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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 HELMER CASTRO CABALLERO,

Case Number: '25CV3407 BJC BJW

11 Petitioner, .

12  
13 vs.

DHS No.: A 

14 KRISTI NOEM, Secretary of Homeland  
Security, PAM BONDI, Attorney General,  
15 Todd M. Lyons, Director of Immigration and  
Customs Enforcement, Patrick Divver, San  
16 Diego ICE Field Office Director; Christopher  
17 J. LaRose, Director – Otay Mesa Detention  
Center.  
18

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

19 Respondents.  
20

21 **PETITION FOR WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS,**  
22 **DECLARATORY JUDGMENT, AND IMMEDIATE RELEASE FROM**  
23 **CUSTODY**

24 1. Petitioner, HELMER CASTRO CABELLERO, ("Petitioner"), a native of  
25 Venezuela is being kept by the department of Homeland Security at 7488 Calzada De La Fuente,  
26 San Diego, California 92154. Defendant has been detained since arriving in the United States  
27 under the CBP One Program on September 22, 2024. He applied for a bond hearing which was  
28

1 not heard because the Immigration Judge stated there was no jurisdiction. He did not appeal this  
2 bond denial as it was futile because the Board of Immigration Appeals was denying these  
3 appeals.

4 2. On August 26, 2025, Immigration Judge Eugene H. Robinson, Jr. granted  
5 Petitioner HELMER CASTRO CABALLERO, deferral of removal because the court found,  
6 “based upon the country conditions evidence, the fact that his captain is already aware that he is  
7 anti-Maduro, the country conditions evidence indicates that if he is detained upon his return, and  
8 the court finds that it is more likely than not he would be detained and likely tortured, based  
9 upon the fact that he would be specifically targeted by his captain for refusing to return to the  
10 unit when he was asked to do so.” (See Exhibit 1) The government appealed and he is still  
11 detained.  
12

13  
14 3. Petitioner has no criminal records and the United States Department of Homeland  
15 Security (“DHS”) is keeping him prisoner. Therefore, he petitions this Court pursuant to 28  
16 U.S.C. § 1331, 28 U.S.C. § 2241, 5 U.S.C. § 551 *et seq.*, 28 U.S.C. §§ 2201 *et seq.*, and the All  
17 Writs Act, 28 U.S.C. § 1651 to issue a writ of habeas corpus to review the lawfulness of his  
18 detention by Immigration and Custom Enforcement (“ICE”), which is a division of the  
19 Department of Homeland Security of the U.S. government. Furthermore, Petitioner respectfully  
20 asks this court for a Writ of Mandamus pursuant to 28 U.S.C. § 1361 to order Respondents to  
21 release him in the United States.  
22

23 4. His wife, Darlyn Jacqueline Gutierrez Sierra, came with him to the United States  
24 under the CBP One Program, but she was released right after their arrival and she has apparently  
25 been deported from the United States, even though she was part of his asylum petition.  
26

27 5. In support of this petition, Petitioner states as follows:  
28

**SUBJECT MATTER JURISDICTION**

1  
2           6.       This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 et seq.,  
3 Art. 1, § 9, cl. 2 of the United States Constitution (“Suspension Clause”). *See Demore v. Kim*,  
4 538 U.S. 510, 517 (2003) (holding that an alien may challenge detention under 8 U.S.C. §  
5 1226(a) through a habeas corpus proceeding under 28 U.S.C. § 2241); *see also Oyelude v.*  
6 *Chertoff*, 125 Fed. App’x 543, 546 (5th Cir. 2005) (relying on *Demore*, 538 U.S. at 516-17, to  
7 conclude that the Court retained jurisdiction to review an alien’s detention when constitutional  
8 issues such as those raised in a habeas petition were presented).  
9

10           7.       The federal district courts have jurisdiction to review petitions for habeas corpus  
11 challenging an alien’s indefinite confinement and conditions of detention. *See Clark v. Martinez*,  
12 543 U.S. 371, 385-86 (2005) (concluding that even aliens not admitted to the United States,  
13 including parolees, are entitled to a custody determination). *See also* Joint Explanatory Statement  
14 of the Committee of Conference, H.R. Cong. Rep. No 109-72 at 175, 151 Cong. Rec. H2836,  
15 2873 (2005) (“[REAL ID Act] section 106 will not preclude habeas review over challenges to  
16 detention that are independent of challenges to removal orders.”)  
17

18           8.       The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 302 (“Real ID  
19 Act”), does not affect the Court’s jurisdiction over challenges to an alien’s detention. *See*  
20 *Ochieng v. Mukasey*, 520 F.3d 1110, 1115 (10th Cir. 2008) (concluding that provisions of the  
21 REAL ID Act limiting habeas relief did not apply where the petitioner “would not be seeking  
22 review of an order of removal, but review of his detention”); *Singh v. Gonzales*, 499 F.3d 969,  
23 978 (9th Cir. 2007) (relying on the legislative history of the REAL ID Act to conclude that the  
24 provisions of the REAL ID Act limiting habeas relief “would not preclude habeas review over  
25 challenges to detention that are independent of challenges to removal orders” (internal quotation  
26 marks and emphasis omitted)); *see also* H.R. Rep. No. 109–72, at 122, 2005 U.S.C.C.A.N. 240,  
27  
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1 300 (stating that that the REAL ID Act “would not preclude habeas review over *challenges to*  
2 *detention that are independent of challenges to removal orders*. Instead, the bill would eliminate  
3 habeas review *only over challenges to removal orders*.” (emphasis added)).

4 9. The Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1651, as a civil  
5 action arising under the Constitution, laws, or treaties of the United States (Federal question), 28  
6 U.S.C. § 1361, as an action to compel an officer or employee of the United States to perform a  
7 duty owed to Plaintiff (Mandamus), 28 U.S.C. §§ 2201-02 (declaratory relief); the  
8 Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., as an action to compel agency  
9 action unlawfully withheld and to hold unlawful and set aside agency action, findings, and  
10 conclusions found to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in  
11 accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in  
12 excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D)  
13 without observance of procedure required by law and the Immigration & Nationality Act (INA)  
14 and regulations implementing it (Title 8 of the C.F.R.).

15 10. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 and may  
16 grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All  
17 Writs Act, 28 U.S.C. § 1651.  
18

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22 **VENUE**

23 11. Venue lies in the Southern District of California, the judicial district in which the  
24 Petitioner is detained. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (“The plain language of the  
25 habeas statute thus confirms the general rule that for core habeas petitions challenging present  
26 physical confinement, jurisdiction lies only in one district: the district of confinement.”).  
27 Petitioner is detained at the Otay Mesa Detention Facility, a Department of Homeland Security,  
28

1 Immigration and Customs Enforcement facility located in this judicial district in San Diego  
2 California, California (OMDF).

3 **PARTIES**

4 12. Petitioner is a thirty-one-year-old citizen of Venezuela. He is currently detained  
5 at the Otay Mesa Detention Facility, 7488 Calzada de la Fuente, San Diego, California 92154.  
6 Respondent has been granted deferral of removal of IJ Robinson on August 26, 2025.  
7

8 13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security  
9 and is sued in her official capacity. Secretary Noem is responsible for the administration and  
10 enforcement of the immigration laws, including the detention of aliens.

11 14. Respondent Pam Bondi is the Attorney General of the United States, and is  
12 responsible for overseeing the Department of Justice, and oversees the enforcement of  
13 immigration laws and policies with the Department of Justice.  
14

15 15. Respondent Todd M. Lyons is the Director in charge of Detention, and is,  
16 therefore, the administrator/warden of DHS Otay Mesa Detention Facility and is sued in his  
17 official capacity.

18 16. Respondent Todd M. Lyons is the Director OF U.S. Immigration and Customs  
19 Enforcement and is sued in his official capacity.  
20

21 17. Respondent Patrick Divver is the acting Field Director for U.S. Immigration and  
22 Customs Enforcement for the San Diego Field Office, and is sued in his/her official capacity for  
23 authority over Petitioner's Detention.

24 18. Respondent Christopher J. LaRose, Director and Warden of the Otay Mesa  
25 Detention Facility, is the Director in charge of Detention, and is, therefore sued in his official  
26 capacity and is Petitioner's immediate custodian.  
27  
28

1 19. Furthermore, this action also includes a prayer for relief in the form of a  
2 Declaratory Judgment and a Writ of Mandamus and all Respondents are necessary parties to this  
3 suit so the Court has power to order them to obey this Court's orders.

4 **FACTUAL AND PROCEDURAL HISTORY**

5 20. Petitioner is a citizen and national of Venezuela. He entered the United States on  
6 originally entered the United States on September 22, 2024, lawfully by registering under the  
7 CBP One application. He applied for asylum as he was being persecuted in his Country for  
8 being against the Maduro government.  
9

10 21. Petitioner is married to Darlyn Jacqueline Gutierrez Sierra, and they have three  
11 children together.

12 22. Petitioners have been detained in Otay Mesa Detention Facility ever since.

13 23. He was granted deferral from removal by IJ Robinson on August 26, 2025.

14 24. The United States government has refused to release him even though he has no  
15 criminal history, is not a threat to national security, or the public and is not a flight risk.  
16

17 25. Petitioner remains detained as of the filing of this petition and has not been  
18 afforded a bond or has been released on his own recognizance.  
19

20 **LEGAL BACKGROUND**

21 **A. Petitioner's Continued Detention Violates Constitutional Due Process**

22 **1. Petitioner Is Entitled to Due Process Protections**

23 26. The Fifth Amendment's Due Process Clause applies to all persons within the  
24 United States, including aliens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Reno v. Flores*,  
25 507 U.S. 292, 306 (1993). Petitioner, who has substantial ties to the United States and a pending  
26 asylum application, is entitled to meaningful due process protections before being subjected to  
27 indefinite detention.  
28

1                   **2. Prolonged Detention Without Individualized Hearing Violates Due Process**

2           27.     Petitioner has been detained for 14 months without a bond hearing or  
3 individualized determination of whether his detention is justified. The Supreme Court has held  
4 that prolonged immigration detention without individualized review violates due process. See  
5 *Rodriguez v. Robbins*, 804 F.3d 1060, 1089 (9th Cir. 2015) (holding that aliens subject to  
6 prolonged immigration detention must receive bond hearings with certain safeguards), rev'd on  
7 other grounds, *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

8  
9           28.     While *Jennings* held that the relevant immigration statutes do not mandate  
10 periodic bond hearings, the Court expressly declined to address "whether, as respondents also  
11 argued, the Due Process Clause requires the result that the Court of Appeals decreed." *Id.* at 851.  
12 The constitutional question remains open and, under Ninth Circuit precedent, Petitioner is  
13 entitled to a bond hearing with appropriate safeguards if his detention continues.

14  
15                   **3. Detention Is Not Justified by Flight Risk or Danger**

16           29.     Petitioner presents neither a flight risk nor a danger to the community:

17           30.     a. Petitioner has relatives in Indiana, who have agreed to be his sponsor and house  
18 him in Indiana;

19  
20           31.     b. Petitioner has reason to flee as he has been given protection under the deferred  
21 removal from the United States;

22           32.     d. Petitioner has no criminal record; and

23           33.     e. Petitioner has family members willing to support his release.

24  
25           34.     Under these circumstances, continued detention is not justified and violates  
26 Petitioner's constitutional rights.

1  
2 **FIRST CLAIM FOR RELIEF**

3 **(Procedural Due Process Violation)**

4 35. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully  
5 herein.

6 36. Petitioner is protected by every clause of the United States Constitution that is not  
7 expressly reserved to citizens. This protection includes the Fifth Amendment.  
8

9 37. The arbitrary refusal to process Petitioner's bond and his continued detention  
10 violate his procedural due process rights under the Constitution.

11 **SECOND CLAIM FOR RELIEF**

12 **(Substantive Due Process Violation)**

13 38. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully  
14 herein.  
15

16 39. Petitioner is protected by every clause of the United States Constitution that is not  
17 expressly reserved to citizens. This protection includes the Fifth Amendment.

18 40. The arbitrary refusal to process Petitioner's bond and his continued detention  
19 violate his substantive due process rights under the Constitution.  
20

21 **THIRD CLAIM FOR RELIEF**

22 **(Right Against Unreasonable Seizure)**

23 41. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully  
24 herein.

25 42. Petitioner is protected by every clause of the United States Constitution that is not  
26 expressly reserved to citizens. This protection includes the Fourth Amendment.  
27  
28

1 43. The arbitrary refusal to process Petitioner’s bond and his continued detention  
2 violate his right against unreasonable seizure.

3 **FOURTH CLAIM FOR RELIEF**

4 (Violation of 5 U.S.C. §§ 702, 704,706-APA Claims)

5 44. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully  
6 herein.

7 45. Petitioner has suffered a “legal wrong” or has been “adversely affected or  
8 aggrieved” by agency action. 5 U.S.C. & 702. Petitioner is aggrieved by agency action for  
9 which there is no other adequate remedy in court. 5 U.S.C. § 704.  
10

11 46. Respondents’ unlawful refusal to release respondent and keep him in custody  
12 order is causing irreparable harm as Petitioner continues to be detained and exceeds their  
13 statutory authority. 5 U.S.C. § 706(c)(2).  
14

15 **FIFTH CLAIM FOR RELIEF**

16 (Relief under the Mandamus Act)

17 47. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully  
18 herein.  
19

20 48. Petitioner has a claim for mandamus relief under 28 U.S.C. § 1361 which  
21 provides the authority to compel the agency to perform a duty owed to Petitioner. They have a  
22 duty to allow Petitioner to release him as the Immigration Judge ordered him to not be deported  
23 and granted deferral. There is no purpose to continue the prolong detention when the  
24 government can allow him to be released on his own recognizance.  
25

26 ///  
27 ///  
28 ///

**SIXTH CLAIM FOR RELIEF**

**(Declaratory Judgment)**

49. Petitioner re-alleges and reasserts the foregoing paragraphs as if set forth fully herein.

50. Pursuant to 28 U.S.C. § 2201 et seq. the Court may declare the rights of the parties and such declaration shall have the force and effect of a final judgment or decree. Respondents in this case have reached a decision that is not in accordance with the law. Said decision has caused and continues to cause harm to Petitioner. Therefore issuance of a declaratory judgment that Respondents' refusal to allow Petitioner to be release on his own recognizance as he was granted deferral of removal and has been allowed to lawfully remain in the United States, is unlawful is warranted.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- A. That it assume jurisdiction over this matter;
- B. That it issue an order directing Respondents to allow Petitioner to be released on his own recognizance and to be released immediately or in the alternative an order releasing Petitioner from custody immediately;
- C. That it award reasonable attorney's fees and costs to Petitioner for being required to bring this action;
- D. That it grant other such relief that may become available through a change in the law; and
- E. That it grant such other relief that is just and equitable.

1 Dated this 25<sup>th</sup>, day of November, 2025.

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3 \_\_\_\_\_  
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VERIFICATION

I, Helmer Javier Castro Caballero, am the Petitioner in this matter. I verify under penalty of perjury that the statements made in the herein attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: : 11-25-14



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Helmer Castro Caballero