. ICE’s decision to detain him was based on a factual error so stark  
4 that it renders Petitioner’s continued detention unconstitutional. In declaring that  
5 Montero’s re-detention was warranted, immigration authorities repeatedly relied on  
6 an arrest that never occurred, in a city he has never visited, for an offense he  
7 demonstrably did not commit.

8 Montero entered the United States in 2020 and sought asylum from Cuba.  
9 Although his asylum application was denied, his appeal remains pending before the  
10 Ninth Circuit Court of Appeals, and no final order of removal has issued. He was  
11 previously granted release on a \$10,000 bond under 8 U.S.C. § 1226(a). That liberty  
12 was revoked only after ICE asserted—incorrectly—that Montero had been arrested  
13 for driving under the influence in Salt Lake City on May 21, 2025. In reality,  
14 Montero was arrested in Las Vegas on May 21, 2025, for minor traffic-related  
15 offenses, making it factually impossible for him to have been arrested in Utah for a  
16 DUI on the same date. That asserted DUI arrest is demonstrably false: Montero has  
17 never been to Salt Lake City, and Utah court records confirm he has never been  
18 charged with any offense in that state. Yet ICE revoked his bond on this false  
19 premise, and an Immigration Judge later denied custody redetermination while  
20 expressly relying on the same nonexistent arrest. Despite Montero’s repeated efforts  
21 to correct the record through administrative channels, the error persisted and  
22 continues to serve as the main justification for his detention.

23 The Constitution does not permit the government to incarcerate a person  
24 based on facts that are untrue. Nor do the Immigration and Nationality Act and  
25 implementing regulations authorize bond revocation absent a genuine change in  
26 circumstances, let alone one that never happened. Because Montero’s continued  
27 detention rests upon a materially false factual predicate, it violates the Due Process  
Clause of the Fifth Amendment and is arbitrary and capricious under the  
Administrative Procedure Act,

1 Habeas corpus is therefore Montero's only remaining avenue for relief. This  
2 Court's intervention is necessary to correct a clear legal error, restore liberty  
3 wrongfully taken, and order Montero's immediate release from ICE custody.

#### 4 JURISDICTION AND VENUE

5 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general  
6 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the  
7 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.  
8 § 2201, 2202 (Declaratory Judgment Act).

9 Federal district courts have jurisdiction to hear habeas claims by non-citizens  
10 challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S.  
11 678 (2001). Federal courts also have federal question jurisdiction, through the APA  
12 to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an  
13 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).  
14 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of  
15 review to a person who is "adversely affected or aggrieved by agency action." 5  
16 U.S.C. § 702. Petitioner's continued detention violates his constitutional due process  
17 rights, constitutes arbitrary and capricious agency action, and is an abuse of  
18 discretion.

19 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28  
20 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at  
21 Nevada Southern Detention Center.

22 Accordingly, Petitioner's habeas petition is properly before this court.

#### 23 PARTIES

24 Jose Montero-Martinez is an asylum-seeker from Cuba. He is currently  
25 detained at the Nevada Southern Detention Center in Pahrump, Nevada.

26 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in  
27 his official capacity, is the immediate custodian of Montero.

1 Michael Bernacke is the Field Director of the West Valley City Office of  
2 Immigration and Customs Enforcement (ICE) Enforcement and Removal  
3 Operations, which has jurisdiction of enforcement and removal operations over  
4 detention facilities in Nevada, including Nevada Southern Detention Center where  
5 Montero is detained. Bernacke, in his official capacity, is a legal custodian of  
6 Montero.

7 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,  
8 which is responsible for administering and enforcing immigration laws, including  
9 the detention and removal of immigrants. Lyons, in his official capacity, is a legal  
10 custodian of Montero.

11 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),  
12 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of  
13 Montero.

14 Pam Bondi is the Attorney General of the United States. She oversees the  
15 immigration court system, which is housed within the Executive Office for  
16 Immigration Review (EOIR) and includes all immigration courts and the Board of  
17 Immigration Appeals (BIA). She is named in her official capacity.

#### 18 STATEMENT OF FACTS<sup>1</sup>

19 Montero entered the United States from Cuba in 2020 and sought asylum.  
20 That same year, ICE detained him under the discretionary detention authority of 8  
21 U.S.C. § 1226(a) and later released him on a \$10,000 bond.<sup>2</sup> Following his release,  
22 Montero complied with all conditions of supervision and lived with his cousin in Las  
23 Vegas. In February 2025, an immigration judge denied Montero's asylum  
24 application. Montero timely appealed that decision to the Board of Immigration

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26 <sup>1</sup> Factual assertions made without citation are made on information and  
27 belief.

<sup>2</sup> See P.Ex. 3; ECF No. 1-2

1 Appeals and subsequently to the Ninth Circuit Court of Appeals.<sup>3</sup> His petition for  
2 review remains pending, and no final order of removal has issued.

3 On May 21, 2025, Montero was arrested by the Las Vegas Metropolitan  
4 Police Department and charged with three moving violations: (1) unlawful acts  
5 relating to vehicle registration or license plates; (2) failure to provide proof of  
6 insurance; and (3) driving without a valid license.<sup>4</sup> None of these charges involved  
7 alcohol, drugs, or any allegation of substance use.

8 Said Defendant, on or about May 21, 2025, at and within the City of Las Vegas, State of  
9 Nevada, in the area of 4TH STREET AND OGDEN AVENUE, has committed the following:

**COUNT 2**

10 UNLAWFUL ACTS RELATING TO VEHICLE REGISTRATION/LICENSE PLATES  
11 (Misdemeanor - LVMC 10.02.010 and NRS 482.545(1)(2)), to-wit: That the said Defendant, did  
12 then and there willfully and unlawfully operate a motor vehicle, which did not have attached  
13 thereto or displayed clearly thereon, the plates assigned thereto for the current registration  
14 period, or which was not registered, by the Department of Motor Vehicles, and/or did have in  
15 his/her possession any certificate of registration, license plate, certificate of title, temporary  
16 placard, movement permit or other document of title knowing it to be fictitious or to have been  
17 cancelled, revoked, suspended or altered.

**COUNT 3**

18 NO PROOF OF INSURANCE (Misdemeanor - LVMC 10.02.010 and NRS 485.187(1)(b)),  
19 to-wit: That the said Defendant did then and there willfully and unlawfully, being the operator  
20 of a motor vehicle, operate said motor vehicle without having evidence of current insurance of  
21 the operator or the vehicle in the vehicle.

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26 <sup>3</sup> See ECF No. 1-2; Ninth Circuit Case No. 25-7140  
27 <sup>4</sup> P.Ex. 2.

**COUNT 4**

DRIVING WITHOUT A VALID LICENSE (Misdemeanor - LVMC 10.02.010 and NRS 483.550), to-wit: That the said Defendant did then and there willfully and unlawfully drive a motor vehicle on a highway or street without first being the holder of a valid driver's license.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the City of Las Vegas, State of Nevada. Said Complainant makes this declaration on information and belief subject to the penalty of perjury.

Dated: May 25, 2025

Metro then arrested Montero for these moving violations and transferred him to ICE custody. According to Montero, ICE then revoked his previously granted bond based on the asserted ground that Montero had been arrested for a DUI in Salt Lake City on May 21, 2025.

That assertion is flatly wrong. Montero was arrested in Las Vegas—not Salt Lake City—on May 21, 2025, and not for driving under the influence. He has never been to Salt Lake City, and a comprehensive search of Utah court records confirms that Montero has never been charged in any criminal case in Utah.<sup>5</sup>

Montero promptly brought this error to the attention of the immigration court. He filed a request for custody redetermination in the Las Vegas Immigration Court, which was docketed on July 10, 2025.<sup>6</sup> On July 29, 2025, the immigration judge denied the request, citing Montero's purported flight risk and relying explicitly on the same incorrect assertion that Montero had been arrested for a DUI in Salt Lake City on May 21, 2025.<sup>7</sup>

Montero appealed that decision to the Board of Immigration Appeals, clearly explaining the factual error. He received a filing receipt confirming submission.<sup>8</sup>

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<sup>5</sup> P.Ex. 6

<sup>6</sup> P.Ex. 1, showing docket date of 7/10/2025.

<sup>7</sup> P.Ex. 3.

<sup>8</sup> P.Exs. 4, 5.

1 Nevertheless, the Executive Office for Immigration Review's online system  
2 incorrectly reflects that no appeal was received.<sup>9</sup>

3 On or about December 1, 2025, Montero filed this habeas petition challenging  
4 his continued detention in ICE custody.<sup>10</sup> Undersigned counsel sought an extension  
5 to file this amended petition with the hope to resolve this matter through  
6 immigration proceedings and diligently pursue all available administrative  
7 remedies.<sup>11</sup> However, after diligently reviewing the evidence and relevant law,  
8 undersigned counsel determined there is no further recourse available through the  
9 administrative process because immigration authorities had already repeatedly  
10 relied on a demonstrably false factual premise and declined to correct it despite  
11 Montero raising this issue in his administrative proceedings.

12 As a result, Montero remains detained based on an arrest that never  
13 occurred, in a city he has never visited, for an offense he could not have committed.  
14 Habeas corpus is therefore his only remaining avenue for relief, and this Court's  
15 intervention is necessary to end his unlawful detention.

#### 16 LEGAL FRAMEWORK

17 Under the authority of 8 U.S.C. §1226(a), ICE may arrest and detain  
18 noncitizens during their removal proceedings. Such noncitizens are entitled to a  
19 bond hearing in immigration court, absent certain circumstances implicating  
20 mandatory detention statutes, none of which apply here. *See Obregon v. Sessions*,  
21 No. 17-CV-01463-WHO, 2017 WL 1407889, at \*3 (N.D. Cal. Apr. 20, 2017) (“[t]he  
22 Attorney General has discretion to continue to detain such individuals or release  
23 them on bond or conditional parole and has delegated this authority to the IJs.”)  
24 citing 8 C.F.R. §§ 1003.19, 1236.1 (2006). Under 8 U.S.C. § 1241(a)(1), a removal  
25 order issued by an IJ does not become final until the expiration of the conclusion of

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26 <sup>9</sup> P.Ex. 1.

27 <sup>10</sup> ECF No. 1

<sup>11</sup> ECF No. 9.

1 judicial review of a removal order where, as here, removal has been stayed by the  
2 circuit court. 8 U.S.C. § 1231(a)(1)(B); *see also Prieto-Romero v. Clark*, 534 F.3d  
3 1053, 1059 (9th Cir. 2008) (“the removal period begins only after the court denies  
4 the petition and withdraws the stay of removal.”). Accordingly, the only detention  
5 authority applicable to an individual in Montero’s circumstances is 8 U.S.C.  
6 §1226(a).

7 Under § 1226(b) and its implementing regulation, 8 C.F.R. § 236.1(c)(9), the  
8 Attorney General “at any time may revoke a bond” authorized under § 1226(a)  
9 “rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. §  
10 1226(b). But neither the statute nor the regulation authorizes ICE to revoke a  
11 noncitizen’s liberty free from constitutional constraint. *See Hernandez v. Sessions*,  
12 872 F.3d 976, 981 (9th Cir. 2017). Notwithstanding the broad language in § 1226(b),  
13 the BIA has acknowledged an implicit limitation on ICE’s revocation authority that  
14 “where a previous bond determination has been made ... no change should be made  
15 ... absent a change of circumstance.” *Matter of Sugay*, 17 I. & N. Dec. 637, 640  
16 (B.I.A. 1981). In practice, DHS itself has represented that it “generally only re-  
17 arrests pursuant to § 1226(b) after a material change in circumstances.” *Saravia v.*  
18 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d. sub nom. Saravia for*  
19 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also Panosyan v. Mayorkas*, 854  
20 F. App’x 787, 788 (9th Cir. 2021) (holding ICE cannot re-detain without change in  
21 circumstances).

22 But even where ICE claims changed circumstances, revocation of release and  
23 re-incarceration implicate a core liberty interest protected by the Fifth Amendment.  
24 In *Otero v. Kaiser*, the Northern District of California recognized that although DHS  
25 retains statutory authority under 8 U.S.C. § 1226(b) to revoke a noncitizen’s release  
26 and re-arrest him “at any time,” that authority is “always constrained by the  
27 requirements of due process.” *Otero*, 2025 U.S. Dist. LEXIS 232899, at \*10–11 (N.D.

1 Cal. Dec. 4, 2025) (citing *Hernandez v. Sessions*, 872 F.3d at 981). “The Fifth  
2 Amendment entitles aliens to due process of law in deportation proceedings.” See  
3 *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). The Due Process Clause  
4 extends to all persons regardless of status. *A.A.R.P. v. Trump*, 605 U.S. 91, 94  
5 (2025).

6 Although the government may re-arrest a person upon a “change in  
7 circumstances,” including “reinvolvement with the criminal justice system,” *id.* at  
8 \*11 (citing *Panosyan v. Mayorkas*, 854 F. App’x at 788), the existence of an alleged  
9 change in circumstances does not displace the noncitizen’s due process right to a  
10 neutral custody determination before a decision is made that re-detention is  
11 appropriate, see *Otero*, 2025 U.S. Dist. LEXIS 232899, at \*11.

12 This Court has jurisdiction to consider the issue of whether Montero’s bond  
13 was unlawfully revoked based on false material facts through a federal habeas  
14 petition because “the Supreme Court has held that section 1226(e) does not limit a  
15 court’s habeas jurisdiction or prohibit a federal court from hearing a habeas petition  
16 ‘challenging[ing] the statutory framework that permits his detention without bail’  
17 or bringing ‘constitutional challenge[s].’” *Obregon*, 2017 WL 1407889, at \*4, citing  
18 *Demore v. Kim*, 538 U.S. 510, 516-17 (2003). Furthermore, “[t]he Ninth Circuit has  
19 held that federal courts may entertain habeas claims alleging constitutional and  
20 legal error in the discretionary process.” *Obregon*, 2017 WL 1407889, at \*4 citing  
21 *Singh v. Holder*, 638 F.3d 1196, 1202 (2011); see also *Perez v. Wolf*, 445 F. Supp. 3d  
22 275, 284 (N.D. Cal. 2020) (finding jurisdiction over petitioner’s due process  
23 challenge to IJ bond decision where petitioner argued that, “because the  
24 Government failed to meet its evidentiary burden, the IJ’s discretionary decision  
25 itself was constitutionally flawed”.)  
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## GROUNDS FOR RELIEF

**Ground One: Montero must be released because the Immigration Judge’s revocation of bond was based on an inaccurate understanding of the “change in circumstances,” was unsupported by evidence, and therefore violated the Fifth Amendment.**

The Immigration Judge’s decision revoking Montero’s previously granted \$10,000 bond violated due process because it rested entirely on a factual premise that is demonstrably false: a purported DUI arrest that never occurred. Where the government’s asserted justification for re-detention does not exist, the revocation of liberty cannot stand.

As set forth above, Montero is detained pursuant to 8 U.S.C. § 1226(a), and ICE’s authority to revoke release under § 1226(b) is constrained by constitutional due process requirements. Both the BIA and DHS itself recognize that bond revocation is permissible only upon a genuine change in circumstances. *Matter of Sugay*, 17 I. & N. Dec. at 640; *Saravia*, 280 F. Supp. 3d at 1197. That limitation is not merely prudential—it reflects the constitutional principle that once liberty has been granted, the government may not re-incarcerate a person arbitrarily or on false pretenses.

Here, there was no qualifying change in circumstances at all. The basis identified for revoking Montero’s bond—a DUI arrest on March 21, 2025—never happened.<sup>12</sup> Because the predicate factual assertion was false, the legal justification for revocation collapsed entirely. A bond revocation based on nonexistent conduct is not a discretionary judgment call; it is legal error.

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<sup>12</sup> The fact that an IJ denied Montero’s asylum application and ordered his removal is also not a materially changed circumstance warranting revocation where Montero is pursuing a timely-filed appeal and is in no imminent danger of removal. He has every reason to appear for future hearings and continue to pursue his appellate remedies.

1 Due process requires, at a minimum, that a deprivation of liberty be  
2 grounded in accurate facts and supported by evidence. *See Hernandez*, 872 F.3d at  
3 981. When the government restrains physical liberty based on an allegation that is  
4 untrue, the detention is arbitrary in the most literal sense. No balancing of risk,  
5 danger, or flight can occur where the triggering event does not exist. The revocation  
6 therefore violated Montero's core Fifth Amendment right to be free from  
7 incarceration absent lawful justification.

8 Moreover, even assuming arguendo that ICE believed a change in  
9 circumstances had occurred, due process still required a neutral and meaningful  
10 custody determination before Montero could be re-detained. *Otero* makes clear that  
11 § 1226(b)'s "at any time" language does not eliminate the constitutional  
12 requirement of process. *Otero*, 2025 U.S. Dist. LEXIS 232899, at \*10–11. A  
13 revocation decision premised on false material facts cannot satisfy that  
14 requirement. A hearing that accepts an untrue allegation as dispositive is not  
15 constitutionally meaningful.

16 Because the IJ's decision was unsupported by evidence and based on a  
17 materially false premise, it violated Montero's due process rights and was legally  
18 erroneous. The appropriate remedy is immediate release. Continued detention  
19 under an invalid revocation serves no legitimate governmental purpose and  
20 perpetuates an ongoing constitutional violation. Accordingly, this Court should  
21 order Montero's release and enjoin Respondents from re-detaining him absent a  
22 bond revocation proceeding that complies with due process—including reliance on  
23 accurate facts and an evidentiary showing sufficient to justify any deprivation of  
24 liberty.

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1 **Ground Two: Montero should be released because the decision to revoke**  
2 **his bond and order his continued detention was arbitrary and capricious,**  
3 **in violation of the Administrative Procedures Act.**

4 Detaining Montero for a false or nonexistent reason also violates the  
5 Administrative Procedures Act (APA). Under the APA, a court must hold unlawful  
6 and set aside agency action found to be “arbitrary, capricious, an abuse of  
7 discretion, or otherwise not in accordance with law” or “without observance of  
8 procedure required by law.” 5 U.S.C. § 706(2). An agency action is “arbitrary and  
9 capricious if the agency has relied on factors which Congress has not intended it to  
10 consider, entirely failed to consider an important aspect of the problem, offered an  
11 explanation for its decision that runs counter to the evidence before the agency, or is  
12 so implausible that it could not be ascribed to a difference in view or the product of  
13 agency expertise.” *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*

14 *Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “defer to an agency’s determinations  
15 so long as the agency ‘gives adequate reasons for its decisions, in the form of a  
16 satisfactory explanation for its action including a rational connection between the  
17 facts found and the choice made.” *Nat. Res. Def. Council, Inc. v. United States Env't*  
18 *Prot. Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned up).

19 Here, the IJ’s decision to detain Montero was unlawful and should be set  
20 aside because there is no rational connection between the facts and the choice to  
21 detain Montero, and they have offered no rational explanation for the action.

22 Accordingly, release is warranted under the APA as well.

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**PRAYER FOR RELIEF**

1  
2 Accordingly, Jose Montero Martinez respectfully requests that this  
3 Court:

4 1. Declare that Petitioner’s continued detention violates the  
5 Administrative Procedure Act, 5 U.S.C. §706(2)(A); and/or the Due Process Clause  
6 of the Fifth Amendment to the U.S. Constitution;

7 2. Order Petitioner’s immediate release;

8 3. Prohibit Respondent’s from re-detaining Petitioner in the future  
9 absent a bond revocation hearing that complies with the requirements of due  
10 process; and

11 5. Grant such other and further relief as, in the interests of justice,  
12 may be appropriate.

13  
14 Dated January 29, 2026.

15 Respectfully submitted,

16 Rene L. Valladares  
17 Federal Public Defender

18  
19 /s/ Laura Barrera

20 Laura Barrera  
21 Assistant Federal Public Defender


22 /s/ Maggie Lambrose

23 Maggie Lambrose  
24 Assistant Federal Public Defender  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been filed on January 29, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

<p>Jose Montero-Martinez   Nevada Southern Detention Center  2190 E Mesquite Avenue  Pahrump, NV 89048</p>	<p>John Mattos, Warden  Nevada Southern Detention Center  2190 E Mesquite Avenue  Pahrump, NV 89048</p>
<p>Pam Bondi  Attorney General  U.S. Department of Justice  950 Pennsylvania Ave, NW,  Washington, DC, 20530</p>	<p>Todd Lyons  500 12th St SW  Washington, DC 20536</p>
<p>Kristi Noem  Secretary of the Department of  Homeland Security  245 Murray Lane SW,  Washington, DC 20528</p>	<p>Michael Bernanke  Salt Lake City ICE Field Office Director  2975 Decker Lake Drive, Ste 100  West Valley City, UT 841179-6096</p>

*/s/ Kaitlyn O'Hearn*

An Employee of the  
Federal Public Defender

