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

10 Jorge Antonio Oyuela Tercero,
11
12 Petitioner-Plaintiff,

CASE NO. '26CV0325 GPC JLB

FILE NO. 

13 vs.

14
15 CHRISTOPHER J. LAROSE, Senior
16 Warden, Otay Mesa Detention Center;
17 PATRICK DIVVER, Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigration and
20 Customs Enforcement; TODD M.
21 LYONS, Acting Director, U.S.
22 Immigration and Customs Enforcement,
23 U.S. Department of Homeland Security;
24 and KRISTI NOEM, Secretary, U.S.
25 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

26 Respondents-Defendants.

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

5 **INTRODUCTION**

6 1. Petitioner Jorge Oyuela Tercero (“Petitioner”) is a Nicaraguan asylum
7 seeker detained at Otay Mesa Detention Center in San Diego, California. He was
8 persecuted in Nicaragua on account of his social group membership [REDACTED]

9 [REDACTED] The persecution he suffered in Nicaragua
10 included experiencing [REDACTED]
11 [REDACTED]

12 2. On or about August 10, 2022, Mr. Oyuela Tercero entered the United
13 States.

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

17 4. On or about August 25, 2022, Respondent was released on bond. Since
18 then, Petitioner has attended his immigration court hearings. On or about May 23,
19 2025, he filed a defensive Form I-589 Application for Asylum, Withholding of
20 Removal, and protection under the Convention Against Torture with the immigration
21 court.

22 5. Since approximately mid-May 2025, DHS has implemented a
23 coordinated practice of leveraging immigration detention to strip people like Mr.
24 Oyuela Tercero of their substantive and procedural rights and pressure them into
25 deportation.¹ Immigration detention is civil and thus is permissible for only two

26 ¹ Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process
27 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->

1 reasons: to ensure a noncitizen’s appearance at immigration hearings and to prevent
2 danger to the community. But DHS did not arrest and detain Mr. Oyuela Tercero—
3 who demonstrably poses no risk of absconding from immigration proceedings or
4 danger to the community—for either of these reasons.

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

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

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

22 9. The Constitution protects Mr. Oyuela Tercero —and every other person
23 present in this country—from arbitrary deprivations of his liberty and guarantees him
24 due process of law. The government’s power over immigration is broad, but as the
25 Supreme Court has declared, it “is subject to important constitutional limitations.”

26 _____
27 3486c5fadbe9 (last visited September 12, 2025) (“The exact number of arrests is unclear, but footage shows agents
detaining people immediately after court appearances.”).

1 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has
2 always been at the core of the liberty protected by the Due Process Clause from
3 arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

4 10. Mr. Oyuela Tercero seeks declaratory and injunctive relief to compel his
5 immediate release from the immigration jail where he has been held by DHS since
6 being unlawfully detained on or about June 26, 2025, without first being provided a
7 due process hearing to determine whether his incarceration is justified.

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

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

22 JURISDICTION

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

25 14. This court has subject matter jurisdiction under 28 U.S.C. § 2241
26 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of
27

1 the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as
2 defendant), and 28 U.S.C. § 1651 (All Writs Act).

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

10 16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
11 2241, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs
12 Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

13 VENUE

14 17. Venue is proper because Petitioner is in Respondents' legal and physical
15 custody at Otay Mesa Detention Center in San Diego, California. Venue is further
16 proper because a substantial part of the events or omissions giving rise to Petitioner's
17 claims occurred in this District, where Petitioner is now in Respondents' legal and
18 physical custody, including his current and ongoing detention under the legal and
19 physical custody of Respondent LaRose, warden of Otay Mesa Detention Center. 28
20 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas petition
21 must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't*
22 *of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal.
23 Feb. 5, 2019) (district of confinement is the preferable forum even if the Court
24 otherwise has personal jurisdiction). For these same reasons, the venue should be
25 found proper under Local Civil Rule HC.1.
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CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

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

12 20. Mr. Oyuela Tercero is “in custody” for the purpose of 28 U.S.C. § 2241
13 because he was arrested by Respondents and remains in their legal and physical
14 custody at Otay Mesa Detention Center in San Diego, California. He is under the
15 Respondents’ and their agents’ direct control.

16 **PARTIES**

17 21. Mr. Oyuela Tercero (“Petitioner”) is a 44-year-old citizen and national
18 of Nicaragua. He left Nicaragua on or about June 1, 2022, and came to the USA on or
19 about August 10, 2022, to seek asylum, withholding of removal, or protection under
20 the Convention Against Torture after fleeing persecution in Nicaragua on account of
21 his social group membership of victims of crimes committed by criminal gangs. On
22 or about August 25, 2022, he was released on bond. He has had no departures since
23 his arrival. He has no criminal convictions. Since the re-arrest on or about June 26,
24 2025, Mr. Oyuela Tercero has remained in the Respondents’ custody.

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

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

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

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

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

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

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

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

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 30. Petitioner has no administrative remedies to exhaust.

10 31. Mr. Oyuela Tercero received a NTA on August 18, 2022, which was
11 dated August 12, 2022, and filed before the Eloy Immigration Court to section 240
12 immigration proceedings. On August 18, 2022, Mr. Oyuela Tercero was released on
13 bond. On or about June 26, 2025, Mr. Oyuela was re-detained by Immigration and
14 Customs Enforcement (ICE) while released on bond, despite full compliance with all
15 bond condition. ICE has not met its burden to justify re-detention, as no material
16 change in circumstances has been demonstrated.

17 32. Mr. Oyuela Tercero's continued unlawful detention in Respondents'
18 custody cannot be challenged by way of bond proceedings before an Immigration
19 Judge. Mr. Oyuela Tercero is also challenging the unlawfulness of Respondents'
20 decision to detain him, independent of any decision made by any Immigration Judge
21 in removal proceedings.

22 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr.
23 Oyuela Tercero's constitutional, statutory, and regulatory rights and restore his
24 liberty.

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LEGAL FRAMEWORK

1
2 34. The Refugee Act of 1980, the cornerstone of the U.S. asylum system,
3 provides a right to apply for asylum to individuals seeking safe haven in the United
4 States. The purpose of the Refugee Act is to enforce the “historic policy of the United
5 States to respond to the urgent needs of persons subject to persecution in their
6 homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

7 35. The “motivation for the enactment of the Refugee Act” was the United
8 Nations Protocol Relating to the Status of Refugees, “to which the United States had
9 been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987).
10 The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our
11 national commitment to human rights and humanitarian concerns.’” *Duran v. INS*,
12 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

16 37. The INA gives the Attorney General or the Secretary of Homeland
17 Security discretion to grant asylum to noncitizens who satisfy the definition of
18 “refugee.” Under that definition, individuals generally are eligible for asylum if they
19 have experienced past persecution or have a well-founded fear of future persecution
20 on account of race, religion, nationality, membership in a particular social group, or
21 political opinions and if they are unable or unwilling to return to and avail themselves
22 of the protection of their homeland because of that persecution or fear. 8 U.S.C. §
23 1101(a)(42)(A).

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

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

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

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

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

26 43. Noncitizens subjected to expedited removal are ordered removed by an
27 immigration officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i).

1 That officer must determine whether the individual has been continuously present in
2 the United States for less than two years; is a noncitizen; and is inadmissible because
3 he or she has engaged in certain kinds of fraud or lacks valid entry documents “at the
4 time of . . . application for admission.” *See* 8 U.S.C. §1225(b)(1)(A)(i), (iii) (citing 8
5 U.S.C. § 1182(a)(6)(C), (a)(7)).

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

11 45. Thus, a low-level DHS officer can order the removal of an individual
12 who has been living in the United States with virtually no administrative process—
13 just the completion of cursory paperwork—based only on the officer’s own
14 conclusions that the individual has not been admitted or paroled, that the individual
15 has not adequately shown the requisite continuous physical presence, and that the
16 individual is inadmissible on one of the two specified grounds. *See* 8 U.S.C. §§
17 1225(b)(1)-(b)(2).

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

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

24 48. For those who fear return to their countries of origin, the expedited
25 removal statute provides a limited additional screening. But the additional screening,
26 to the extent it occurs, does not remotely approach the type of process and the rights
27

1 available to asylum seekers receive in regular INA section 240 immigration
2 proceedings.

3 49. An expedited removal order comes with significant consequences
4 beyond removal itself. Noncitizens who are issued expedited removal orders are
5 subject to a five-year bar on admission to the United States unless they qualify for a
6 discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly,
7 noncitizens issued expedited removal orders after having been found inadmissible
8 based on misrepresentation are subject to a lifetime bar on admission to the United
9 States unless they are granted a discretionary exception or waiver. 8 U.S.C. §
10 1182(a)(6)(C).

11 50. Expedited removal only applies to noncitizens who are inadmissible on
12 one of two specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who
13 seek to procure immigration status or citizenship via fraud or false representations, or
14 § 1182(a)(7), which applies to noncitizens who, “at the time of application for
15 admission,” fail to satisfy certain documentation requirements. 8 U.S.C. §
16 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other grounds, they
17 must afford the noncitizen a full hearing before an immigration judge. *See* 8 C.F.R. §
18 235.3(b)(1), (3).

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

26 52. Thus, in the decades that followed, most people who entered without
27 inspection—unless they were subject to some other detention authority—received

1 bond hearings. That practice was consistent with many more decades of prior
2 practice, in which noncitizens who were not deemed “arriving” were entitled to a
3 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
4 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
5 “restates” the detention authority previously found at § 1252(a)).

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

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

19 55. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin
20 Huffman issued for public inspection and effective immediately a designation
21 expanding the scope of expedited removal to apply nationwide and to certain
22 noncitizens who are unable to prove they have been in the country continuously for
23 two years. On January 24, 2025, DHS published a Notice that expanded the
24 application of expedited removal. Office of the Secretary, Dep’t of Homeland
25 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January
26 2025 Designation”). The designation was “effective on” January 21, 2025.

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

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

7 58. On information and belief, Mr. Oyuela Tercero alleges that Respondents
8 detained him for the purpose of divesting him of his due process rights in his properly
9 filed asylum application.

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

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

17 **FACTUAL BACKGROUND**

18 61. Petitioner is 44-year-old citizen and national of Nicaragua.

19 62. Mr. Oyuela Tercero was persecuted in Nicaragua on account of imputed
20 political opinion and social group membership of individuals who have crimes
21 committed against them from criminal gangs. The persecution he suffered in
22 Nicaragua included [REDACTED]

23 [REDACTED]

24 63. [REDACTED]

25 [REDACTED]

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[REDACTED]

64. In July 2019, [REDACTED] entered Mr. Oyuela Tercero's farm and destroyed his crops and property. Petitioner went to file a complaint with the police, but they did not assist him [REDACTED]

[REDACTED] On or about November 22, 2022, Mr. Oyuela Tercero was attacked by three people without reason, and when he attempted to file a complaint, the police officer did not want to take action because Mr. Oyuela Tercero [REDACTED] Petitioner was taken to the hospital to treat his injuries, and the same three people continued to threaten him. Fearing this continued persecution, Petitioner sought help and made it through Nicaragua, Honduras, Guatemala, and Mexico before entering the United States.

65. Mr. Oyuela Tercero attended one or more master calendar hearings.

66. The DHS started this removal proceeding on or about August 12, 2022. On or about August 25, 2022, Respondent was released on bond.

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 a hearing on September 15, 2022, in the immigration court in Eloy, Arizona.

68. On or about May 23, 2025, Petitioner filed his defensive Form I-589 asylum application.

69. On or about June 26, 2025, Petitioner was re-detained by ICE.

70. Petitioner's case was transferred to the Otay Mesa Immigration Court, and he was detained at the Otay Mesa Detention Center.

71. Mr. Oyuela Tercero 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.

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

73. 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.

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

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

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

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

5 78. While there is a right to “consult” with an attorney or another person
6 about the credible fear interview process, see 8 U.S.C. § 1225(b)(1)(B)(iv) and 8
7 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not
8 unreasonably delay the process.” The consultant may be “present” during the
9 interview but may only make a “statement” at the end of the interview if permitted by
10 the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited
11 removal may present evidence “if available”, *id.* —often an impossibility given the
12 fast timeline and the default of detention during the process. *See generally* Heidi
13 Altman, et. al., *Seeking Safety from Darkness: Recommendations to the Biden*
14 *Administration to Safeguard Asylum Rights in CBP Custody*, National Immigration
15 Law Center, (Nov. 21, 2024), [https://www.nilc.org/resources/seeking-safety-from-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
16 [darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)
17 [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 the obstruction of access to
18 counsel for people undergoing credible fear screenings in Customs and Border
19 Protection custody).

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

1 80. In sum, applying for asylum in removal proceedings comes with a
2 panoply of greater protections when compared with seeking asylum in expedited
3 removal. *See Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at
4 *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in regular removal proceedings enjoy far
5 more robust due process protections [than those in expedited removal] because
6 Congress has conferred additional statutory rights on them.”).

7 81. Moreover, Mr. Oyuela Tercero has a vital liberty interest in remaining
8 free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
9 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071,
10 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE
11 released from custody after initial apprehension “has a substantial private interest in
12 remaining out of custody” which includes an interest in “...obtaining necessary
13 medical care, [and] maintaining her relationships in the community...”). While on
14 release from DHS custody, Mr. Oyuela Tercero was building his emotional support
15 system which helped him cope with the emotional trauma he suffered in Nicaragua.

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

22 83. Here, Mr. Oyuela Tercero was not advised by DHS about the reopening
23 of his proceedings, which would place him in expedited removal, depriving him of
24 his liberty interest and the bundle of rights associated with his original pending
25 asylum application in violation of due process. *See generally Mathews v. Eldridge*,
26 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before
27 deprivation of a legally protected interest). Nor has the government identified any

1 materially changed circumstances warranting the detention of Mr. Oyuela Tercero
2 after he submitted his Asylum Application (Form I-589), declaration, and
3 corroborating evidence to the immigration Court.

4 **COUNT TWO**

5 **Violation of Fifth Amendment Right to Due Process -**
6 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const.**
7 **Amend. V.**

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

10 85. Administrative rules “will not be construed to have retroactive effect
11 unless their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S.
12 244, 272 (1994). When a “new provision attaches new legal consequences to events
13 completed before its enactment” the new provision is not retroactive unless it is
14 unmistakably clear.

15 86. Applying the January 2025 expedited removal designation to Petitioner’s
16 2022 entry to the United States to seek asylum would attach new legal consequences
17 including the loss of significant rights related to his right to seek asylum, particularly
18 because DHS immediately placed Mr. Oyuela Tercero into INA section 240
19 proceedings in lieu of expedited removal proceedings. *See* Designating Aliens for
20 Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (expanding the
21 expedited removal designation).

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

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

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

4 89. Accordingly, Respondents unlawfully subjected Mr. Oyuela Tercero to
5 expedited removal.

6 **COUNT THREE**

7 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
8 **Accordance with 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
11 every allegation in the paragraphs above as if fully set forth herein.

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

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

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

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

1 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
2 taken by unauthorized official).

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

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

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

COUNT FOUR

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

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

99. 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).

100. 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 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 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)).

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

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

1 103. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9,
2 2025), the Court explained the process of discretionary release from custody in
3 immigration cases and noted that before revoking the release, the non-citizen must be
4 given written notice of the impending revocation, which must include a cogent
5 description of the reasons. Under the APA, non-citizens are entitled to determinations
6 related to their release revocations that are not arbitrary, capricious or an abuse of
7 discretion. *See id.* at *10.

8 104. By categorically revoking Mr. Oyuela Tercero's release from DHS
9 custody, and detaining him without notice or consideration of his individualized facts
10 and circumstances, Respondents have violated the INA, implementing regulations,
11 and the APA.

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

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

15 107. On information and belief, by detaining Mr. Oyuela Tercero
16 categorically and without notice, Respondents have further abused their discretion
17 because, since the agency made its initial custody determination, on information and
18 belief, there have been no changes to Mr. Oyuela Tercero's specific facts or
19 circumstances that support his detention or the revocation of his release from custody
20 on his own recognizance.

21 108. Respondents have already considered Mr. Oyuela Tercero's facts and
22 circumstances and determined that he was not a flight risk or danger to the
23 community. On information and belief, there have been no changes to the facts of Mr.
24 Oyuela Tercero's proceedings that justify this revocation of his release from DHS
25 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. Oyuela Tercero 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. Oyuela Tercero 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.

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

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

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

23 118. Mr. Oyuela Tercero, at the moment of his arrest and detention, did not
24 receive any judicial determination of probable cause for his arrest or continued
25 detention by the Respondents.

26 119. The Government cannot salvage this seizure by invoking generalized
27 immigration enforcement interests. The Fourth Amendment’s reasonableness inquiry

1 is fact-specific and demands individualized justification for both the arrest and the
2 extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84
3 (1975); *Gerstein*, 420 U.S. at 114. Mr. Oyuela Tercero posed no danger to any person
4 in the community at large.

5 120. Respondents’ warrantless arrest of Mr. Oyuela Tercero constitutes an
6 unreasonable and unlawful seizure in violation of the Fourth Amendment.

7 **COUNT SEVEN**

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

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

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

16 123. Mr. Oyuela Tercero has a fundamental interest in liberty and being free
17 from official restraint.

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

20 125. The government’s re-detention of Petitioner without material change of
21 circumstances and without a meaningful bond and custody redetermination hearing to
22 determine whether he is a flight risk or danger to others violates his right to due
23 process.

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PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (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;
- (4) Declare that Respondents’ application of the January 2025 Designation to Petitioner is illegal;
- (5) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court’s approval;
- (8) 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;
- (9) 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;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (11) Grant any and all other further relief this Court deems just or proper.

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1 Dated: January 16, 2026

Respectfully submitted,

//s// Mario Portugal

MARIO PORTUGAL,
Attorney for Petitioner
Jorge Antonio Oyuela Tercero

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