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

10 **MENDOZA PEREZ, Anthony Jose**

**CASE NO. '25CV3845 AGS MMP**

11 **Petitioner-Plaintiff,**

12 A 

13 vs.

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

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

CHALLENGE TO UNLAWFUL  
INCARCERATION; REQUEST FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

25 **Respondents-Defendants.**  
26 \_\_\_\_\_  
27  
28

1 Petitioner Mr. Mendoza Perez petitions this Court for a writ of habeas corpus under 28  
2 U.S.C. § 2241 to remedy Respondents’ detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4 1. Petitioner Anthony Mendoza Perez (“Petitioner”) is a Venezuelan asylum seeker  
5 detained at Otay Mesa Detention Center in San Diego, California. He was persecuted in Venezuela  
6 on account of his imputed political opinion and social group membership of former military officers  
7 who deserted their posts after refusing to support government corruption. The persecution he  
8 suffered in Venezuela included an arrest warrant being put out for his dishonorable discharge from  
9 the military.

10 2. On or about September 16, 2023, Mr. Mendoza Perez entered the United States and  
11 was released on his own recognizance.

12 3. Respondents commenced removal proceedings against him in immigration court,  
13 entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a.

14 4. Since then, Petitioner has attended his immigration court hearings. About four  
15 months after his arrival in the USA, Petitioner hired an attorney to submit an asylum application,  
16 but the attorney never filed it. After months of waiting with no progress, a pro bono attorney  
17 assisted in filing another asylum application. On or about September 18, 2025, he filed Form I-589,  
18 Application for Asylum, Withholding of Removal, and Protection under the Convention Against  
19 Torture with the immigration court.

20 5. Since approximately mid-May 2025, DHS has implemented a coordinated practice of  
21 leveraging immigration detention to strip people like Mr. Mendoza Perez of their substantive and  
22 procedural rights and pressure them into deportation.<sup>1</sup> Immigration detention is civil and thus is  
23 permissible for only two reasons: to ensure a noncitizen’s appearance at immigration hearings and  
24 to prevent danger to the community. But DHS did not arrest and detain Mr. Mendoza Perez—who  
25 demonstrably poses no risk of absconding from immigration proceedings or danger to the  
26 community—for either of these reasons.

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27 <sup>1</sup> Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process  
28 concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice-agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9> (last visited September 12, 2025) (“The exact number of arrests is unclear, but footage shows agents detaining people immediately after court appearances.”).

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

8           7.       Respondents then redetained Mr. Mendoza Perez without a meaningful opportunity  
9 to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based  
10 not on Mr. Mendoza Perez’s personal circumstances or individualized facts. Due to his detention,  
11 Mr. Mendoza Perez is at risk of being transferred away from the Southern District of California  
12 while he remains in Respondents’ physical and legal custody.

13           8.       But Respondents cannot evade due process requirements so easily. The U.S.  
14 Constitution requires the Respondents provide at least the rights available to him when he filed his  
15 application for asylum.

16           9.       The Constitution protects Mr. Mendoza Perez—and every other person present in  
17 this country—from arbitrary deprivations of his liberty and guarantees him due process of law. The  
18 government’s power over immigration is broad, but as the Supreme Court has declared, it “is  
19 subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).  
20 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due  
21 Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

22           10.      Mr. Mendoza Perez seeks declaratory and injunctive relief to compel his immediate  
23 release from the immigration jail where he has been held by DHS since being unlawfully detained,  
24 and transferred to Otay Mesa on or about November 5, 2025, without first being provided a due  
25 process hearing to determine whether his incarceration is justified.

26           11.      Absent review in this Court, no other neutral adjudicator will examine Mr. Mendoza  
27 Perez’s plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §  
28 1225(b)(1), INA § 235(b)(1), without due process. Mr. Mendoza Perez appeared before the Otay  
Mesa Immigration Court within Otay Mesa Detention Center in San Diego, California. An  
Immigration Judge at the Adelanto Detention Center informed Mr. Mendoza Perez and his counsel  
that he was likely not eligible for bond, leading to Mr. Mendoza Perez’s counsel withdrawing the

1 bond request at the bond hearing that day. Counsel for DHS confirmed that DHS, too, believed Mr.  
2 Mendoza Perez was likely not eligible for bond or release.

3 12. For the reasons outlined below, Mr. Mendoza Perez’s arrest and inability to contest  
4 his arbitrary detention violate his statutory and constitutional rights, including Due Process  
5 protections under the U.S. Constitution. Mr. Mendoza Perez respectfully requests that this Court  
6 should grant the instant petition for a writ of habeas corpus, without any bond requirement, and for  
7 declaratory and injunctive relief, to prevent such harms from recurring. Mr. Mendoza Perez also  
8 asks this Court to find that Respondents’ attempts to detain, transfer, and deport him are arbitrary  
9 and capricious and in violation of the law, and to immediately issue an order preventing her transfer  
10 out of this district.

### 11 JURISDICTION

12 13. This action arises under the Constitution of the United States and the Immigration  
13 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

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

18 15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens  
19 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)  
20 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533  
21 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*3  
22 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL  
23 2420068, at \*7 (E.D. Cal. Aug. 21, 2025) (same).

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

### 27 VENUE

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

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 of*  
4 *Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at \*2 (S.D. Cal. Feb. 5, 2019)  
5 (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 HC.1.

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

7 18. The Court must grant the petition for writ of habeas corpus or issue an order to show  
8 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. §  
9 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days  
10 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

11 19. Courts have long recognized the significance of the habeas statute in protecting  
12 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
13 important writ known to the constitutional law of England, affording as it does a swift and  
14 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400  
15 (1963).

16 20. Mr. Mendoza Perez is “in custody” for the purpose of 28 U.S.C. § 2241 because he  
17 was arrested by Respondents and remains in their legal and physical custody at Otay Mesa  
18 Detention Center in San Diego, California. He is under Respondents’ and their agents’ direct  
19 control.

18 **PARTIES**

19 21. Mr. Mendoza Perez (“Petitioner”) is a 27-year-old citizen and national of Venezuela.  
20 He left Venezuela in May 2021 and came to the USA in September 2023 to seek asylum,  
21 withholding of removal, or protection under the Convention Against Torture after fleeing  
22 persecution in Venezuela on account of his imputed political opinion and social group membership  
23 of former military officers who deserted their post after refusing to support government corruption.  
24 He has had no departures since his arrival. Since the transfer to Otay Mesa on or about November 5,  
25 2025, Mr. Mendoza Perez has remained in the Respondents’ custody.

26 22. Mr. Mendoza Perez is currently residing in Respondents’ custody at Otay Mesa  
27 Detention Center in San Diego, California, as of the time of the filing of this petition.

1 23. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa  
2 Detention Center in San Diego, California, where Mr. Mendoza Perez is detained. LaRose is  
3 responsible for the day-to-day operations and confinement of non-citizens detained at that facility.  
4 He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Mr.  
5 Mendoza Perez and is named in his official capacity.

6 24. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in San  
7 Diego, California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for  
8 local custody decisions relating to non-citizens charged with being removable from the U.S.,  
9 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field  
10 Office’s area of responsibility includes San Diego and Imperial Counties in California. Respondent  
11 Divver is a custodian of Mr. Mendoza Perez and is named in his official capacity.

12 25. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and he has  
13 authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody  
14 decisions relating to non-citizens charged with being removable from the U.S., including the arrest,  
15 detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr.  
16 Mendoza Perez and is named in his official capacity.

17 26. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has authority over  
18 the actions of all other DHS Respondents in this case, as well as all operations and federal agencies  
19 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with  
20 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §  
21 1103(a). Respondent Noem is a custodian of Mr. H.K. and is named in her official capacity.

22 27. Respondent ICE is responsible for local custody decisions relating to non-citizens  
23 charged with being removable from the U.S., including the arrest, detention, custody status, and  
24 removal of non-citizens.

25 28. Respondent DHS is the federal agency that has authority over the actions of ICE and  
26 all other DHS Respondents.

27 29. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem  
28 (collectively, “Respondents”) all in their official capacities.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

30. Petitioner has no administrative remedies to exhaust.

1 31. Mr. Mendoza Perez received a NTA, which was then filed before the before the  
2 Immigration Court to initiate his immigration proceedings.

3 32. On November 5, 2025, the Petitioner was transferred to the Otay Mesa Detention  
4 Center, and counsel for DHS confirmed that it was unlikely Mr. Mendoza Perez would be released  
5 on bond because of the holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). As  
6 such, Mr. Mendoza Perez’s continued unlawful detention in the Respondents’ custody cannot be  
7 challenged by way of bond proceedings before an Immigration Judge. Mr. Mendoza Perez is also  
8 challenging the unlawfulness of the Respondents’ decision to detain him, independent of any  
9 decision made by any Immigration Judge in removal proceedings.

10 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Mendoza  
11 Perez’s constitutional, statutory, and regulatory rights and restore his liberty.

### 12 LEGAL FRAMEWORK

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

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

23 36. The Refugee Act established the right to apply for asylum in the United States and  
24 defines the standards for granting asylum. It is codified in various sections of the INA.

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

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

4 39. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.  
5 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§  
6 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the  
7 right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on  
8 the applicant to present evidence to establish eligibility.).

9 40. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment  
10 to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

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

16 42. In 1996, Congress created “expedited removal” as a truncated method for rapidly  
17 removing certain noncitizens from the United States with very few procedural protections. Illegal  
18 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208,  
19 Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585; *see* 8 U.S.C. §  
20 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to  
21 only those noncitizens who are inadmissible to the United States because they engaged in fraud or  
22 misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or  
23 who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). No other  
24 person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

25 43. Noncitizens subjected to expedited removal are ordered removed by an immigration  
26 officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). That officer must  
27 determine whether the individual has been continuously present in the United States for less than  
28 two years; is a noncitizen; and is inadmissible because he or she has engaged in certain kinds of  
29 fraud or lacks valid entry documents “at the time of . . . application for admission.” *See* 8 U.S.C.  
30 §1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

1 44. Otherwise, if the officer concludes that the individual is inadmissible under an  
2 applicable ground, the officer “shall,” with simply the concurrence of a supervisor, 8 C.F.R. §  
3 235.3(b)(7), order the individual removed “without further hearing or review unless the alien  
4 indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. §  
5 1225(b)(1)(A)(i).

6 45. Thus, a low-level DHS officer can order the removal of an individual who has been  
7 living in the United States with virtually no administrative process—just the completion of cursory  
8 paperwork—based only on the officer’s own conclusions that the individual has not been admitted  
9 or paroled, that the individual has not adequately shown the requisite continuous physical presence,  
10 and that the individual is inadmissible on one of the two specified grounds. *See* 8 U.S.C. §§  
11 1225(b)(1)-(b)(2).

12 46. Once a determination on inadmissibility is made, removal can occur rapidly, within  
13 twenty-four hours.

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

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

21 49. An expedited removal order comes with significant consequences beyond removal  
22 itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on  
23 admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. §  
24 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after  
25 having been found inadmissible based on misrepresentation are subject to a lifetime bar on  
26 admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C.  
27 § 1182(a)(6)(C).

28 50. Expedited removal only applies to noncitizens who are inadmissible on one of two  
specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who seek to procure  
immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which applies to  
noncitizens who, “at the time of application for admission,” fail to satisfy certain documentation

1 requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other  
2 grounds, they must afford the noncitizen a full hearing before an immigration judge. *See* 8 C.F.R. §  
3 235.3(b)(1), (3).

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

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

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

20 54. On January 20, 2025, President Donald Trump issued several executive actions  
21 relating to immigration, including “Protecting the American People Against Invasion,” an executive  
22 order (EO) setting out a series of interior immigration enforcement actions. The Trump  
23 administration, through this and other actions, has outlined sweeping, executive branch-led changes  
24 to immigration enforcement policy, establishing a formal framework for mass deportation. The  
25 “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all  
26 appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement  
27 procedures including through the use of mass detention.

28 55. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued  
for public inspection and effective immediately a designation expanding the scope of expedited  
removal to apply nationwide and to certain noncitizens who are unable to prove they have been in  
the country continuously for two years. On January 24, 2025, DHS published a Notice that

1 expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland  
2 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025  
3 Designation"). The designation was "effective on" January 21, 2025.

4 56. The January 2025 Designation expands the pool of noncitizens who can be subjected  
5 to the summary removal process substantially to include noncitizens who are apprehended  
6 anywhere in the United States and who have not been in the United States continuously for more  
7 than two years. *Id.* at 8140.

8 57. The January 2025 Designation does not state that it applies to noncitizens who were  
9 in the United States before its effective date.

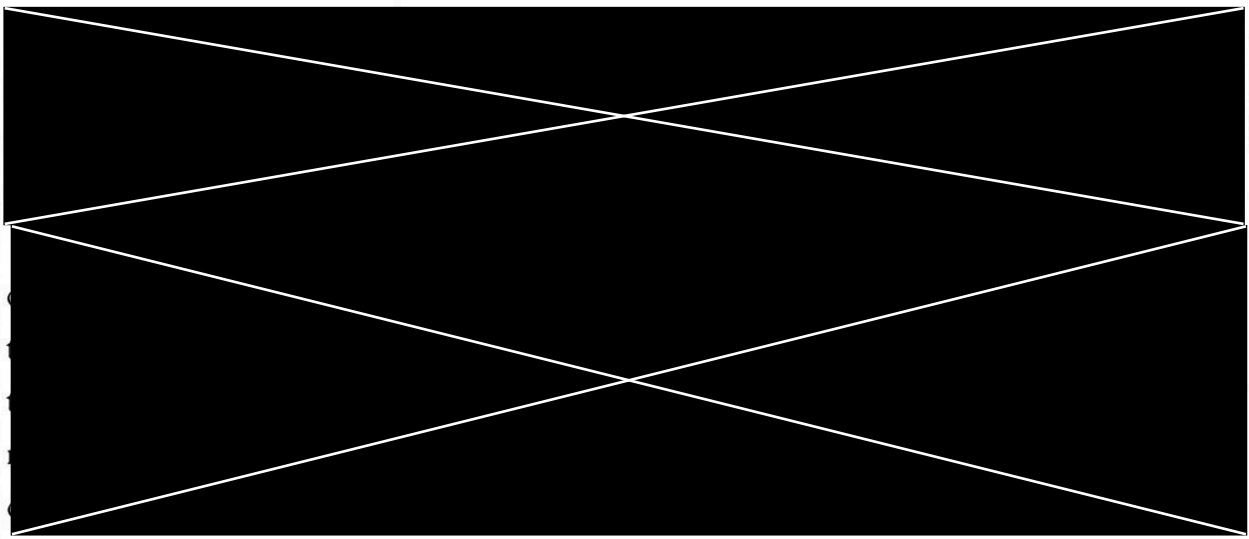
10 58. On information and belief, Mr. Mendoza Perez alleges that Respondents detained  
11 him for the purpose of divesting him of his due process rights in his properly filed asylum  
12 application.

13 59. On information and belief, Respondents did not afford Petitioner due process before  
14 revoking his release from custody, depriving him of his liberty interest, and placing him in detention  
15 within Respondents' legal and physical custody.

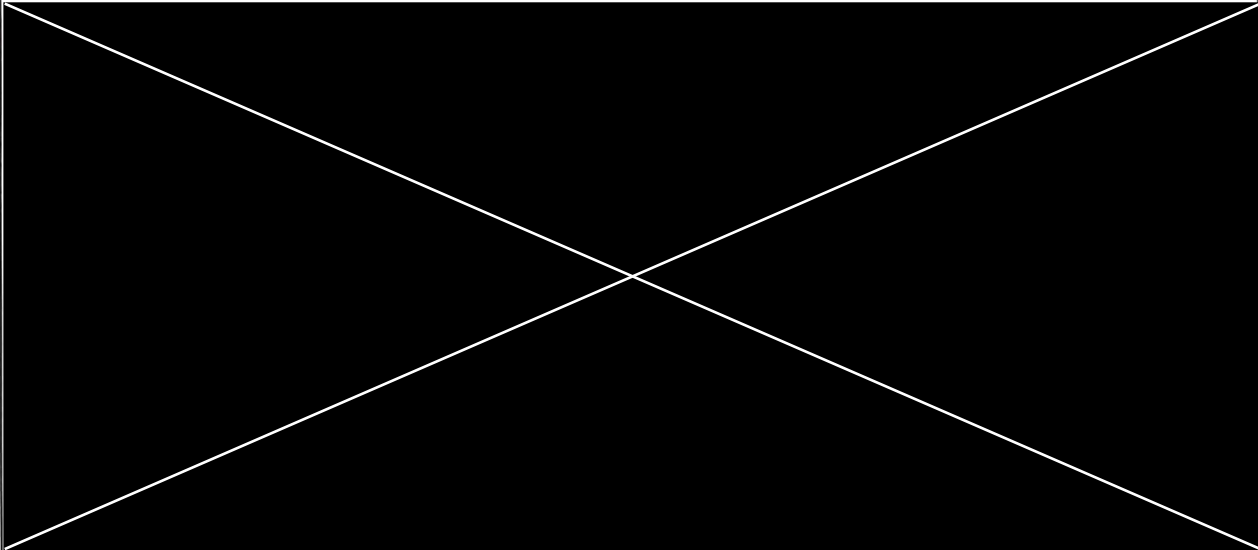
16 60. On information and belief, Respondents are using the immigration detention system,  
17 including extra-territorial transfer and detention, as a means to punish individuals for asserting  
18 rights under the Refugee Act.

19 **FACTUAL BACKGROUND**

20 61. Petitioner is 27-year-old citizen and national of Venezuela.



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continued persecution, Petitioner sought help and made it through Colombia, Panama, Costa Rica, Honduras, Guatemala, and Mexico before entering the United States.

65. Mr. Mendoza Perez entered the United States on September 16, 2023, and was released under his own recognizance. After that, he attended one or more undetained master calendar hearings. In January 2025, he filed an asylum application with the immigration court.

66. The DHS redetained at the Adelanto Immigration Court.

67. Respondents alleged he was inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and commanded him to appear for his hearings in the immigration court in Adelanto, California.

68. On or about January 2025, Petitioner filed his Form I-589 asylum application.

69. On or about November 5, 2025, Petitioner’s case was transferred to the Otay Mesa Immigration Court, and he was detained at the Otay Mesa Detention Center.

70. On or about September 18, 2025, Petitioner re-filed his Form I-589 asylum application before the Otay Mesa Immigration Court.

71. The Immigration Judge and counsel for Respondents indicated that Mr. Mendoza Perez would likely be ineligible for bond or release because he is subject to *Matter of M-S-*, 27 I&N 509 (2019). Mr. Mendoza Perez remains in the Respondents’ legal and physical custody at Otay Mesa Detention Center in San Diego, California.

**CAUSES OF ACTION**

**COUNT ONE**

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

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3  
4 72. Petitioner restates, realleges, and incorporates by reference each and every allegation  
5 in the paragraphs above as if fully set forth herein.

6 73. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits  
7 the federal government from depriving any person of “life, liberty, or property, without due process  
8 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,  
9 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.”  
10 *Zadvydas*, 533 U.S. at 693.

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

13 75. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. §  
14 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the  
15 United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]  
16 status, may apply for asylum.” *Id.*

17 76. Because the denial of the right to apply for asylum can result in serious harm or  
18 death, the statutory right to apply is robust and meaningful. It includes the right to legal  
19 representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to  
20 present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an  
21 adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§  
22 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision  
23 determining removability, *see id.* § 1229a(c)(6)-(7).

24 77. Expedited removal, in contrast, severely limits the availability of such rights.  
25 Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an  
26 immigration judge must occur within seven days of the decision. *See* 8 C.F.R. § 1003.42.

27 78. While there is a right to “consult” with an attorney or another person about the  
28 credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. §§ 208.30(d)(4),  
235.3(b)(4)(i)(B), (ii), the consultation “shall not unreasonably delay the process.” The consultant  
may be “present” during the interview but may only make a “statement” at the end of the interview

1 if permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited  
2 removal may present evidence “if available”, *id.* —often an impossibility given the fast timeline and  
3 the default of detention during the process. *See generally* Heidi Altman, et. al., *Seeking Safety from*  
4 *Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP*  
5 *Custody*, National Immigration Law Center, (Nov. 21, 2024),  
6 [https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)  
7 [administration-to-safeguard-asylum-rights-in-cbp-custody/](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/) (last visited Sept. 13, 2025) (describing  
8 the obstruction of access to counsel for people undergoing credible fear screenings in Customs and  
9 Border Protection custody).

10 79. Review of a negative credible fear decision by an immigration judge is limited. “A  
11 credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings,”  
12 and there is no right to submit evidence, as it may be admitted only at “the discretion of the  
13 immigration judge.” Immigration Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a  
14 credible fear interview and affirmance by a judge, removal is a near certainty; the immigrant is  
15 ineligible for other forms of relief from removal.

16 80. In sum, applying for asylum in removal proceedings comes with a panoply of greater  
17 protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders*  
18 *Law Center v. Mayorkas*, 2023 WL 3149243, at \*29 (C.D. Cal. Mar. 15, 2023) (“Individuals in  
19 regular removal proceedings enjoy far more robust due process protections [than those in expedited  
20 removal] because Congress has conferred additional statutory rights on them.”).

21 81. Moreover, Mr. Mendoza Perez has a vital liberty interest in remaining free from  
22 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*4 (N.D. Cal.  
23 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14,  
24 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a  
25 substantial private interest in remaining out of custody” which includes an interest in “...obtaining  
26 necessary medical care, [and] maintaining her relationships in the community...”). While on release  
27 from DHS custody, Mr. Mendoza Perez was building his emotional support system which helped  
28 him cope with the emotional trauma he suffered in Venezuela.

82. Even if the initial decision to release a non-citizen on from DHS custody is  
discretionary, “...after that individual is released from custody she has a protected liberty interest in  
remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068,

1 at \*7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL  
2 2084921, at \*3 (N.D. Cal. July 24, 2025)).

3 83. Here, Mr. Mendoza Perez was not advised by DHS opening his proceedings would  
4 place him in expedited removal, depriving him of his liberty interest and the bundle of rights  
5 associated with his original pending asylum application in violation of due process. *See generally*  
6 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard  
7 before deprivation of a legally protected interest). Nor has the government identified any materially  
8 changed circumstances that would warrant detaining Mr. Mendoza Perez after he submitted his  
9 Asylum Application (Form I-589), declaration, and corroborating evidence to the immigration  
10 Court.

11 **COUNT TWO**

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

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

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

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

20 86. Applying the January 2025 expedited removal designation to Petitioner’s September  
21 2023 entry to the United States to seek asylum would attach new legal consequences including the  
22 loss of significant rights related to his right to seek asylum, particularly because DHS immediately  
23 placed Mr. Mendoza Perez into INA section 240 proceedings in lieu of expedited removal  
24 proceedings. *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24,  
25 2025) (expanding the expedited removal designation).

26 87. The January 2025 designation does not unmistakably apply to individuals who  
27 entered the United States prior to its effective date and were already in INA section 240  
28 proceedings. The designation’s language thus does not “require that it be applied retroactively.” *See*  
*INS v. St Cyr*, 533 U.S. 289, 291 (2001).

88. Nor does the statutory language that the designation purports to derive from, 8  
U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow

1 retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521  
2 U.S. 320, 328, n.4 (1997) (requiring statutory language to be “so clear that it could sustain only one  
3 interpretation”).

4 89. Accordingly, Respondents unlawfully subjected Mr. Mendoza Perez to expedited  
5 removal.

6 **COUNT THREE**

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

10 90. Petitioner restates, realleges, and incorporates by reference each and every allegation  
11 in the paragraphs above as if fully set forth herein.

12 91. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in  
13 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction  
14 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §  
15 706(2)(A)-(D).

16 92. Once a removal proceeding has been initiated, regulations enumerate the reasons for  
17 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the  
18 Immigration Judge must make “an informed adjudication . . . based on an evaluation of the factors  
19 underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

20 93. The initiation of expedited removal proceedings is not an enumerated ground upon  
21 which a removal proceeding may be dismissed.

22 94. It is a well-established administrative principle that “agency action taken without  
23 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1,  
24 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*  
25 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency  
26 action because it was taken by unauthorized official).

27 95. Under the APA, an agency must provide “reasoned explanation for its action” and  
28 “may not depart from a prior policy sub silentio or simply disregard rules that are still on the  
29 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). At the time of his  
30 detention, Mr. Mendoza Perez had been in the United States for over two years. On information and  
31 belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in removal

1 proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of  
2 material changed circumstances, or for some other purposes not supported by law. *See Pinchi v.*  
3 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025) (“Detention  
4 for its own sake, to meet an administrative quota, or because the government has not yet established  
constitutionally required pre-detention procedures is not a legitimate government interest.”).

5 96. In deciding to detain Mr. Mendoza Perez, Respondents further violated the APA by  
6 “entirely fail[ing] to consider an important aspect of the problem” – namely, the important  
7 procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor*  
8 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also*  
9 *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding  
10 that rescission of immigration policy without considering “particular reliance interests” is arbitrary  
and capricious in violation of the APA).

11 97. The arbitrary and capricious detention of Mr. Mendoza Perez was not made in  
12 furtherance of an enumerated reason set forth in the regulations and causes Mr. Mendoza Perez  
13 irreparable harm. For these reasons, the Court should find that the decision to detain Mr. Mendoza  
14 Perez is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A),  
(E).

#### 15 COUNT FOUR

#### 16 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with** 17 **Law and in Excess of Statutory Authority, Unlawful Detention**

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

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

23 100. An action is an abuse of discretion if the agency “entirely failed to consider an  
24 important aspect of the problem, offered an explanation for its decision that runs counter to the  
25 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view  
26 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,  
27 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463  
U.S. 29, 43 (1983)).

1 101. To survive an APA challenge, the agency must articulate “a satisfactory explanation”  
2 for 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).

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

10 103. 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-citizens  
14 are entitled to determinations related to their release revocations that are not arbitrary, capricious or  
15 an abuse of discretion. *See id.* at \*10.

16 104. By categorically revoking Mr. Mendoza Perez’s release from DHS custody, and  
17 detaining him without notice or consideration of his individualized facts and circumstances,  
18 Respondents have violated the INA, implementing regulations, and the APA.

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

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

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

26 108. Respondents have already considered Mr. Mendoza Perez’s facts and circumstances  
27 and determined that he was not a flight risk or danger to the community. On information and belief,  
28 there have been no changes to the facts of Mr. Mendoza Perez’s proceedings that justify this  
revocation of his release from DHS custody.

**COUNT FIVE**

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

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

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

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

112. Mr. Mendoza Perez is not amenable to, nor may he be subjected to, expedited removal because he was immediately placed into INA section 240 proceedings upon encountering DHS officers in 2023, and not into expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II), 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring “reasonable opportunity” to explain a non-citizen’s status).

113. Because Mr. Mendoza Perez is not subject to the January 2025 Designation, Respondents’ use of the January 2025 designation to detain him while his INA section 240 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.

**COUNT SIX**

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

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

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

116. The Fourth Amendment requires that arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial

1 determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in  
2 the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,  
3 including of a noncitizen, absent a neutral judicial determination of probable cause violates the  
4 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,  
5 57 (1991). This determination must occur within 48 hours of detention, which includes weekends,  
6 unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside*  
7 *v. McLaughlin*, 500 U.S. 44, 57 (1991).

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

13 118. Mr. Mendoza Perez at the moment of his arrest and detention did not receive any  
14 judicial determination of probable cause for his arrest or continued detention by Respondents.

15 119. The Government cannot salvage this seizure by invoking generalized immigration  
16 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and  
17 demands individualized justification for both the arrest and the extended detention. *See United*  
18 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Mendoza  
19 Perez did not pose any danger to any person in the community at large.

20 120. Respondents’ warrantless arrest of Mr. Mendoza Perez constitutes an unreasonable  
21 and unlawful seizure in violation of the Fourth Amendment.

22 **COUNT SEVEN**

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

25 121. Petitioner restates, realleges, and incorporates by reference each and every allegation  
26 in the paragraphs above as if fully set forth herein.

27 122. The government may not deprive a person of life, liberty, or property without due  
28 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,  
detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

123. Mr. Mendoza Perez has a fundamental interest in liberty and being free from official  
restraint.

1 124. The government’s detention of Petitioner without a notice or an opportunity to be  
2 heard before detention violates his right to due process.

3 125. The government’s detention of Petitioner without a meaningful bond and custody  
4 redetermination hearing to determine whether he is a flight risk or danger to others violates his right  
5 to due process.

6 **PRAYER FOR RELIEF**

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

- 8 (1) Assume jurisdiction over this matter;
- 9 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
10 should not be granted within three days;
- 11 (3) Declare that Petitioner’s detention without an individualized determination violates  
12 the Due Process Clause of the Fifth Amendment;
- 13 (4) Declare that Respondents’ application of the January 2025 Designation to Petitioner  
14 is illegal;
- 15 (5) Declare that refusal to allow Petitioner a meaningful bond and custody  
16 redetermination hearing violates the INA, APA, and Due Process;
- 17 (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from  
18 custody;
- 19 (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this  
20 district without the Court’s approval;
- 21 (8) Issue an Order requiring Respondents to provide a bond and custody redetermination  
22 hearing within 14 days to meaningfully consider his eligibility for release from DHS  
23 custody;
- 24 (9) Award Petitioner’s counsel reasonable attorney’s fees and costs under the Equal  
25 Access to Justice Act, and on any other basis justified under law;
- 26 (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 27 (11) Grant any and all other further relief this Court deems just or proper.

24 //  
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1 Dated: December 30, 2025

Respectfully submitted,

/S/ Mario Portugal

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