

MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner Victor Manuel MORALES MORALES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'25CV3859 DMS BJW

Victor Manuel MORALES MORALES

CASE NO.:

Petitioner-Plaintiff,

A 

vs.

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

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

CHALLENGE TO UNLAWFUL
INCARCERATION: REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Respondents-Defendants.

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

4 **INTRODUCTION**

5 1. Petitioner Victor Manuel MORALES MORALES ("Petitioner" or "Mr. Morales")
6 entered the United States on or about 2003. Mr. Morales is a Mexican national with an approved
7 Convention Against Torture (C.A.T.) deferral relief granted at the Las Vegas Immigration Court in
8 Las Vegas, Nevada. On or about August 30, 2023, the C.A.T. Deferral was granted.

9 2. After that, C.A.T. Deferral approval status remains valid as shown in the court order
10 dated August 30, 2023, and there are no changes in circumstances since then.

11 3. On December 19, 2025, Respondents took the Petitioner under custody and
12 commenced removal proceedings against him in immigration court. Even when, on or about August
13 30, 2023, the Immigration Court granted the C.A.T. Deferral. This status remains valid as set forth
14 in the court order, and there is no change in circumstances that would justify detention.

15 4. Since then, Petitioner has remained in detention and attended his immigration court
16 hearings.

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

25 6. In immigration court, noncitizens have the right to pursue claims for relief from
26 removal, including termination of proceedings based on the approved CAT Deferral, be represented
27 by counsel, gather and present evidence, and pursue appeals. 8 U.S.C. § 1229(a).

28 ¹ Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process 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 7. Respondents now seek to keep Mr. Morales detained without a meaningful
2 opportunity to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents
3 do so based not on Mr. Morales’s personal circumstances or individualized facts. Due to his
4 detention, Mr. Morales is at risk of being transferred away from the Southern District of California
5 while he remains in the Respondents’ physical and legal custody.

6 8. But Respondents cannot evade due process requirements so easily. The U.S.
7 Constitution requires the Respondents to provide at least the rights available to him based on the
8 approved CAT deferral, and related relief.

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

15 10. Mr. Morales seeks declaratory and injunctive relief to compel his immediate release
16 from the immigration jail where DHS has held him since being unlawfully detained on December
17 19, 2025, without first being provided a due process hearing to determine whether his incarceration
18 is justified.

19 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Morales’s
20 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
21 1225(b)(1), INA § 235(b)(1), without due process. Mr. Morales was placed before the Otay Mesa
22 Immigration Court within Otay Mesa Detention Center in San Diego, California.

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

JURISDICTION

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

3 14. 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 Writs
6 Act).

7 15. 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*, 533
10 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3
11 (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).

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

VENUE

16 17. Venue is proper because Petitioner is in Respondents’ legal and physical custody at
17 Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial
18 part of the events or omissions giving rise to Petitioner’s claims occurred in this District, where
19 Petitioner is now in Respondents’ legal and physical custody, including his current and ongoing
20 detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa
21 Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas
22 petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep’t of*
23 *Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019)
(district of confinement is the preferable forum even if the Court otherwise has personal
jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

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

24 18. The Court must grant the petition for writ of habeas corpus or issue an order to show
25 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. §
26

1 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days
2 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

7 20. Mr. Morales is “in custody” for the purpose of 28 U.S.C. section 2241 because he
8 was arrested by Respondents and remains in their legal and physical custody at Otay Mesa
9 Detention Center in San Diego, California. He is under the Respondents’ and their agents’ direct
10 control.

11 PARTIES

12 21. Mr. Morales (“Petitioner”) is a 32-year-old citizen and national of Mexico. He came
13 to the USA in 2003, and on or about August 30, 2023, the immigration court granted CAT Deferral.
14 This status remains valid, as shown in the court order; no change in circumstances has occurred. He
15 also applied for cancellation of removal for certain non-permanent residents. He has had no
16 departures since his arrival. He is married. He has two U.S. citizen minor children. He works in
17 construction. He has no recent criminal convictions since the conviction under 21 USC § 841(a) for
18 possession with intent to distribute of cocaine. Since the detention on December 19, 2025, Mr.
19 Morales has remained in the Respondents’ custody.

20 22. Mr. Morales is currently residing in the Respondents’ custody at Otay Mesa
21 Detention Center in San Diego, California, as of the time of the filing of this petition.

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

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

1 Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent
2 Divver is a custodian of Mr. Morales and is named in his official capacity.

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

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

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

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

18 29. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem
19 (collectively, "Respondents"), all in their official capacities.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 30. Petitioner has no administrative remedies to exhaust.

22 31. Mr. Morales then received an NTA on or about April 6, 2023, which was filed before
23 the Las Vegas Immigration Court to initiate his INA section 240 immigration proceedings. On
24 August 20, 2023, a CAT deferral was granted, and the respondent was released. Since October
25 2025, the Respondent has been placed in alternatives to detention (ATD). On December 19, 2025,
26 the Respondent was detained by the Respondents after his routine check-in with ICE.

27 32. Mr. Morales's continued unlawful detention in the Respondents' custody cannot be
28 challenged by way of bond proceedings before an Immigration Judge. Mr. Morales also challenges
the unlawfulness of the Respondents' decision to detain him, irrespective of any decision by any
Immigration Judge in removal proceedings.

1 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Morales’s
2 constitutional, statutory, and regulatory rights and restore his liberty.

3 **LEGAL FRAMEWORK**

4 34. 8 C.F.R. § 1003.18(d)(1)(ii)(C) states discretionary termination is available when:
5 (a) The noncitizen is a beneficiary of Temporary Protected Status, deferred action, or Deferred
6 Enforced Departure.

7 35. Here, the Respondent warrants dismissal of his removal proceedings because of the
8 approved CAT deferral. As previously stated, the Respondent meets the requirements under the Act
9 to be eligible for dismissal.

10 36. Deferred action is an act of prosecutorial discretion to defer the removal of an
11 individual. Individuals who receive deferred action will not be removed from the United States for a
12 specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate
13 the grant of deferred action.

14 37. Once jurisdiction vests with the Immigration Court, the government no longer has
15 the sole authority to dismiss proceedings. However, this analysis shows that the IJ does have the
16 authority to dismiss proceedings once jurisdiction vests with the Immigration Court. Motions to
17 dismiss are, in fact, frequently used by Respondents in removal proceedings on many grounds. One
18 example would be if the Respondent has a colorable claim to U.S. Citizenship. Another might be
19 that the NTA does not state valid grounds for removal. See 8 CRF 1239.2(c).

20 38. On August 30, 2023, the Petitioner was granted CAT deferral. There are no changes
21 of circumstances that warrant his re-detention by the Respondents.

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

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

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

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

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

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

22 45. On information and belief, Mr. Morales alleges that Respondents detained him for
23 the purpose of divesting him of his due process rights in his properly filed U-visa application, and
24 the underlying approved deferred action.

25 46. On information and belief, Respondents did not afford Petitioner due process before
26 revoking his release from custody, depriving him of his liberty interest, and placing him in detention
27 within Respondents’ legal and physical custody.

28 47. On information and belief, Respondents are using the immigration detention system,
including extra-territorial transfer and detention, as a means to punish individuals for asserting
rights under the I.N.A.

FACTUAL BACKGROUND

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48. Petitioner is 32-year-old citizen and national of Mexico.

49. On or about 2003 the Petitioner entered the United States for the first time. Mr. Morales passed through Mexico to reach the USA.

50. Mr. Morales was convicted in 2018 under 21 USC § 841(a) for possession with intent to distribute and distribution of cocaine.

51. After this conviction Mr. Morales was referred to the immigration court.

52. Mr. Morales attended one or more master calendar hearings. On August 30, 2023, he was granted CAT deferral.

53. On or about October 2025, Petitioner was placed in ATD. On December 19, 2025, Petitioner was re-detained following a routine check-in with ICE. Respondents alleged he was subject to removal from the United States under INA 212(a)(6)(A)(i) and commanded him to appear for a hearing at the immigration court in Otay Mesa, California.

54. On or about December 23, 2025, Petitioner obtained pro bono counsel to challenge the detention under habeas corpus.

55. Respondents indicated that Mr. Morales would likely be ineligible for bond or release because he is subject to *Matter of M-S-*, 27 I&N 509 (2019). Mr. Morales remains in 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.

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

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

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

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

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

14 61. Here, Mr. Morales was not advised by DHS of his liberty interest and the bundle of
15 rights associated with his approved CAT deferral in violation of due process. *See generally*
16 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard
17 before deprivation of a legally protected interest). Nor has the government identified any materially
18 changed circumstances that would warrant detaining Mr. Morales after he submitted his declaration
19 and corroborating evidence to the Immigration Court.

20 **COUNT TWO**

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

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

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

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

64. On or about December 21, 2023, USCIS granted deferred action to the Respondent.
This status remains valid, as indicated in the employment authorization for noncitizens under
category C-14, for non-immigrants who were placed on deferred action.

1 65. The January 2025 designation does not unmistakably apply to individuals who
2 entered 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 66. Nor does the statutory language that the designation purports to derive from, 8
6 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow
7 retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521
8 U.S. 320, 328, n.4 (1997) (requiring statutory language to be “so clear that it could sustain only one
9 interpretation”).

10 67. Accordingly, Respondents unlawfully subjected Mr. Morales to unlawful detention.

11 **COUNT THREE**

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

14 **C.F.R. § 239.2(c)**

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

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

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

25 71. The initiation of expedited removal proceedings is not an enumerated ground upon
26 which a removal proceeding may be dismissed.

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

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

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

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

21 COUNT FOUR

22 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with** 23 **Law and in Excess of Statutory Authority, Unlawful Detention**

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

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

78. An action is an abuse of discretion if the agency “entirely failed to consider an
important aspect of the problem, offered an explanation for its decision that runs counter to the
evidence before the agency, or is so implausible that it could not be ascribed to a difference in view

1 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
2 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
3 U.S. 29, 43 (1983)).

4 79. To survive an APA challenge, the agency must articulate “a satisfactory explanation”
5 for its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
6 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

7 80. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
8 explained the process of discretionary release from custody in immigration cases and noted that
9 before revoking the release, the non-citizen must be given written notice of the impending
10 revocation, which must include a cogent description of the reasons. Under the APA, non-citizens
11 are entitled to determinations related to their release revocations that are not arbitrary, capricious or
12 an abuse of discretion. *See id.* at *10.

13 81. By detaining Mr. Morales without notice or consideration of his individualized facts
14 and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

15 82. Respondents have made no finding that Petitioner is a danger to the community.

16 83. Respondents have made no finding that Petitioner is a flight risk.

17 84. On information and belief, by detaining Mr. Morales categorically and without
18 notice, Respondents have further abused their discretion because, since the agency made its initial
19 custody determination, on information and belief, there have been no changes to Mr. Morales’
20 specific facts or circumstances that support his detention.

21 **COUNT FIVE**

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

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

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

87. 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).

1 88. Because Mr. Morales is not subject to the January 2025 Designation, Respondents’
2 use of the January 2025 designation to detain him while his INA section 240 proceedings were
3 ongoing is arbitrary, capricious, and unlawful.

4 **COUNT SIX**

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

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

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

14 91. The Fourth Amendment requires that arrests entail a neutral, judicial determination
15 of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
16 determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in
17 the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,
18 including of a noncitizen, absent a neutral judicial determination of probable cause violates the
19 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,
20 57 (1991). This determination must occur within 48 hours of detention, which includes weekends,
21 unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside*
22 *v. McLaughlin*, 500 U.S. 44, 57 (1991).

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

28 93. Mr. Morales, at the moment of his arrest and detention by Respondents, was lawfully
present based on Respondents’ prior grant of CAT deferral from DHS custody, which is valid, and
there are no changes of circumstances that justified detention. He did not receive any judicial
determination of probable cause for his arrest or continued detention by the Respondents.

1 94. The Government cannot salvage this seizure by invoking generalized immigration
2 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and
3 demands individualized justification for both the arrest and the extended detention. *See United*
4 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Morales was
5 granted release from DHS custody in 2023 and did not pose any danger to any person in the
6 community at large.

7 95. Respondents’ warrantless detention of Mr. Morales constitutes an unreasonable and
8 unlawful seizure in violation of the Fourth Amendment.

9 **COUNT SEVEN**

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

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

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

18 98. Mr. Morales has a fundamental interest in liberty and being free from official
19 restraint.

20 99. The government’s detention of Petitioner without notice or an opportunity to be
21 heard before detention violates his right to due process.

22 100. The government’s detention of Petitioner without a meaningful bond and custody
23 redetermination hearing to determine whether he is a flight risk or danger to others violates his right
24 to due process.

25 **PRAYER FOR RELIEF**

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

- 27 (1) Assume jurisdiction over this matter;
- 28 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
should not be granted within three days;
- (3) Declare that Petitioner’s detention without an individualized determination violates
the Due Process Clause of the Fifth Amendment;

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- (4) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court’s approval;
- (7) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;
- (8) Award Petitioner’s counsel reasonable attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (9) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (10) Grant any and all other further relief this Court deems just or proper.

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Dated: December 31, 2025

Respectfully submitted,

//s// Mario Portugal

MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner