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

10 In the Matter of:)
11 SUAREZ ARTUNDUAGA, Cristian)
12)
13 Petitioner,)
14)
15)
16)
17 v.)
18 CHRISTOPHER J. LAROSE, Senior)
19 Warden, Otay Mesa Detention Center;)
20 PATRICK DIVVER, Field Office)
21 Director, San Diego Office of Detention)
22 and Removal, U.S. Immigration and)
23 Customs Enforcement; TODD M.)
24 LYONS, Acting Director, U.S.)
25 Immigration and Customs Enforcement,)
26 U.S. Department of Homeland Security;)
27 and KRISTI NOEM, Secretary,)
28 U.S. Department of Homeland Security)
Respondents.)

Case No.: **'25CV3627 CAB KSC**

A#: 

**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus under
3 28 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully, and states as
4 follows:

5
6 **INTRODUCTION**

7 1. Petitioner Cristian Suarez Artunduaga ("Petitioner" or "Mr. Suarez Artunduaga") has
8 been detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention
9 Center in San Diego, California, pending removal proceedings since or about June 29, 2025.

10 2. On or about April 14, 2024, Petitioner, a citizen of Colombia, entered the United States.
11 Petitioner applied for admission at the Laredo, Texas Port of Entry on or about April 14, 2024.

12 3. Petitioner requested asylum due to fear of returning to his home country and arrived
13 with a scheduled CBP One appointment. Petitioner received a grant of humanitarian parole for
14 one year into the U.S. under the Class of Admission "DT" pending an Immigration and
15 Nationality Act ("INA") § 240 hearing.

16 4. Petitioner affirmatively filed a Form I-589, Application for Asylum, Withholding of
17 Removal, and protection under the Convention Against Torture, with USCIS on or about
18 September 10, 2024. On or about August 14, 2024, an Immigration Judge ("IJ") dismissed
19 Petitioner's removal proceedings based on Petitioner's motion to terminate based on the fact
20 he was paroled into the United States. The Department of Homeland Security ("DHS")
21 withdrew its previous opposition and did not oppose the dismissal of proceedings to take
22 consistent positions on the issue.
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25 5. After the dismissal of his removal proceedings, on or about June 29, 2025, Petitioner
26 was detained at the Otay Mesa Detention Center and placed into removal proceedings again
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1 with the issuance of a new Notice to Appear (“NTA”), designating him as an “arriving alien”
2 and charging him as removable under INA § 212(a)(7)(A)(i)(I). DHS later issued Form I-261,
3 on or about July 28, 2025, clarifying the factual allegations against Petitioner. Based on the
4 Form I-261, Petitioner continues to be characterized as an “arriving alien”, despite his April
5 2024 entry and receipt of humanitarian parole.
6

7 6. During the pendency of his current removal proceedings, Petitioner filed a defensive I-
8 589 application on or about November 6, 2025. Petitioner, through undersigned counsel, also
9 initiated Guardianship and Special Immigrant Juvenile Status (“SIJS”) proceedings in the
10 Superior Court of California, County of San Diego- Probate Division on or about October 6,
11 2025. Based on the pendency of the matter in the probate court, Petitioner filed a motion to
12 administratively close removal proceedings based on the pending issuance of the state court’s
13 SIJS finding necessary to apply for SIJS under INA § 101(a)(27)(J) on or about October 9,
14 2025.
15

16
17 7. Petitioner now challenges his continued detention, which has caused significant
18 hardship to him. Petitioner relied on the CBP One application process and now faces
19 indefinite detention based on his mischaracterization as an “arriving alien”, without the ability
20 to have an individualized custody redetermination hearing before an Immigration Judge.
21

22 8. Since approximately mid-May 2025, DHS has implemented a coordinated practice of
23 leveraging immigration detention to strip people like Petitioner of their substantive and
24 procedural rights and pressure them into deportation. Immigration detention is civil and thus
25 is permissible for only two reasons: to ensure a noncitizen’s appearance at immigration
26 hearings and to prevent danger to the community. But DHS did not arrest and detain
27 Petitioner—who poses no risk of absconding from immigration proceedings or danger to the
28

1 community—for either of these reasons. Petitioner’s only criminal history, in the United
2 States or elsewhere, is a pending case for driving without a license.

3
4 9. In immigration court, noncitizens have the right to pursue claims for relief from
5 removal (including asylum), be represented by counsel, gather and present evidence, and
6 pursue appeals. 8 U.S.C. § 1229(a). DHS—in its view—can transfer a noncitizen’s case from
7 removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to cursory
8 proceedings under 8 U.S.C. § 1225(b)(1) called “expedited removal,” where the procedural
9 protections and opportunities to pursue relief from removal built into regular immigration-
10 court proceedings do not apply.

11
12 10. Respondents now seek to keep Petitioner detained without a meaningful opportunity to
13 seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so
14 based not on Petitioner’s personal circumstances or individualized facts. Due to his detention,
15 Petitioner is at risk of being transferred away from the Southern District of California while he
16 remains in Respondents’ physical and legal custody.

17
18 11. But Respondents cannot evade due process requirements so easily. The U.S.
19 Constitution requires the Respondents provide at least the rights available to him when he
20 filed his application for asylum.

21
22 12. The Constitution protects Petitioner—and every other person present in this country—
23 from arbitrary deprivations of his liberty and guarantees him due process of law. The
24 government’s power over immigration is broad, but as the Supreme Court has declared, it “is
25 subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
26 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due
27
28

1 Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80
2 (1992).

3 13. Petitioner seeks declaratory and injunctive relief to compel his immediate release from
4 the immigration jail where he has been held by DHS since being unlawfully detained on or
5 about June 29, 2025, without first being provided a due process hearing to determine whether
6 his incarceration is justified.

7
8 14. Absent review in this Court, no other neutral adjudicator will examine Petitioner’s
9 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
10 1225(b)(1), INA § 235(b)(1), without due process. Due to his erroneous designation as an
11 “arriving alien” despite his 2024 entry, Petitioner is not eligible for bond, as IJs lack
12 jurisdiction to hold an individualized custody redetermination hearing in his matter.
13

14 15. For the reasons outlined below, Petitioner’s arrest and inability to contest his arbitrary
15 detention violate his statutory and constitutional rights, including Due Process protections
16 under the U.S. Constitution. Petitioner respectfully requests that this Court should grant the
17 instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory
18 and injunctive relief, to prevent such harms from recurring. Petitioner also asks this Court to
19 find that Respondents’ attempts to detain, transfer, and deport him are arbitrary and capricious
20 and in violation of the law, and to immediately issue an order preventing him transfer out of
21 this district.
22
23

24 JURISDICTION

25 16. Petitioner is detained in the custody of Respondents at the Otay Mesa Detention Center
26 in San Diego, California.
27
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1 17. This action arises under the Constitution of the United States and the Immigration and
2 Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

3 18. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
4 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution
5 (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All
6 Writs Act).

7 19. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
8 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
9 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*,
10 533 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025,
11 at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
12 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same). This action arises under the Due Process
13 Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C.
14 §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause);
15 and 5 U.S.C. § 702 (Administrative Procedure Act).

16 20. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,
17 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §
18 1651, and the Court’s inherent equitable powers.

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23 **VENUE**

24 21. Venue is proper because Petitioner is in Respondents’ legal and physical custody at Otay
25 Mesa Detention Center in San Diego, California. Venue is further proper because a substantial
26 part of the events or omissions giving rise to Petitioner’s claims occurred in this District, where
27 Petitioner is now in Respondents’ legal and physical custody, including his current and ongoing
28

1 detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa
2 Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas
3 petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't*
4 *of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5,
5 2019) (district of confinement is the preferable forum even if the Court otherwise has personal
6 jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule
7 HC.1.
8

9
10 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

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

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

24 **STATEMENT OF FACTS**

25 24. Petitioner is a 20-year-old citizen and national of Colombia. Petitioner is a citizen of
26 Colombia who entered the United States for the first time through the Laredo Port of Entry on
27
28

1 or about April 14, 2024. Mr. Suarez Artunduaga was paroled for one year year into the U.S.
2 pending an INA § 240 hearing.

3 25. Petitioner affirmatively filed a Form I-589, Application for Asylum, Withholding of
4 Removal, and protection under the Convention Against Torture, with USCIS on or about
5 September 10, 2024. Petitioner's I-589 application was based on a fear of returning to his
6 home country after being forcibly displaced by an armed group and threatened due to his
7

8  On or about August 14, 2024, an IJ
9 dismissed Petitioner's removal proceedings based on Petitioner's motion to terminate based
10 on the fact he was paroled into the United States. The DHS withdrew its previous opposition
11 and did not oppose the dismissal of proceedings to take consistent positions on the issue.
12

13 26. After the dismissal of his removal proceedings, on or about June 29, 2025, Petitioner
14 was detained at the Otay Mesa Detention Center and placed into removal proceedings again
15 with the issuance of a new NTA. Petitioner filed a defensive I-589 application on or about
16 November 6, 2025. Petitioner, through undersigned counsel, also initiated Guardianship and
17 SIJS proceedings in the Superior Court of California, County of San Diego- Probate Division
18 on or about October 6, 2025.
19

20 27. Petitioner is thus a noncitizen who is detained at Otay Mesa Detention Center pending
21 immigration removal proceedings since June 29, 2025. Petitioner remains detained at Otay
22 Mesa Detention Center and requests release. Petitioner poses no danger or flight risk.
23

24 28. Petitioner's sole criminal history is that of a pending charge for driving without a
25 license.

26 29. On October 9, 2025, the Petitioner filed a Motion to Administratively Close Removal
27 Proceedings Based on Pending Special Immigration Juvenile Status Proceedings. However, the
28

1 (DHS) has opposed the motion, and the Respondent continues to be detained. DHS filed its
2 opposition on October 16, 2025.

3 30. Petitioner's removal proceedings have yet to be set for a final hearing. Petitioner's
4 pending Guardianship and SIJS proceedings in the probate court are set for a hearing on January
5 22, 2026.
6

7 **PARTIES**

8 31. Mr. Suarez Artunduaga ("Petitioner") is a 20-year-old citizen and national of Colombia.
9 He left Colombia in November 2024³ and came to the USA in April 2024 to seek asylum,
10 withholding of removal, or protection under the Convention Against Torture after fleeing
11 persecution in Colombia. He has had no departures since his arrival. He is not married. He has
12 no children. Since the arrest on or about June 29, 2025, Mr. Suarez Artunduaga has remained in
13 Respondents' custody.
14

15 32. Mr. Suarez Artunduaga is currently residing in Respondents' custody at Otay Mesa
16 Detention Center in San Diego, California, as of the time of the filing of this petition.
17

18 33. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa
19 Detention Center in San Diego, California, where Mr. Suarez Artunduaga 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. Suarez Artunduaga and is named in his official capacity.
23

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

1 Office's area of responsibility includes San Diego and Imperial Counties in California.

2 Respondent Divver is a custodian of Mr. Suarez Artunduaga and is named in his official
3 capacity.

4
5 35. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority
6 over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
7 decisions relating to non-citizens charged with being removable from the U.S., including the
8 arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian
9 of Mr. Suarez Artunduaga and is named in his official capacity.

10
11 36. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over the
12 actions of all other DHS Respondents in this case, as well as all operations and federal agencies
13 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with
14 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
15 1103(a). Respondent Noem is a custodian of Mr. Suarez Artunduaga and is named in her
16 official capacity.

17
18 37. Respondent ICE is responsible for local custody decisions relating to non-citizens
19 charged with being removable from the U.S., including the arrest, detention, custody status, and
20 removal of non-citizens.

21
22 38. Respondent DHS is the federal agency that has authority over the actions of ICE and all
23 other DHS Respondents.

24 39. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem
25 (collectively, "Respondents") all in their official capacities.

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 40. Petitioner has no administrative remedies to exhaust, as he is designated as an “arriving
3 alien” and is thus IJs do not have jurisdiction to hear a custody redetermination request in
4 Petitioner’s matter.
5

6 41. As such, Petitioner’s continued unlawful detention in Respondents’ custody cannot be
7 challenged by way of bond proceedings before an Immigration Judge. Petitioner is also
8 challenging the unlawfulness of Respondents’ decision to detain him, independent of any
9 decision made by any Immigration Judge in removal proceedings.
10

11 42. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner’s
12 constitutional, statutory, and regulatory rights and restore his liberty.

13 **LEGAL FRAMEWORK**

14 43. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to
15 apply for asylum to individuals seeking safe haven in the United States. The purpose of the
16 Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs
17 of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L.
18 No. 96-212, 94 Stat. 102 (1980).
19

20 44. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol
21 Relating to the Status of Refugees, “to which the United States had been bound since 1968.”
22 *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
23 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
24 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
25

26 45. The Refugee Act established the right to apply for asylum in the United States and
27 defines the standards for granting asylum. It is codified in various sections of the INA.
28

1 46. The INA gives the Attorney General or the Secretary of Homeland Security discretion to
2 grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition,
3 individuals generally are eligible for asylum if they have experienced past persecution or have a
4 well-founded fear of future persecution on account of race, religion, nationality, membership in
5 a particular social group, or political opinions and if they are unable or unwilling to return to
6 and avail themselves of the protection of their homeland because of that persecution of fear. 8
7 U.S.C. § 1101(a)(42)(A).
8

9 47. Although a grant of asylum may be discretionary, the right to apply for asylum is not.
10 The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is
11 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. §
12 1158(a)(1).
13

14 48. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The
15 right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§
16 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and
17 the right to access information in support of an application, see § 1158(b)(1)(B) (placing the
18 burden on the applicant to present evidence to establish eligibility.).
19

20 49. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to
21 the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
22

23 50. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration
24 court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due
25 process, noncitizens may seek administrative appellate review before the Board of Immigration
26 Appeals of removal orders entered against them and judicial review in federal court upon a
27 petition for review. 8 U.S.C. § 1252(a) *et seq.*
28

1 51. In 1996, Congress created “expedited removal” as a truncated method for rapidly
2 removing certain noncitizens from the United States with very few procedural protections.
3
4 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
5 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585; *see* 8
6 U.S.C. § 1225(b)(1). Because there are few procedural protections, expedited removal applies
7 narrowly to only those noncitizens who are inadmissible to the United States because they
8 engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8
9 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8
10 U.S.C. § 1182(a)(7). No other person may be subjected to expedited removal. 8 C.F.R. §
11 235.3(b)(1), (b)(3).
12

13 52. Noncitizens subjected to expedited removal are ordered removed by an immigration
14 officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). That officer must
15 determine whether the individual has been continuously present in the United States for less
16 than two years; is a noncitizen; and is inadmissible because he or she has engaged in certain
17 kinds of fraud or lacks valid entry documents “at the time of . . . application for admission.” *See*
18 8 U.S.C. §1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).
19

20 53. Otherwise, if the officer concludes that the individual is inadmissible under an
21 applicable ground, the officer “shall,” with simply the concurrence of a supervisor, 8 C.F.R. §
22 235.3(b)(7), order the individual removed “without further hearing or review unless the alien
23 indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. §
24 1225(b)(1)(A)(i).
25

26 54. Thus, a low-level DHS officer can order the removal of an individual who has been
27 living in the United States with virtually no administrative process—just the completion of
28

1 cursory paperwork—based only on the officer’s own conclusions that the individual has not
2 been admitted or paroled, that the individual has not adequately shown the requisite continuous
3 physical presence, and that the individual is inadmissible on one of the two specified grounds.
4
5 *See* 8 U.S.C. §§ 1225(b)(1)-(b)(2).

6 55. Once a determination on inadmissibility is made, removal can occur rapidly, within
7 twenty-four hours.

8 56. Asylum is not an admission to the United States and an applicant for asylum, while they
9 must be physically present in the United States to apply, need not apply for or seek admission to
10 the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

11 57. For those who fear return to their countries of origin, the expedited removal statute
12 provides a limited additional screening. But the additional screening, to the extent it occurs,
13 does not remotely approach the type of process and the rights available to asylum seekers
14 receive in regular INA section 240 immigration proceedings.

15 58. An expedited removal order comes with significant consequences beyond removal itself.
16 Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission
17 to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8
18 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found
19 inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United
20 States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

21 59. Expedited removal only applies to noncitizens who are inadmissible on one of two
22 specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who seek to procure
23 immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which
24 applies to noncitizens who, “at the time of application for admission,” fail to satisfy certain
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1 documentation requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens
2 based on other grounds, they must afford the noncitizen a full hearing before an immigration
3 judge. *See* 8 C.F.R. § 235.3(b)(1), (3).

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

11
12 61. Thus, in the decades that followed, most people who entered without inspection—unless
13 they were subject to some other detention authority—received bond hearings. That practice was
14 consistent with many more decades of prior practice, in which noncitizens who were not
15 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8
16 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
17 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

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

23
24 63. On January 20, 2025, President Donald Trump issued several executive actions relating
25 to immigration, including “Protecting the American People Against Invasion,” an executive
26 order (EO) setting out a series of interior immigration enforcement actions. The Trump
27 administration, through this and other actions, has outlined sweeping, executive branch-led
28

1 changes to immigration enforcement policy, establishing a formal framework for mass
2 deportation. The “Protecting the American People Against Invasion” EO instructs the DHS
3 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil
4 immigration enforcement procedures including through the use of mass detention.
5

6 64. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for
7 public inspection and effective immediately a designation expanding the scope of expedited
8 removal to apply nationwide and to certain noncitizens who are unable to prove they have been
9 in the country continuously for two years. On January 24, 2025, DHS published a Notice that
10 expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland
11 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January 2025
12 Designation”). The designation was “effective on” January 21, 2025.
13

14 65. The January 2025 Designation expands the pool of noncitizens who can be subjected to
15 the summary removal process substantially to include noncitizens who are apprehended
16 anywhere in the United States and who have not been in the United States continuously for
17 more than two years. *Id.* at 8140.
18

19 66. The January 2025 Designation does not state that it applies to noncitizens who were in
20 the United States before its effective date.
21

22 67. Courts have recognized the significance of the habeas statute in protecting individuals
23 from unlawful detention, which affords “a swift and imperative remedy in all cases of illegal
24 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963); *see also Yong v. INS*, 208
25 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination
26 of petitions).
27
28

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

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

6 70. Due process requires “adequate procedural protections” to ensure that the government’s
7 asserted justification for physical confinement “outweighs the individual’s constitutionally
8 protected interest in avoiding physical restraint.” *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001)
9 (internal quotation marks omitted).

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

13 72. The test for procedural due process claims, the *Mathews* test balances: (1) the private
14 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
15 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
16 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No.
17 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
18 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
19 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting
20 cases doing the same). Here, each factor weighs in Petitioner’s favor, and Petitioner’s release is
21 justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no
22 danger to the community, nor is a flight risk.

1 73. On information and belief, Petitioner alleges that Respondents detained him for the
2 purpose of divesting him of his due process rights in his properly filed asylum application.

3 74. On information and belief, Respondents did not afford Petitioner due process before
4 revoking his release from custody, depriving him of his liberty interest, and placing him in
5 detention within Respondents' legal and physical custody.

6 75. 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 under the Refugee Act
9

10
11 **CAUSES OF ACTION**

12 **COUNT ONE**

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

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

17 77. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
18 federal government from depriving any person of "life, liberty, or property, without due process
19 of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States,
20 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
21 permanent." *Zadvydas*, 533 U.S. at 693.

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

24 79. Moreover, Mr. Suarez Artunduaga has a vital liberty interest in remaining free from
25 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D.
26 Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal.
27
28

1 June 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
2 apprehension “has a substantial private interest in remaining out of custody” which includes an
3 interest in “...obtaining necessary medical care, [and] maintaining her relationships in the
4 community...”). While on release from DHS custody, Mr. Suarez Artunduaga was building his
5 emotional support system in the community.
6

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

13 81. Here, Mr. Suarez Artunduaga was detained arbitrarily and without cause. *See generally*
14 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard
15 before deprivation of a legally protected interest). Nor has the government identified any
16 materially changed circumstances that would warrant detaining Mr. Suarez Artunduaga.
17

18 COUNT TWO

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

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

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

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

1 84. The January 2025 designation does not unmistakably apply to individuals who entered
2 the United States prior to its effective date and were already in removal proceedings. The
3 designation's language thus does not "require that it be applied retroactively." See *INS v. St Cyr*,
4 533 U.S. 289, 291 (2001).

5
6 85. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. §
7 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive
8 effect. See *INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320,
9 328, n.4 (1997) (requiring statutory language to be "so clear that it could sustain only one
10 interpretation").

11
12 86. Accordingly, Respondents unlawfully subjected Mr. Suarez Artunduaga to indefinite
13 detention.

14 **COUNT THREE**

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

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

20 88. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in
21 accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction
22 authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. §
23 706(2)(A)-(D).

24
25 89. Once a removal proceeding has been initiated, regulations enumerate the reasons for
26 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss,
27
28

1 the Immigration Judge must make “an informed adjudication . . . based on an evaluation of the
2 factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

3
4 90. The initiation of expedited removal proceedings is not an enumerated ground upon
5 which a removal proceeding may be dismissed.

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

11
12 92. Under the APA, an agency must provide “reasoned explanation for its action” and “may
13 not depart from a prior policy sub silentio or simply disregard rules that are still on the books.”
14 *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief,
15 Respondents’ intent was to eliminate the due process rights available to Petitioner in removal
16 proceedings under section 240 of the INA, deprive him of his liberty interest despite no
17 evidence of material changed circumstances, or for some other purposes not supported by law.
18 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
19 2025) (“Detention for its own sake, to meet an administrative quota, or because the government
20 has not yet established constitutionally required pre-detention procedures is not a legitimate
21 government interest.”).

22
23
24 93. In deciding to detain Mr. Suarez Artunduaga, Respondents further violated the APA by
25 “entirely fail[ing] to consider an important aspect of the problem” – namely, the important
26 procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor*
27 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see*
28

1 also *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020)
2 (holding that rescission of immigration policy without considering “particular reliance interests”
3 is arbitrary and capricious in violation of the APA).
4

5 94. The arbitrary and capricious detention of Mr. Suarez Artunduaga was not made in
6 furtherance of an enumerated reason set forth in the regulations and causes Mr. Suarez
7 Artunduaga irreparable harm. For these reasons, the Court should find that the decision to detain
8 Mr. Suarez Artunduaga is arbitrary, capricious, and unsupported by substantial evidence. *See* 5
9 U.S.C. § 706(2)(A), (E).
10

11 COUNT FOUR

12 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance 13 with Law and in Excess of Statutory Authority, Unlawful Detention**

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

16 96. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
17 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
18 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).
19

20 97. An action is an abuse of discretion if the agency “entirely failed to consider an important
21 aspect of the problem, offered an explanation for its decision that runs counter to the evidence
22 before the agency, or is so implausible that it could not be ascribed to a difference in view or the
23 product of agency expertise.” *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
24 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
25 463 U.S. 29, 43 (1983)).
26
27
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1 98. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for
2 its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
3 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

4 99. The INA provides that Respondents may, as they did in 2024 in Petitioner’s case, release
5 an individual from apprehension or custody based on an individualized determination of their
6 danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24
7 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody
8 determination may be made only when warranted by an individual’s specific facts and
9 circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

10 100. 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.

16 101. By revoking his release from DHS custody and detaining Mr. Suarez Artunduaga
17 without notice or consideration of his individualized facts and circumstances, Respondents have
18 violated the INA, implementing regulations, and the APA.

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

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

21 104. On information and belief, by detaining Mr. Suarez Artunduaga categorically and
22 without notice, Respondents have further abused their discretion because, since the agency
23 made its initial custody determination, on information and belief, there have been no changes to
24
25
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1 Mr. Suarez Artunduaga’s specific facts or circumstances that support his detention or the
2 revocation of his release from custody on his own recognizance.

3
4 **COUNT FIVE**

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

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

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

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

15 108. Petitioner is not amenable to, nor may he be subjected to, expedited removal because he
16 was immediately placed into INA section 240 proceedings upon encountering DHS officers in
17 2024, and not into expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II),
18 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring “reasonable opportunity” to explain a non-
19 citizen’s status).
20

21 109. Because Mr. Suarez Artunduaga is not subject to the January 2025 Designation,
22 Respondents’ use of the January 2025 designation to detain him while his INA section 240
23 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.
24

25 **COUNT SIX**

26 **Violation of the Fourth Amendment of the Constitution**

27 110. Petitioner restates, realleges, and incorporates by reference each and every allegation in
28

1 the paragraphs above as if fully set forth herein.

2 111. The Fourth Amendment protects “[t]he right of the people to be secure in their persons .
3 . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has
4 recognized that immigration arrests and detentions are “seizures” within the meaning of the
5 Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
6 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
7 person).
8

9 112. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
10 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
11 determination can occur either before the arrest, in the form of a warrant, or promptly afterward,
12 in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a
13 person, including of a noncitizen, absent a neutral judicial determination of probable cause
14 violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
15 *McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of
16 detention, which includes weekends, unless there is a bona fide emergency or other
17 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).
18

19 113. Congress enacted a strong preference that immigration arrests be based on warrants. *See*
20 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act
21 thus provides immigration officers with only limited authority to conduct warrantless arrests. 8
22 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8
23 C.F.R. § 287.8(c)(2)(ii).
24

25 114. Mr. Suarez Artunduaga, lawfully present based on Respondents’ allowing Petitioner to
26 enter after attending a CBPOne appointment and releasing him from DHS custody after a grant
27
28

1 of humanitarian parole, did not receive any judicial determination of probable cause for his
2 arrest or continued detention by the Respondents.

3 115. The Government cannot salvage this seizure by invoking generalized immigration
4 enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and
5 demands individualized justification for both the arrest and the extended detention. *See United*
6 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Suarez
7 Artunduaga has no criminal record, with only a pending charge of driving without a license, and
8 has not posed a threat to the community while being in the United States.

9
10 115. Respondents' arrest of Mr. Suarez Artunduaga constitutes an unreasonable and unlawful
11 seizure in violation of the Fourth Amendment.
12

13 **COUNT SEVEN**

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

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

18 117. 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

23 118. Mr. Suarez Artunduaga has a fundamental interest in liberty and being free from official
24 restraint.

25 119. The government's detention of Petitioner without notice or an opportunity to be heard
26 before detention violates his right to due process.
27
28

1 120. The government's detention of Petitioner without a meaningful bond and custody
2 redetermination hearing to determine whether he is a flight risk or danger to others violates his
3 right to due process.

4
5 **PRAYER FOR RELIEF**

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

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

25 Respectfully Submitted,

26 /S/ John Wells

27 John Wells, Esq.

28 Attorney for the Petitioner