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Detained

7 *Attorney for Petitioner Cristian A Suarez Artunduaga*

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

9 In the Matter of:

) Case No: 25-cv-3627-CAB-KSC
) Hearing Date/Time: N/A
) Courtroom: 15A

10
11 **CRISTIAN SUAREZ
ARTUNDUAGA**

) Judge: Hon. Cathy Ann Bencivengo

12
13
14 Petitioner,

) **PETITIONER'S TRAVERSE IN
SUPPORT OF HIS PETITION
FOR WRIT OF HABEAS
CORPUS**

15 v.

16 CHRISTOPHER J. LAROSE, Senior
17 Warden of the Otay Mesa Detention
18 Center; PATRICK DIVVER, Field
19 Office Director, San Diego Office of
20 Detention and Removal, U.S.
21 Immigration and Customs
22 Enforcement; TODD M. LYONS,
23 Acting Director, U.S. Immigration;
24 and Customs Enforcement, U.S.
Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security

25 Respondent's – Defendants.

26 **PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN**

27 Petitioner, Cristian Suarez Artunduaga, through undersigned counsel, respectfully

28 submits this Traverse to Respondents' Return and in further support of his Petition for Writ of

1 Habeas Corpus under 28 U.S.C. § 2241.

2 **I. INTRODUCTION**

3 Respondent's Opposition rests on two core assertions, first, that this Court lacks jurisdiction
4 to review Petitioner's detention under 8 U.S.C. §1252; and second, that Petitioner is lawfully
5 subject to mandatory detention under 8 U.S.C. §1225(b)(2) because his parole expired and he is
6 therefore an "arriving alien." Both assertions are incorrect.

7
8 Petitioner challenges only the lawfulness of his present physical detention. He does not seek
9 review of removability, the commencement or adjudication of removal proceedings, or any
10 discretionary immigration determination. Rather, he asks this Court to determine whether
11 Respondents possess statutory authority to continue detaining him at all under the detention
12 framework they invoke.

13
14 Because Petitioner seeks relief that would directly and immediately alter the fact and
15 duration of his custody, namely, release or a lawful custody redetermination, this Court has
16 jurisdiction under 28 U.S.C. § 2241 to review the legality of his detention.

17
18 **II. FACTUAL BACKGROUND**

19 Petitioner entered the United States through the Laredo, Texas Port of Entry on or about
20 April 14, 2024, pursuant to a scheduled CBP One appointment. DHS granted Petitioner
21 humanitarian parole for one year under Class of Admission "DT" and placed him into removal
22 proceedings under 8 U.S.C. § 1229a.

23
24 Petitioner appeared as required in immigration court and affirmatively pursued his asylum
25 application. On or about August 14, 2024, the Immigration Judge dismissed Petitioner's
26 removal proceedings after DHS withdrew its opposition and did not contest dismissal in order to
27 take consistent positions regarding Petitioner's parole.

1 Notwithstanding that procedural history, DHS arrested and detained Petitioner on or about
2 June 29, 2025. DHS issued a new Notice to Appear designating Petitioner as an “arriving alien”
3 and charging him as inadmissible under INA § 212(a)(7)(A)(i)(I). DHS later issued a Form I-
4 261 clarifying factual allegations while continuing to characterize Petitioner as an arriving
5 alien—despite his prior parole into the United States, placement into § 1229a proceedings, and
6 dismissal of those proceedings by an Immigration Judge.
7

8 Petitioner has remained detained at the Otay Mesa Detention Center since that date without
9 access to a bond or custody redetermination hearing.
10

11 III. LEGAL STANDARD

12 A writ of habeas corpus under 28 U.S.C. § 2241 permits a court to inquire into the legality
13 of federal detention. Habeas corpus exists to test whether the Government has lawful authority
14 to detain an individual and whether that detention is being carried out in accordance with
15 statutory and constitutional limits. Relief is appropriate where detention lacks statutory
16 authorization, violates required procedures, or is otherwise not in accordance with law.
17

18 IV. HABEAS JURISDICTION IS PROPER

19 Respondents contend that this Court lacks jurisdiction under 8 U.S.C. § 1252. That
20 argument fails. Petitioner challenges only the lawfulness of his present physical detention and
21 seeks relief that would directly and immediately alter the fact and duration of his custody. This
22 Court therefore has jurisdiction under 28 U.S.C. § 2241.
23

24 A. Petitioner Challenges Detention, Not Removal

25 Respondents mischaracterize the Petition as a challenge to removal proceedings, which is
26 a misrepresentation of the facts. Petitioner does not seek termination of proceedings, suppression
27 of evidence, or review of discretionary immigration determinations. He challenges only whether
28

1 the Respondent has lawful statutory authority to continue detaining him.

2 Habeas jurisdiction exists where a petitioner challenges present physical custody and seeks
3 relief that would result in release or a lawful custody determination. *Nettles v. Grounds*, 830 F.3d
4 922, 934 (9th Cir. 2016). Where success on the petition would directly affect custody, §2241 is
5 the proper vehicle. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023).

7 That is precisely the relief sought here.

8 **B. Petitioner's Detention Does Not Arise From Removal Proceedings**

9 Respondents argue that Petitioner's claims are barred by 8 U.S.C. §1252(b)(9). That
10 provision is a channeling rule, not a jurisdiction-stripping statute. It does not preclude district
11 court review of detention challenges that are independent of the removal process.

13 Petitioner's injury is present physical confinement, not the adjudication of removability or
14 execution of a removal order. The relief sought, release or lawful custody redetermination, would
15 not interfere with removal proceedings or the Immigration Judge's adjudicatory role.

16 The Supreme Court has made clear that habeas review remains available where the
17 challenge is to detention itself rather than the removal process. *Thuraissigiam v. U.S. Dep't of*
18 *Homeland Sec.*, 591 U.S. 103, 109–10 (2020).

20 **C. Section 1252(g) Does Not Bar Review**

21 Section 1252(g) applies only to three discrete actions: the decision to commence
22 proceedings, adjudicate cases, or execute removal orders. Petitioner challenges none of those
23 actions. He challenges only whether Respondents may lawfully detain him under the statute they
24 invoke. Section 1252(g) therefore does not bar this Court's review.

26 **D. Exhaustion Is Not Required or Possible**

27 Respondents argue that Petitioner failed to exhaust administrative remedies. But
28

1 Respondents simultaneously assert that Petitioner is subject to mandatory detention and therefore
2 ineligible for a bond hearing. Where no administrative custody remedy exists, exhaustion is
3 neither required nor possible.

4
5 Respondents cannot deny the availability of bond while faulting Petitioner for failing to seek
6 it. Habeas corpus is the proper, and only, vehicle to address Petitioner's present detention.

7 **V. DHS LACKS AUTHORITY TO DETAIN PETITIONER**

8 Respondents assert that Petitioner is subject to mandatory detention under 8 U.S.C. §
9 1225(b)(2) because his parole expired and parole does not constitute admission. That conclusion
10 does not follow from the statute and ignores the procedural posture of this case.

11
12 Although Petitioner's Habeas Petition addresses DHS's broader reliance on expedited-
13 removal authority, Respondents here justify Petitioner's continued detention specifically under
14 8 U.S.C. §1225(b)(2). Petitioner challenges that asserted detention authority directly.

15 **A. DHS Lacks Statutory Authority to Invoke §1225(b)(2) After Parole and §1229a**
16 **Proceedings**

17
18 Petitioner does not dispute that parole is not an admission. But Respondents' argument
19 conflates admission status with detention authority. The relevant question is not whether
20 Petitioner was admitted; it is whether DHS may lawfully detain him under § 1225(b)(2) after DHS
21 itself paroled him into the United States, placed him into removal proceedings under 8 U.S.C. §
22 1229a, and obtained dismissal of those proceedings before an Immigration Judge.

23
24 Section 1225(b) governs inspection and detention decisions at the time a noncitizen seeks
25 admission. It does not grant DHS unrestricted authority to invoke mandatory detention months
26 later, after parole, after § 1229a processing, and after Immigration Judge involvement. Nothing
27 in the INA authorizes DHS to retroactively reclassify the governing detention statute in this
28

1 manner.

2 **B. Expiration of Parole Does Not Automatically Trigger §1225(b)(2)**

3 Respondents rely heavily on 8 U.S.C. § 1182(d)(5)(A), which provides that parole is not an
4 admission and that, once parole ends, the individual's case shall continue as that of an applicant
5 for admission. That provision addresses status, not detention authority. It does not itself authorize
6 detention, nor does it mandate detention under § 1225(b)(2) in every case.

7
8 If Congress intended parole expiration to automatically trigger mandatory detention
9 regardless of prior § 1229a proceedings and Immigration Judge action, it would have said so.
10 Respondents' interpretation would permit DHS to detain formerly paroled individuals at any time,
11 under any detention statute of its choosing, without regard to procedural history or reliance
12 interests. The statute does not support that result.

13
14 **C. DHS May Not Switch Detention Statutes Mid-Stream**

15 DHS affirmatively chose to parole Petitioner into the United States, process him under
16 §1229a, and seek dismissal of those proceedings before an Immigration Judge. Petitioner
17 complied with that framework and relied on it.

18
19 As the template traverse makes clear, detention imposed after IJ action must independently
20 satisfy the statutory prerequisites of the detention statute invoked. Where those prerequisites are
21 absent, continued detention exceeds DHS's statutory authority and is unlawful. *Pinson*, 69 F.4th
22 at 1067; *Nettles*, 830 F.3d at 934.

23
24 **D. Continued Detention Without Statutory Authority Is Unlawful**

25 Because Respondents have failed to identify a detention statute that lawfully applies in the
26 posture of this case, Petitioner's continued detention lacks statutory basis. Detention that is not
27 authorized by statute is unlawful and must be remedied through habeas corpus.
28

1 **VI. PETITIONER'S DETENTION VIOLATES DUE PROCESS**

2 **A. Due Process Requires Detention Within Statutory Limits**

3 Even in the immigration context, due process requires that detention authority be
4 exercised within the limits Congress established and consistent with required procedures.
5 Respondents' reliance on statutory labels and parole-expiration reasoning does not cure the
6 absence of lawful detention authority.
7

8 **B. IJ Termination Without Prejudice Does Not Authorize Automatic §1225(b)(2)**
9 **Detention**

10 Placement into detention under § 1225(b)(2) following termination of removal
11 proceedings without prejudice exceeds the statutory bounds set by Congress. Nothing in the
12 INA authorizes DHS to impose mandatory detention solely because prior proceedings were
13 terminated, particularly where DHS itself sought dismissal and previously elected to proceed
14 under § 1229a.
15

16 **C. Prolonged Detention Without a Hearing Violates Due Process**

17 Petitioner has remained detained at the Otay Mesa Detention Center since June 29,
18 2025, despite minimal criminal history and while immigration and related proceedings remain
19 pending. DHS's custody decision immediately and definitively deprived Petitioner of liberty
20 without a lawful statutory basis.
21

22 Immigration Judges lack authority to remedy the injury challenged here. Where DHS
23 asserts mandatory detention under § 1225(b)(2), Immigration Judges have no jurisdiction to
24 conduct bond hearings or order release. As a result, Petitioner cannot obtain meaningful review
25 of the legality of his detention through the administrative process, rendering habeas corpus the
26 only effective mechanism for relief.
27
28

1 **VII. APA REVIEW SUPPORTS RELIEF**

2 DHS's decision to detain Petitioner is final in the only sense that matters—it immediately
3 and definitively deprived him of liberty. Because that action directly governs custody and
4 cannot be meaningfully remedied administratively, habeas relief remains appropriate.
5
6 *Thuraissigiam*, 591 U.S. at 109; *Pinson*, 69 F.4th at 1067.

7 **VIII. RELIEF WOULD DIRECTLY AFFECT CUSTODY**

8 Petitioner seeks a declaration that his detention under the asserted statutory framework is
9 unlawful and an order requiring release or a lawful custody redetermination. Granting this relief
10 would directly alter custody, satisfying § 2241's core requirement. *Nettles*, 830 F.3d at 934.

11 **IX. CONCLUSION AND PRAYER FOR RELIEF**

12
13 For the foregoing reasons, Petitioner respectfully requests that this Court deny Respondents'
14 request to dismiss, grant the Petition for Writ of Habeas Corpus, declare that Respondents lack
15 lawful authority for Petitioner's continued detention under the asserted framework as applied
16 here, and order Petitioner's immediate release or such other relief as the Court finds just and
17 proper.
18

19 Respectfully Submitted,

20 /S/ Jack Wells

21 DATED: December 30, 2025

22 _____
23 Jack Wells,
24 Attorney for Petitioner,
25 Cristian Suarez Artunduaga