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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JOHAN ANDRES VELASQUEZ MONTILLO, Petitioner, Petitioner, v. NATE BROOKSBY, Washington County Sheriff, RUBEN LEYVA, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO); BRIAN HENKE Field Office Director for Las Vegas/Salt Lake City; KRISTI NOEM, Secretary United States Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC § 2241** Case No. _____ Agency Case No. A[redacted]

Petitioner Johan Velasquez is a national of Venezuela who sought refuge in the United States after [redacted] In November 2021 he and his family (a wife and three small daughters) presented themselves at southern border, seeking asylum. Immigration officials detained them for about five days, and after investigating their backgrounds, ICE released them into the community so they could seek asylum here. Mr.

Velasquez has lived a law-abiding life in the U.S. since then, and his asylum application is currently pending.

Despite doing all that this country has asked him to do, he was unexpectedly arrested at work on February 12, 2025. He is currently in ICE custody in the Washington County Jail in Hurricane, Utah.

His rearrest violates the Constitution and laws of the United States of America. For this reason, Mr. Velasquez asks the court pursuant to 28 U.S.C. § 2241 to grant immediate release from custody. Mr. Velasquez further asks the court to order Respondents not to transfer him out of this district or deport him while this case is pending.[1]

FACTS APPLICABLE TO ALL CLAIMS

1. Johan Velasquez was born in Venezuela [redacted] (Ex. 1; Ex. 2.)
2. Beginning when he was a college student, he [redacted] (Ex. 1 at 11.)

[1] "[T]transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings." *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee). And this court has "inherent power to preserve its ability to hear the case." *Alves v. U.S. Dep't of Just.*, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g.*, *M.M. v. Wamsley*, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same); *Bustos v. Raycraft*, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed); *Lopez Pop v. Noem*, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, 2025 WL 2801449, at *2 (D. Colo. Sept. 17, 2025).

3. The declaration he submitted in connection with his asylum petition describes the violence and threats of violence he experienced [redacted] (Ex. 1 at 11-19.)

4. [redacted]

5. He fled Venezuela with his wife and three young children, and on November 14, 2021, they arrived at the U.S.'s southern border on November 25, 2021.

6. U.S. Customs and Border Protection issued a warrant for his arrest, and he was taken into custody, and he was held for about five days.

7. He was detained with one of their daughters in a section for fathers with children; his wife had their other two daughters in a different section of the same detention center.

8. He was served with a Notice to Appear, which placed him in Removal Proceedings. (Ex. 3.)

9. And after taking time to investigate his background, immigration officials released him after about five days in custody under an Order of Release on Recognizance (ORR). (Ex. 4.)

10. The ORR imposed various release conditions and directed him to report to immigration authorities in Utah.

11. Upon information and belief, Mr. Velasquez has been fully and completely compliant with the requirements of the ORR.

12. After his arrival in Utah, Mr. Velasquez retained counsel and filed his Form I-589 application for asylum, and he was given a hearing date of November 25, 2022. (Ex. 5.)

13. He was granted an employment authorization card. (Ex. 6.)

14. He has an "individual hearing" before an immigration judge on April 3, 2026. (Ex. 7.)

15. The purpose of this hearing is for the immigration judge to decide whether to grant him asylum.

16. Notwithstanding this appointment, Mr. Velasquez was unexpectedly arrested at his work on February 12, 2025, by ICE agents.

17. At the time of this filing, he is in ICE custody at the Washington County Jail, and ICE officers have told him they will be moving him out of state this weekend.

18. The Immigration and Nationality Act ("INA") provides no authority for DHS to retroactively revoke a lawful ORR and re-detain a compliant noncitizen years later.

19. Once the Respondents deliberate, and choose the appropriate processing path, that decision legally binds them, unless Respondents can show a material change in circumstances on the part of the individual released from custody.

20. At the time of his arrest, Mr. Velasquez was fully compliant with the terms of is release on recognizance.

21. He has not committed any criminal offense.

22. ICE/ERO had no reason to actively seek his arrest and the ICE officers involved had no lawful or valid reason to detain him.

23. Arresting officers did not inform Mr. Velasquez of the legal basis for their arrest, and on information and belief, no legal authority supports the re-detention of Mr. Velasquez.

24. This forum is Mr. Velasquez's only avenue for judicial review of DHS's ultra vires decision to arrest him without notice, a hearing, or any evidence of changed circumstances.

25. Immigration detention should not be used as a punishment and should be used only when, under an individualized determination, a noncitizen is a flight risk because they are unlikely

to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26. Accordingly, Mr. Velasquez seeks a writ of habeas corpus requiring that he be released from ICE/ERO custody immediately on the same terms as his original release.

DECISION BEING CHALLENGED

27. Mr. Velasquez challenges Respondents decision to take him into custody on February 12, 2026

28. This is the first petition filed to challenge this detention.

JURISDICTION

29. Mr. Velasquez is in the physical custody of Respondents in the state of Utah.

30. This court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); and 28 U.S.C. § 1651 (All Writs Act).

31. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

32. The court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's inherent equitable powers.

33. Even if the government were to argue that the court lacks jurisdiction, this court has jurisdiction to determine its jurisdiction. *Belbacha v. Bush*, 520 F.3d 452, 455-56 (citing *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947)).

34. This jurisdiction includes the authority to grant "interim relief" and enjoin a transfer to another district to preserve its ability to review its own jurisdiction. *Id.* (discussing All Writs

Act, 28 U.S.C. § 1651).

35. Mr. Velasquez is seeking relief related only to his custody status, which is not inconsistent with an order of removal, so exhaustion of administrative remedies, if any, is not required.

VENUE

36. Venue lies in the District of Utah because this is the judicial district in which Mr. Velasquez is currently detained. *Rumsfeld v. Padilla,* 542 U.S. 426, 442-42 (2004); *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

37. Venue is also proper in this judicial district under 28 U.S.C. § 1391(e) because respondents are officers or employees of the United States; Mr. Velasquez is being held in this district; and a substantial part of the events or omissions giving rise to the Petition occurred in this judicial district.

REQUIREMENTS OF 28 U.S.C. § 2243

38. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

39. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

40. Mr. Velasquez is a citizen of Venezuela. He is in ICE custody in Washington County, Utah.

41. Respondent NATE BROOKSBY is the Sheriff in Washington County, Utah. He is the physical custodian of Mr. Velasquez.

42. Respondent REUBEN LEYVA is the Acting Field Office Director of the Salt Lake City Enforcement and Removal Operations (ERO) and U.S. Immigration and Customs Enforcement (ICE). He is the legal custodian of Mr. Velasquez. He is named in his official capacity.

43. Respondent BRIAN HENKE is the Field Office Director for ICE Enforcement and Removal Operations ("ERO") in Salt Lake City, Utah. As Field Office Director, he is Mr. Velasquez's immediate custodian, responsible for his detention at WCJ, and is the person with the authority to authorize detention or release. Respondent Henke is named in his official capacity.

44. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is the legal custodian of Mr. Velasquez. She is named in her official capacity.

45. Respondent PAMELA BONDI is the Attorney General of the United States. In this capacity, Ms. Bondi is the legal custodian of Mr. Velasquez. Respondent Bondi is sued in her official capacity.

LEGAL FRAMEWORK

46. The INA authorizes immigration detention under 8 U.S.C. §§ 1225, 1226, or 1231.

47. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

48. Second, the INA provides for mandatory detention of noncitizens subject to expedited

removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

49. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-(b).

50. In cases of noncitizens apprehended near the border, DHS has discretion at initial processing to choose between expedited removal under § 1225 and removal proceedings under § 1229a. *See, e.g., Innovation Law Lab v. McAleenan*, 924 F. 3d 503, 508 (9th Cir. 2019).

51. In *Thuraissigiam v. Department of Homeland Security*, the Ninth circuit described the INA as providing that noncitizens are removed "either via expedited removal under § 1225(b)(1) or via the removal procedures under § 1229a." 917 F.3d 1097, 1102 (9th Cir. 2019) (emphasis added), *rev'd on other grounds*, 591 U.S. 103 (2020); *Matter of E-R-M- & L-R-M*, 25 I&N Dec. 520, 523 (BIA 2011); *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023).

52. This choice is critical because it will dictate whether a detention is governed by § 1225 or § 1226.

53. This case necessarily involves the detention provision at § 1226(a) because that is the explicit statutory authority under which Respondents chose to process and release Mr. Velasquez on his own recognizance after his entry into the United States in 2023. (Ex. 6.[2])

54. In 1996, Congress amended and recodified § 1226 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

55. In the decades after IIRIRA, most people who entered the United States without inspection

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[2] INA § 236 is codified at 8 U.S.C. § 1226.

(like Mr. Velasquez) were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.

56. That practice was consistent with many more decades of prior practice, in which noncitizens who were not seeking admission at the U.S. border were entitled to a custody hearing before an Immigration Judge 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 § 1251(a)).

57. In *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) the U.S. Supreme Court held that detention under § 1226(a) is discretionary and permits release.

58. Although DHS retains discretion over which statute it uses in enforcement actions, that choice then dictates which statute governs detention.

59. Once a noncitizen has been released into the United States and placed into § 1229a proceedings, detention authority arises, if at all, under § 1226(a). f

60. *See Soberanes v. Comfort*, 388 F.3d 1305, 1310-11 (10th Cir. 2004); *Casas-Castrillon v. DHS*, 535 F.3d 942, 948–51 (9th Cir. 2008); *Hechavarria v. Sessions*, 891 F.3d 49, 54–56 (2d Cir. 2018); *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 508 (9th Cir. 2019).

61. In this instance, Mr. Velasquez was placed directly into Section 1229a removal proceedings. (Ex. 5 at 1.[3])

62. And DHS chose to give Mr. Velasquez an ORR (Own Recognizance Release) more than five years ago. (Ex. 6.)

63. Once DHS makes that initial processing choice and decides to release a noncitizen under

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[3] INA § 240 is codified at 8 U.S.C. § 1229a.

§ 1226(a), the statute provides no mechanism for retroactive reversal absent new facts or what has been defined as a "material change."

64. Even though DHS possesses revocation authority under 8 U.S.C. § 1226(b) (INA § 236(b)), the Board of Immigration Appeals has long recognized that custody determinations are not to be altered arbitrarily and should not be changed absent materially changed circumstances. In *Matter of Sugay*, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance," explaining that this limitation is necessary to ensure that custody decisions are not exercised in an "arbitrary or capricious" manner. 17 I. & N. Dec. 637, 640 (BIA 1981).

65. Federal courts have confirmed that DHS itself has represented that it adheres to this changed-circumstances rule in practice. In *Saravia v. Sessions*, the Ninth Circuit noted that "the government explained that DHS complies with *Sugay* by conducting a 'changed circumstances' bond hearing before an immigration judge within seven to fourteen days of an arrest," and further observed that, according to government counsel, DHS "has incorporated this holding into its practice." 905 F.3d 1137, 1147-48 (9th Cir. 2018).

66. Accordingly, where—as here—DHS rearrests a noncitizen after a prolonged period of full compliance with an ORR and without any intervening change in facts, such re-detention is vulnerable as arbitrary and capricious and procedurally unlawful unless DHS can articulate and prove changed circumstances through a meaningful custody hearing.

67. Challenges to detention under an incorrect statutory framework or imposed in an arbitrary manner are properly brought through habeas corpus. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004).

68. In this case, Mr. Velasquez has relied in good faith on the prior actions taken by DHS to place him in removal proceedings under 8 U.S.C. § 1229a.

69. He filed his I-589 Application and has lived a law-abiding life at all times.

CLAIMS FOR RELIEF

Federal law authorizes this court to issue a writ of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). "[A]n order barring their transfer to or from a place of incarceration" is "a proper claim for habeas relief." *Kiyemba v. Obama*, 561 F.3d 509, 513 (D.C. Cir. 2009). The government's plan to keep Mr. Velasquez in custody while his asylum application is pending has several constitutional and legal problems.

I. CLAIM 1: Violation of the INA

The allegations in the above paragraphs are realleged and incorporated herein.

In November 2021, DHS completed a lawful § 1226(a) custody determination and chose to release Mr. Velasquez on ORR. Again, DHS had discretion whether to proceed under 8 U.S.C. § 1225 or 8 U.S.C. § 1229a. But once it decides to proceed under § 1229a, and it releases under § 1226, it does not have authority to reverse that choice ex post facto, *absent a material change in circumstances. Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). Once that choice is made, DHS must abide by that choice and cannot revoke detention without first showing a material change in *the individual's* circumstances prior to redetaining any previously processed person. A government policy change does not constitute a material change in the individual's circumstances.

The Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate

retroactive rules unless that power is conveyed by Congress in express terms." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). To do so would add "new legal consequences to events completed [prior to the expansion]." *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994); *see also, INS v. St. Cyr*, 533 U.S. 289, 315-316 (2001).

Because Respondents arrested Mr. Velasquez after releasing him on ORR, without first showing a material change in circumstances, the re-arrest violated federal law.

II. CLAIM 2: Violation of Fifth Amendment right to Procedural Due Process.

The allegations in the above paragraphs are realleged and incorporated herein.

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural due process rights, a petitioner must establish (1) a protected property or liberty interest, and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).

To the first point, Mr. Velasquez's interest in not being detained is "the most elemental of liberty interests[.]" *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *3, *9 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); granting petition and ordering immediate release with no re-detention absent "an immigration court hearing . . . held (with adequate notice) to determine whether detention is appropriate."). *See also, e.g., Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

Given that the liberty interest here is "the most elemental," numerous courts have found that this first factor weighs heavily in a petitioner's favor. *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *7 (this factor "must be accorded significant weight"). Mr. Velasquez's status as a

noncitizen does not negate that interest. "While the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process[.]" *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

In fact, as an individual who was released by ICE, Mr. Velasquez has a higher liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*, No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging that he had previously been released by ICE and was about to be re-detained, "Petitioner has asserted liberty interests that differ from the liberty interests of a detained person in *Rodriguez Diaz*"). Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464, *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been released has had—in contrast to a detainee with no period of release—"an opportunity 'to form the [ ] enduring attachments of normal life'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which led the Supreme Court in *Morrisey* to impose due process requirements on parolees where the state seeks to revoke parole.

The second factor, risk of an erroneous deprivation of liberty, also weighs in Mr. Velasquez's favor. A detainee's release to the community on ORR reflected ICE's determination that the individual was neither a flight risk nor a danger to the community. *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner, "it did so after determining—as required by regulation—that 'such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.'. . . By issuing the OR[R], ICE necessarily found that [Petitioner] was neither a flight risk nor a danger to the community.") (quoting 8 C.F.R. § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL

2717279, at *1 (N.D. Cal. Sept. 22, 2025) ("ICE's release of Barrenechea on his own recognizance in 2020 can only be understood as reflecting a determination that he did not pose a flight risk or danger to the community.").

The government has no legitimate interest in detaining a petitioner without providing a pre-deprivation hearing. "[T]he government's interest in detaining petitioner without a hearing is low." *Carballo*, 2025 WL 2381464, *8 (cleaned up). "In immigration court, custody hearings are routine and impose a minimal cost." *Id.* (cleaned up). As stated in *E.A. T.-B.*, "although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on ATD violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." 2025 WL 2402130, at *5.

Many courts have concluded that a released detainee cannot be rearrested without a pre-deprivation hearing. *See, e.g., Jimenez v. Bondi*, 2025 WL 3466925, at *2-*3 (W.D. Wash. Dec. 3, 2025) (granting petition, ordering immediate release, and barring re-detention "without providing adequate notice of the reasons for his re-detention and a meaningful opportunity to respond."); *Perez v. Mordant*, No. 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to due process before he was detained a second time, even though his detention was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).

Under *Mathews*, Mr. Velasquez has a high interest in not being re-detained. The risk of any erroneous deprivation is also high because ICE's previous decision to release him necessarily reflected a conclusion that he was not a flight risk or a danger to the community.

Here, as in *Ledesma Gonzalez*, "ICE revoked that release without any reassessment of those factors." 2025 WL 2841574, at *8.

Respondents have long experience applying the material change in circumstances substantive and procedural standard to redetention decisions. Respondents failed to apply that experience in this case. Respondents have provided Mr. Velasquez with no procedure whatsoever. They have cited no legal authority and provided no procedural safeguards against their illegal and arbitrary detention—their affirmative and misleading actions taken to deprive Mr. Velasquez of their liberty, of their constitutional right to remain free from detention without due process.

DHS has identified no change in circumstances since their prior decision in 2023 to release Petitioners on their own recognizance. The decision to arrest Mr. Velasquez a second time violated his due process rights and was, therefore, unlawful.

III. CLAIM 3: Violation of the APA

The allegations in the above paragraphs are realleged and incorporated herein.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). 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)).

For a challenged agency action to be upheld, the agency "must explain the evidence

which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

ICE's decision to arrest Mr. Velasquez on February 12, 2026, must be vacated under the APA because it was arbitrary, capricious, and an abuse of discretion. This decision failed to consider the central aspect of the determination—materially changed circumstances—and it offered no plausible explanation for this action. The decision to revoke ORR violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Mr. Velasquez had been granted ORR, and nothing had changed since that original decision. And nothing suggests that there was a "rational" reason for this choice, given that Mr. Velasquez had filed an asylum application and complied with all the conditions of ORR.

Additionally, DHS failed to consider Mr. Velasquez's reliance interests. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020). He has kept all the rules and has participated in the asylum process as we would expect him to do. He never received any written notification that ORR could be revoked or why. He has no other forum in which to seek judicial review of the constitutional and legal issues raised by their arbitrary re-detention without process, in violation of the law.

PRAYER FOR RELIEF

For these reasons, Mr. Velasquez asks the court to order the following relief:

1. Enter an emergency order that Respondents not (a) transfer Mr. Velasquez out of this district or (b) deport him while this petition is pending.
2. Order Respondents to show cause why this petition should not be granted.

3. Order Respondents to immediately release Mr. Velasquez from custody.
4. Order Respondents not to take him into custody again without first holding a hearing before a neutral decisionmaker, at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released.
5. Order all other relief that the Court deems just and proper.

* * *

Counsel verifies that this petition is authorized by Petitioner. It does not personally bear Petitioner's signature because of he is now in custody. Prior to submitting this petition, counsel was able to meet with Mr. Velasquez in person. Counsel has discussed the facts of this petition with Petitioner, and knows the facts asserted above to be true, or alleges them on information and belief, based on information obtained from Petitioner.

DATED this 14th day of February.

/s/ Benjamin C. McMurray
BENJAMIN C. McMURRAY
Assistant Federal Public Defender