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LUIS GILBERTO LUYO CHAVEZ

6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

9 **LUIS GILBERTO LUYO CHAVEZ**



10  
11 **Petitioner,**

12  
13 **vs.**

14  
15 **Mesa Verde Detention Center,**  
16 **GURMEET SINGH** in his official  
17 **capacity, Warden; IMMIGRATION**  
18 **AND CUSTOMS ENFORCEMENT**  
19 **(ICE); Bakersfield ICE Field Office,**  
20 **ERIK BONNAR** in his official capacity,  
21 **Director; Immigration and Customs**  
22 **Enforcement, TODD M. LYONS** in his  
23 **official capacity, Director;**  
24 **DEPARTMENT OF HOMELAND**  
25 **SECURITY (DHS); Department of**  
26 **Homeland Security, PAM BONDI** in her  
27 **official capacity, Attorney General;**  
28 **Department of Homeland Security,**  
**KRISTI NOEM** in her official capacity,  
**Secretary,**

**Respondents.**

**CIVIL ACTION FILE NO.**

**28 U.S.C. §2241 PETITION FOR  
WRIT OF HABEAS CORPUS FOR  
PERSON IN FEDERAL CUSTODY  
AND/OR EMERGENCY STAY OF  
REMOVAL; REQUEST  
TEMPORARY RESTRAINING  
ORDER; REQUEST FOR RELEASE  
OR A BOND HEARING**

1 **INTRODUCTION**

2 1. COMES NOW Petitioner Luis Gilberto Luyo Chavez (hereinafter  
3 “Petitioner”), and files this Petition for Writ of Habeas Corpus. Petitioner is a native  
4 and citizen of Peru and is currently in the physical custody of the Bakersfield Field  
5 Office of the U.S. BUREAU OF IMMIGRATION AND CUSTOMS  
6 ENFORCEMENT (“ICE”) at the Mesa Verde Detention Center in Bakersfield,  
7 California.

8 2. Petitioner was arrested and detained by Respondents on October 2, 2025. As  
9 ICE officers arrested Petitioner, they told him he had scanned his face on the  
10 SmartLINK mobile application late for his ICE check-in, which is a false statement  
11 as Petitioner checked in and scanned his face to establish his identity on the mobile  
12 application as he has continuously and properly done every Monday.

13 3. Petitioner asks this Court to find that Respondents’ arrest and detention of  
14 Petitioner is arbitrary, capricious, an abuse of discretion, and in violation of the law.  
15 Petitioner further asks this Court to issue an order to Respondents to show cause as  
16 to why Petitioner should not be discharged from the restraint of liberty and to issue  
17 an order to Respondents to release Petitioner at his own recognizance or a  
18 reasonable bond. In addition, Petitioner asks this Court to issue an order prohibiting  
19 the Respondents from transferring Petitioner from the district without the court’s  
20 approval.

21 **JURISDICTION**

22 4. This action arises under the Constitution of the United States, the  
23 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et. seq., and the  
24 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et. seq.

25 5. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas  
26 corpus). 28 U.S.C. § 1331 (federal question), and Article I, § 9 cl. 2 of the United  
27 States Constitution (Suspension Clause), as Petitioner is currently in custody under  
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1 the color of the authority of the United States at the Mesa Verde Detention Center,  
2 in the city of Bakersfield, in Kern County.

3 6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §  
4 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All  
5 Writs Act, 28 U.S.C. § 1651.

6 **VENUE**

7 7. Venue is proper in this District under 28 U.S.C. § 1391 because the United  
8 States District Court for the Eastern District of California is the judicial district in  
9 which the Petitioner is currently in custody. Petitioner is in Respondents' custody at  
10 the Mesa Verde Detention Center in Kern County.

11 8. Venue is further proper because Respondents are government employees,  
12 officers, and agencies in the United States, and because a substantial part of the  
13 events that gave rise to the Petitioner's claim occurred in this District, where  
14 Petitioner is now detained and in Respondents' custody.

15 **REQUIREMENTS OF 28 U.S.C. § § 2241, 2243**

16 9. The court must grant the petition for writ of habeas corpus or issue an order  
17 to Respondents to show cause ("OSC"), within three (3) days, but not exceeding  
18 twenty (20) days, unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

19 10. Pursuant to 28 U.S.C. § 2241(c)(3), a petitioner must be "in custody" in  
20 order to obtain relief in a habeas corpus proceeding. The custody requirement is  
21 satisfied if the petitioner is "in custody" when the petition is filed. *Spencer v.*  
22 *Kemna*, 523 U.S. 1, 7, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998).

23 11. Petitioner is "in custody" under 28 U.S.C. section 2241 because Petitioner  
24 is currently detained by Respondents.

25 12. Petitioner is presently in custody under color of the authority of the United  
26 States, and such custody is in violation of the Constitution, laws, or treaties of the  
27 United States. *See e.g., Mayers v. United States Immigration and Naturalization*  
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1 *Service*, 175 F.3d 1289, 1299 (11th Cir. 1999); *Henderson v. Reno*, 157 F.3d 106,  
2 122 (2nd Cir. 1998), *Reno v. Navas*, 526 U.S. 1004, 1141 (1999).

3 **EXHAUSTION OF REMEDIES**

4 13. Petitioner has filed no other writ of habeas corpus, and he has no other  
5 adequate remedies. Petitioner respectfully requests that he be released from custody  
6 or that an evidentiary hearing be set forthwith as he is being detained and separated  
7 from his wife, four (4) year-old son, and five (5) month old baby girl, who is a  
8 citizen of the United States.

9 **PARTIES**

10 14. Petitioner is a 31-year-old native and citizen of Peru. Petitioner resides in  
11 Bakersfield, California.

12 15. Respondent, Gurmeet Singh, Warden of Mesa Verde Detention Center is  
13 sued in his official capacity as he oversees the operations of the Mesa Verde  
14 Detention Center. Respondent is a legal custodian of Petitioner.

15 16. Respondent U.S. Immigration Customs Enforcement is the federal agency  
16 responsible for custody decisions relating to non-citizens who have been charged  
17 with being removable, which includes the detention and custody of non-citizens.

18 17. Respondent, Erik Bonnar is sued in his official capacity as the Bakersfield  
19 ICE Field Office Director. The Bakersfield Field Office is responsible for local  
20 custody decisions relating to detained non-citizens. Respondent is a legal custodian  
21 of Petitioner.

22 18. Respondent, Todd M. Lyons is sued in his official capacity as the Acting  
23 Director of Immigration and Customs Enforcement as he has authority over  
24 Respondent, Erik Bonnar.

25 19. Respondent U.S. Department of Homeland Security (“DHS”) is the federal  
26 agency that oversees and has authority over ICE and all other DHS Respondents.  
27 DHS is responsible for implementing and enforcing the INA, which includes the  
28 arrest and detention of citizens.

1 20. Respondent, Pam Bondi is sued in her official capacity as the Attorney  
2 General of the United States. She has authority over DHS and is responsible for  
3 administration of the immigration laws.

4 21. Respondent, Kristi Noem is sued in her official capacity as the Acting  
5 Secretary of the Department of Homeland Security as she has authority over all  
6 other DHS Respondents and the operations of DHS.

7 **STATEMENT OF FACTS**

8 22. Petitioner is 31-year-old native and citizen of Peru.

9 23. Petitioner entered the United States in April 2024 and removal  
10 proceedings commenced against Petitioner in immigration court. Petitioner is  
11 seeking asylum as he and his family were victims of extortion and death threats in  
12 Peru.

13 24. Respondents have scheduled weekly ICE check-ins for Petitioner through the  
14 SmartLINK mobile application, specifically every Monday, which Petitioner has  
15 never failed to comply with.

16 25. Petitioner was scheduled for a routine ICE check-in on Monday, September  
17 29,  
18 2025, and Petitioner scanned his face as usual and complied with the steps as he has  
19 always successfully and properly done. Despite Petitioner's compliance, ICE sent a  
20 message to Petitioner through the mobile application and informed Petitioner that he  
21 must appear for an in-person ICE check-in on October 2, 2025.

22 26. Petitioner complied and appeared in person for a check-in on October 2,  
23 2025. Upon arrival, ICE agents arrested Petitioner and told him he did not properly  
24 scan his face for his mobile check-in on September 29, 2025.

25 27. Petitioner did not understand what the ICE officers meant when they said he  
26 did not scan his face properly because Petitioner is adamant, he checked in for his  
27 weekly ICE check-in appointment using the SmartLINK mobile application and  
28 scanned his face to establish his identity.

1 28. Nevertheless, the ICE officers detained Petitioner and took him into custody at  
2 the Mesa Verde Detention Center. The ICE agents did not offer Petitioner any  
3 process or opportunity to be heard, prior to arresting and detaining Petitioner.  
4 Petitioner was arrested and detained while his asylum case is pending.

5 29. Petitioner has appeared for all scheduled immigration hearings and ICE  
6 check-in appointments while in removal proceeding. Petitioner only has a DUI on  
7 his record and has complied with all court orders. Petitioner attended the required  
8 course ordered by the criminal judge and paid the corresponding fine. The DUI case  
9 has been closed, and Petitioner has no other crime on his record. A DUI charge  
10 alone does not constitute a crime of moral turpitude. Therefore, Petitioner is not  
11 likely to fail to attend an immigration hearing and is not a threat to the community.

12 30. Petitioner is a father of two (2) children including a four (4) year old son and  
13 a five (5) month old daughter, who is a citizen of the United States. Petitioner is the  
14 bread winner of the family and Petitioner's wife is struggling to support their young  
15 children financially while also caring for their young children. Petitioner's four (4)  
16 year-old son cries for his father every night believing his father abandoned him, not  
17 understanding the circumstances.

18 31. It is pivotal that Petitioner returns to his children and wife, who are suffering  
19 and barely surviving without Petitioner.

20 32. Thus, Petitioner is held in DHS custody contrary to the Federal  
21 Constitution, statutes and regulations.

### 22 LEGAL FRAMEWORK

23 33. The Due Process Clause of the Fifth Amendment to the U.S. Constitution  
24 prohibits the federal government from depriving any person of "life, liberty, or  
25 property, without due process of law."

26 34. The INA has three forms of detention for noncitizens in removal  
27 proceedings. First is detention for noncitizens in regular, non-expedited removal  
28 proceeding. 8 U.S.C. § 1226(a). Individuals who fall under § 1226(a) are entitled to

1 a bond hearing at the outset of their detention. If noncitizens have committed certain  
2 crimes, they are subject to mandatory detention pursuant to § 1226(c).

3 35. The INA also mandates detention for noncitizens in expedited removal  
4 proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose  
5 immigration cases are completed, *id.* § 1231(a)(6). *Banda v. McAleeman*, 385 F.  
6 Supp. 3d 1099, 1111-13 (W.D. Wash. 2019).

7 36. Noncitizens seeking asylum are guaranteed due process under the Fifth  
8 Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

9 37. The Ninth Circuit has expressed grave doubts that any statute that allows for  
10 arbitrary prolonged detention without any process is constitutional or that those who  
11 founded our democracy precisely to protect against the government's arbitrary  
12 deprivation of liberty would have thought so. *Rodriguez v. Marin*, 909 F.3d 252, 256  
13 (9th Cir. 2018).

14 38. The Due Process Clause of the Fifth Amendment provides Petitioner with  
15 protections regarding his detention. "Freedom from imprisonment from government  
16 custody, detention, or other forms of physical restraint lies at the heart of the  
17 liberty." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

18 39. To protect against arbitrary detention and to guarantee the right to liberty, due  
19 process requires "adequate procedural protections" that outweighs the individual's  
20 constitutionally protected interest in avoiding physical restraint." *Id.*

21 40. In the immigration context, the Supreme Court has recognized only two valid  
22 purposes for civil detention: to mitigate the risks of danger to the community and to  
23 prevent flight. *Id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

24 41. Due process requires certain procedures at bond hearings. First, to justify  
25 immigration detention, the government must bear the burden of proof by clear and  
26 convincing evidence that the noncitizen is a danger or flight risk. *Singh v. Holder*,  
27 638 F.3d 1196, 1203 (9th Cir. 2011). Second, the decision maker must consider  
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1 alternatives to detention. Third, if the government does not meet their burden of  
2 proof, a decisionmaker must assess the noncitizen's ability to pay a bond.

3 42. "For purposes of determining the constitutional adequacy of administrative  
4 procedures, identification of the specific dictates of due process generally requires  
5 consideration of three distinct factors: (1) the private interest that will be affected by  
6 the official action; (2) the risk of an erroneous deprivation of such interest through  
7 the procedures used, and the probable value, if any, of additional or substitute  
8 procedural safeguards; and (3) the government's interest, including the function  
9 involved and the fiscal and administrative burdens that the additional or substitute  
10 procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 323  
11 (1976).

12 43. First, detention deprives noncitizens of a profound liberty interest – one that  
13 requires some form of procedural protections. *Diouf v. Napolitano*, 634 F.3d 1081,  
14 1091-92 (9th Cir. 2011).

15 44. Second, the risk of error is great where the government is represented by  
16 professional attorneys and detained noncitizens often lack English proficiency and  
17 proper representation. Because parents subject to termination proceedings are often  
18 poor, uneducated, or members of minority groups, such proceedings are often  
19 vulnerable to judgments based on cultural or class bias." *Santosky v. Kramer*, 455  
20 U.S. 745, 762-763 (1982).

21 45. Third, placing the burden on the government imposes minimal cost or  
22 inconvenience because the government has access to the detained noncitizen's  
23 immigration record.

24 46. Under the three-part test of *Mathews*, 424 U.S. 319, the balance  
25 overwhelmingly favors Petitioner. The Respondents' detention of Petitioner creates  
26 an extreme risk of erroneous deprivation of Petitioner's liberty interest and family  
27 unity.

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1 47. The Respondent's interest in ensuring Petitioner's appearance at court  
2 hearings can be accomplished by far less restrictive means, such as the Intensive  
3 Supervision Appearance Program ("ISAP"), which has resulted in a 99% attendance  
4 rate at all EOIR hearings and a 95% attendance rate at final hearings. *Hernandez v.*  
5 *Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

6 48. Due process requires alternatives to detention for those who are not  
7 considered a flight risk or danger to the community and consideration of financial  
8 circumstances.

9 50. Respondents have failed to show that Petitioner's detention is reasonable or  
10 related to the purpose of ensuring he appears for hearings during removal  
11 proceedings.

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13 **CLAIMS FOR RELIEF**

14 **COUNT ONE**  
15 **Habeas Corpus**

16 51. Petitioner incorporates the allegations in the paragraphs above as though  
17 fully set forth herein.

18 52. "At its historical core, the writ of habeas corpus has served as a means of  
19 reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474  
20 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

21 53. The Suspension Clause of the United States Constitution provides that "[t]he  
22 Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in  
23 Cases of Rebellion or Invasion the Public Safety may require it." U.S. CONST. art.  
24 I, § 9, cl. 2.

25 54. Respondents have made no finding that this case involves rebellion or  
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1 invasion of public safety as Petitioner has followed all immigration orders, attended  
2 all scheduled hearings, complied with ICE check-ins, and only has a DUI on his  
3 record.

4 55. Petitioner has continued to obey the laws of the United States and has not  
5 committed a new crime or act that would lead the Respondents to determine that he  
6 is now a danger to public safety.

7 56. Respondents' arrest and detention of Petitioner without due process or  
8 opportunity to be heard violates the laws and Constitution of the United States.

### 9 **COUNT TWO**

#### 10 **Violation of the Administrative Procedure Act**

11 57. Petitioner incorporates the allegations in the paragraphs above as though  
12 fully set forth herein.

13 58. Pursuant to 5 U.S.C. section 706 (2)(A) of the Administrative Procedures  
14 Act, "a court shall hold unlawful and set aside agency action, findings and  
15 conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise  
16 not in accordance with law."

17 59. Immigration detention should not be used as a punishment and should only  
18 be used, when a noncitizen is unlikely to appear for an immigration hearing or is a  
19 danger to the community. *Zadvydas*, 533 U.S. at 690.

20 60. Respondents have made no finding that Petitioner is a flight risk as  
21 Petitioner has never failed to attend an immigration hearing or ICE check-in.

22 61. In addition, Respondents have made no finding that Petitioner is a threat to  
23 the community as he only has a DUI on his record, which does not constitute a  
24 crime of moral turpitude. Petitioner has never committed a crime of moral turpitude  
25 in the United States or in any country.

26 62. Had the Respondents conducted a proper assessment of Petitioner's case,  
27 they would have concluded not there are no facts or circumstances that have  
28 changed to justify the arrest and detention of Petitioner.

1 63. Evidently, Respondents' decision to arrest and detain Petitioner while the  
2 immigration court adjudicates his asylum case, is arbitrary, capricious, and an abuse  
3 of discretion.

4 64. Therefore, this Court shall find Respondents' arrest and detention of  
5 Petitioner unlawful and order Respondents to release Petitioner or provide an  
6 opportunity for Petitioner to be heard and pay a reasonable bond to be released.

7 **COUNT THREE**  
8 **Violation of Fifth Amendment Right to Due Process**

9 65. Petitioner incorporates the allegations in the paragraphs above as though  
10 fully set forth herein.

11 66. The Due Process Clause of the Fifth Amendment to the U.S. Constitution  
12 prohibits the federal government from depriving any person of "life, liberty, or  
13 property, without due process of law."

14 67. The U.S. Constitution protects "all 'persons' within the United States,  
15 including [non-citizens], whether their presence is lawful, unlawful, temporary, or  
16 permanent." *Zadvydas*, 533 U.S. at 693.

17 68. While the government has discretion to detain individuals under 8 U.S.C §  
18 1226(a), it is not "unlimited" and must comport with constitutional due process.  
19 *Zadvydas*, 533 U.S. at 698.

20 69. "The government's discretion to incarcerate non-citizens is always  
21 constrained by the requirements of due process." *Morrissey v. Brewer*, 408 U.S.  
22 471, 482 (1972).

23 70. Immigration detention should not be used as a punishment and should only  
24 be used, when a noncitizen is unlikely to appear for an immigration hearing or is a  
25 danger to the community. *Zadvydas*, 533 U.S. at 690.

26 71. Noncitizens seeking asylum are guaranteed due process under the Fifth  
27 Amendment to the U.S. Constitution. *Reno*, 507 U.S. at 306.

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1 72. Petitioner sought asylum during removal proceedings as he and his family  
2 were victims of extortion and death threats in Peru. As a noncitizen who filed an  
3 asylum claim with the immigration court, Petitioner is protected by the rights of due  
4 process under the Fifth Amendment of the U.S. Constitution.

5 73. Respondents arrested and took Petitioner into custody without proper notice  
6 or an opportunity to be heard.

7 74. Respondents were required to provide Petitioner with notice and an  
8 opportunity to be heard before arresting and detaining Petitioner. As a result,  
9 Respondents deprived Petitioner of a legally protected interest under the  
10 Constitution of the United States.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 13 1. Assume jurisdiction over this matter;
- 14 2. Issue a Writ of Habeas Corpus ordering Respondents to show cause as to why  
15 Petitioner should not be discharged from the restraint of liberty now imposed  
16 on him by the Respondents;
- 17 3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner on  
18 his own recognizance or a reasonable bond;
- 19 4. Issue an order prohibiting the Respondents from transferring Petitioner from  
20 the district without the court's approval;

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22 ///

- 1 5. Award Petitioner attorney's fees and costs under the Equal Access to Justice  
2 Act, 28 U.S.C. § 2412; and  
3 6. Grant any further relief this Court deems just and proper.  
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5 Respectfully submitted this December 3, 2025.

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