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5
6 **UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

7 **LUZARDO SANCHEZ, Elvis Jose**

FILE NO.: '26CV0530 GPC VET

8 **Petitioner,**



9 vs.

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

21 **Respondents-Defendants.**
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1 Petitioner Elvis J Luzardo Sanchez 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 Elvis Luzardo Sanchez ("Petitioner" or "Mr. Luzardo Sanchez") is an
5 Venezuelan asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He
6 was persecuted in Venezuela on account of his political opinion by armed government groups. The
7 persecution he suffered in Venezuela included fear, hunger, humiliation, and forced participation in
8 political events in support of the Venezuelan government.

9 2. On or about December 18, 2023, Mr. Luzardo Sanchez entered the United States. He
10 sought asylum.

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

13 4. Since then, Petitioner has attended his immigration court hearings. On or about
14 October 14, 2025, he filed a Form I-589 Application for Asylum, Withholding of Removal, and
15 protection under the Convention Against Torture with the immigration court.

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

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

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

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

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

17 10. Mr. Luzardo Sanchez seeks declaratory and injunctive relief to compel his
18 immediate release from the immigration jail where he has been held by DHS since being unlawfully
19 detained on or about September 2025 without first being provided a due process hearing to
20 determine whether his incarceration is justified.

21 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Luzardo
22 Sanchez’s plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C.
23 § 1225(b)(1), INA § 235(b)(1), without due process. Mr. Luzardo Sanchez appeared before the Otay
24 Mesa Immigration Court within Otay Mesa Detention Center in San Diego, California.

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

1 and capricious and in violation of the law, and to immediately issue an order preventing her transfer
2 out of this district.

3 JURISDICTION

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

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

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

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

19 VENUE

20 17. Venue is proper because Petitioner is in Respondents’ legal and physical custody at
21 Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial
22 part of the events or omissions giving rise to Petitioner’s claims occurred in this District, where
23 Petitioner is now in Respondents’ legal and physical custody, including his current and ongoing
24 detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa
25 Detention Center. 28 U.S.C. § 1391(c); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas
26 petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep’t of*
27 *Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019)
28 (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.

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

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

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. Luzardo Sanchez is “in custody” for the purpose of 28 U.S.C. § 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 Respondents’ and their agents’ direct
10 control.

11 PARTIES

12 21. Mr. Luzardo Sanchez (“Petitioner”) is a 20-year-old citizen and national of
13 Venezuela. He left Venezuela in 2017 and came to the USA in December 2023 to seek asylum,
14 withholding of removal, or protection under the Convention Against Torture after fleeing
15 persecution in Venezuela on account of his political opinion by Venezuelan government authorities.
16 The persecution he suffered in Venezuela included fear, hunger, humiliation, and forced
17 participation in political events in support of the Venezuelan government. He has had no departures
18 since his arrival. He is not married. He has one child. He has no criminal convictions. Since the
19 arrest on or about September 2025, Mr. Luzardo Sanchez has remained in Respondents’ custody.

20 22. Mr. Luzardo Sanchez is currently residing in 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 Mr. Luzardo Sanchez is detained. LaRose is
24 responsible for the day-to-day operations and confinement of non-citizens detained at that facility.
25 He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Mr.
26 Luzardo Sanchez and is 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. Luzardo Sanchez 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 Luzardo Sanchez 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. Luzardo Sanchez and is named in her official
13 capacity.

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

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

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

21 EXHAUSTION OF ADMINISTRATIVE REMEDIES

22 30. Petitioner has no administrative remedies to exhaust.

23 31. Mr. Luzardo Sanchez was detained on September 2025 and taken into custody, and
24 proceedings commenced before the Otay Mesa Immigration Court to initiate his INA section 240
25 immigration proceedings.

26 32. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Luzardo
27 Sanchez's constitutional, statutory, and regulatory rights and restore his liberty.

28 LEGAL FRAMEWORK

33. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a
right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the
Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of

1 persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
2 212, 94 Stat. 102 (1980).

3 34. The “motivation for the enactment of the Refugee Act” was the United Nations
4 Protocol Relating to the Status of Refugees, “to which the United States had been bound since
5 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
6 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
7 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

8 35. The Refugee Act established the right to apply for asylum in the United States and
9 defined the standards for granting asylum. It is codified in various sections of the INA.

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

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

20 38. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.
21 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§
22 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the
23 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on
24 the applicant to present evidence to establish eligibility.).

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

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

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

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

16 43. Otherwise, if the officer concludes that the individual is inadmissible under an
17 applicable ground, the officer “shall,” with simply the concurrence of a supervisor, 8 C.F.R. §
18 235.3(b)(7), order the individual removed “without further hearing or review unless the alien
19 indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. §
20 1225(b)(1)(A)(i).

21 44. Thus, a low-level DHS officer can order the removal of an individual who has been
22 living in the United States with virtually no administrative process—just the completion of cursory
23 paperwork—based only on the officer’s own conclusions that the individual has not been admitted
24 or paroled, that the individual has not adequately shown the requisite continuous physical presence,
25 and that the individual is inadmissible on one of the two specified grounds. *See* 8 U.S.C. §§
26 1225(b)(1)-(b)(2).

27 45. Once a determination on inadmissibility is made, removal can occur rapidly, within
28 twenty-four hours.

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

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

5 48. An expedited removal order comes with significant consequences beyond removal
6 itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on
7 admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. §
8 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after
9 having been found inadmissible based on misrepresentation are subject to a lifetime bar on
10 admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C.
11 § 1182(a)(6)(C).

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

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

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

1 52. Immigration detention should not be used as a punishment and should only be used
2 when, under an individualized determination, a noncitizen is a flight risk because they are unlikely
3 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,
4 690 (2001).

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

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

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

24 56. On information and belief, Mr. Luzardo Sanchez alleges that Respondents detained
25 him for the purpose of divesting him of his due process rights in his properly filed asylum
26 application.

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

1 58. On information and belief, Respondents are using the immigration detention system,
2 including extra-territorial transfer and detention, as a means to punish individuals for asserting
3 rights under the Refugee Act.

4 **FACTUAL BACKGROUND**

5 59. Petitioner is 20-year-old citizen and national of Venezuela.

6 60. Mr. Luzardo Sanchez was persecuted in Venezuela on account of his political
7 opinion. Petitioner and his family have openly opposed the Maduro regime, a government known
8 for its oppressive tactics against political dissidents.

9 61. While living in Venezuela, Petitioner experienced severe hunger, fear, and
10 humiliation as a result of the government's policies and actions. Armed "extermination" groups,
11 operating with the support of the regime, conducted night patrols in Petitioner's neighborhood,
12 instilling fear and targeting individuals perceived as opponents of the government. Petitioner was
13 also coerced into attending political events in support of the Maduro regime, under threat of
14 retaliation. Petitioner's opposition to the regime and refusal to comply with its demands have placed
15 him at a significant risk of persecution, so Petitioner fled to Colombia, where he sought refuge with
16 his father, who had also fled the country due to similar threats. Colombia failed to provide adequate
17 protection to Petitioner and his father and consequently, Petitioner's father sought asylum in the
18 U.S.; Petitioner later followed his father to the U.S., seeking safety and protection under U.S.
19 asylum laws.

20 62. Mr. Luzardo Sanchez entered on December 19, 2023, and was released on his own
21 recognize thereafter. On December 17, 2024, he applied for asylum with USCIS and obtained an
22 employment authorization document.

23 63. Mr. Luzardo Sanchez attended one or more master calendar hearings. In October
24 2025, he filed an asylum application with the immigration court.

25 64. The DHS started this removal proceeding on or about September 2025.

26 65. Respondents alleged he was inadmissible to the United States.

27 66. On or about October 14, 2025, Petitioner filed his Form I-589 asylum application.

28 67. On or about September 2025, Petitioner was detained at the Otay Mesa Detention
Center.

68. Mr. Luzardo Sanchez 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.

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

70. 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.

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

72. 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.*

73. 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).

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

75. While there is a right to “consult” with an attorney or another person about the 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 76. 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 77. 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 78. Moreover, Mr. Luzardo Sanchez 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 DIIS custody, Mr. Luzardo Sanchez was building his emotional support system which helped
28 him cope with the emotional trauma he suffered in Venezuela.

79. 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 80. Here, Mr. Luzardo Sanchez was not advised by DHS that opening his proceedings
4 could 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. Luzardo Sanchez 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 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 82. Petitioner restates, realleges, and incorporates by reference each and every allegation
16 in the paragraphs above as if fully set forth herein.

17 82. 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 83. 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 84. The initiation of expedited removal proceedings is not an enumerated ground upon
26 which a removal proceeding may be dismissed.

27 85. 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*
36 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency
37 action because it was taken by unauthorized official).

1 85. 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). At the time of his
4 detention, Mr. Luzardo Sanchez had been in the United States for over two years. On information
5 and belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in
6 removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no
7 evidence of material changed circumstances, or for some other purposes not supported by law. *See*
8 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025)
9 (“Detention 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.”).

10 87. In deciding to detain Mr. Luzardo Sanchez, 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
and capricious in violation of the APA).

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

21 **COUNT THREE**

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

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

1 91. An action is an abuse of discretion if the agency “entirely failed to consider an
2 important aspect of the problem, offered an explanation for its decision that runs counter to the
3 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view
4 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
5 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
6 U.S. 29, 43 (1983)).

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

10 93. The INA provides that Respondents may release an individual from apprehension or
11 custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. §
12 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a
13 release decision is made, a revocation of the custody determination may be made only when
14 warranted by an individual’s specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. §
15 1236.1(c)(9).

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

22 95. By categorically revoking Mr. Luzardo Sanchez’s release from DHS custody, and
23 detaining him without notice or consideration of his individualized facts and circumstances,
24 Respondents have violated the INA, implementing regulations, and the APA.

25 96. Respondents have made no finding that Petitioner is a danger to the community.

26 97. Respondents have made no finding that Petitioner is a flight risk.

27 98. On information and belief, by detaining Mr. Luzardo Sanchez categorically and
28 without notice, Respondents have further abused their discretion because, since the agency made its
initial custody determination, on information and belief, there have been no changes to Mr. Luzardo
Sanchez’s specific facts or circumstances that support his detention or the revocation of his release
from custody on his own recognizance.

1 99. Respondents have already considered Mr. Luzardo Sanchez’s facts and
2 circumstances and determined that he was not a flight risk or danger to the community. On
3 information and belief, there have been no changes to the facts of Mr. Luzardo Sanchez’s
4 proceedings that justify this revocation of his release from DHS custody.

4 **COUNT FOUR**

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

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

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

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

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

18 **COUNT FIVE**

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

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

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

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

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

15 108. Mr. Luzardo Sanchez, at the moment of his arrest and detention by Respondents, did
16 not receive any judicial determination of probably cause for his arrest or continued detention by
17 Respondents.

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

23 110. Respondents’ warrantless arrest of Mr. Luzardo Sanchez constitutes an unreasonable
24 and unlawful seizure in violation of the Fourth Amendment.

25 **COUNT SIX**

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

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

112. The government may not deprive a person of life, liberty, or property without due
process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,

1 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 113. Mr. Luzardo Sanchez has a fundamental interest in liberty and being free from
4 official restraint.

5 114. The government’s detention of Petitioner without a notice or an opportunity to be
6 heard before detention violates his right to due process.

7 115. The government’s detention of Petitioner without a meaningful bond and custody
8 redetermination hearing to determine whether he is a flight risk or danger to others violates his right
9 to due process.

10 **PRAYER FOR RELIEF**

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

- 12 (1) Assume jurisdiction over this matter;
- 13 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
14 should not be granted within three days;
- 15 (3) Declare that Petitioner’s detention without an individualized determination violates
16 the Due Process Clause of the Fifth Amendment;
- 17 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
18 redetermination hearing violates the INA, APA, and Due Process;
- 19 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
20 custody;
- 21 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
22 district without the Court’s approval;
- 23 (7) Issue an Order requiring Respondents to provide a bond and custody redetermination
24 hearing within 14 days to meaningfully consider his eligibility for release from DHS
25 custody;
- 26 (8) Award Petitioner’s counsel reasonable attorney’s fees and costs under the Equal
27 Access to Justice Act, and on any other basis justified under law;
- 28 (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: January 21, 2026

Respectfully submitted,
/S/ Mario Portugal

Mario Portugal
Attorney for Petitioner Elvis Jose
Luzardo Sanchez