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

**CESAR AUGUSTO OSPINO GUARDO**

Petitioner,

v.


CHRISTOPHER LAROSE, Senior Warden, Otay  
Mesa Detention Center; TODD LYONS,  
Acting Director, U.S. Immigration and Customs  
Enforcement; PATRICK DIVVER, Field Office  
Director, San Diego Field Office, U.S. Immigration  
and Customs Enforcement; PAMELA BONDI,  
Attorney General, U.S. Department of Justice,

Respondents.

**'26CV2187 RBM SBC**

**PETITION FOR WRIT OF  
HABEAS CORPUS**

### INTRODUCTION

1. Petitioner, Cesar Augusto Ospino Guardo, A# , is a citizen and national of Colombia.
2. Petitioner was paroled into the United States on December 29, 2024, by Respondents at the El Paso, Texas port of entry. Petitioner was detained by Respondents July 2025.
3. On February 24, 2025, Petitioner's immigration case closed by an Immigrating Judge in Sacramento, California for failure to prosecute.
4. Petitioner was detained by Respondents July 2025.
5. Petitioner then applied for asylum before the Otay Mesa Immigration Court on November 4, 2025.
6. On January 29, 2026, Petitioner's asylum was denied. On February 11, 2026, Petitioner filed his appeal before the Board of Immigration Appeals. His appeal remains pending.
7. Petitioner has been detained for almost 9 months.
8. The Due Process Clause of the Fifth Amendment forbids such arbitrary and prolonged detention. Respondents have not justified Petitioners continued detention at a hearing before a neutral decision maker where the government bears the burden to demonstrate why Petitioner poses a danger or flight risk.
9. Accordingly, Petitioner petitions this Court for a writ of habeas corpus to vindicate his right to due process and to seek relief from continued arbitrary detention

### JURISDICTION

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28

U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This 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.*, and the All Writs Act, 28 U.S.C. § 1651.

#### VENUE

13. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center in San Diego, California, which is within the jurisdiction of this District.
14. Venue is further proper because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

#### REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).
16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

17. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

**PARTIES**

18. Petitioner is a citizen and national of Colombia. Petitioner is currently detained at the Otay Mesa Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

19. Respondent, Christopher Larose, is the Warden of the Otay Mesa Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Larose is a legal custodian of Petitioner.

20. Respondent, Todd Lyons, is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

21. Respondent, Patrick Divver, is the Field Office Director for the San Diego Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Respondent Divver is a legal custodian of Petitioner.


22. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.


23. This action is commenced against all Respondents in their official capacities.

**STATEMENT OF FACTS**

24. Petitioner is a 34-year-old Colombian National and Citizen.

25. While living in Colombia, he witnessed lots of gang-violence.

26. His first encounter with a criminal organization was in 2012, when he was 21 years old. It was with a gang called  a neighborhood in the city of Cartagena de Indias, Colombia. He had dropped off a friend at her house on his motorcycle, on his way back home, he saw a group of ten people coming out of an alley with knives and stones in their hands. They stopped him and asked him to take one of their companions to the hospital. Petitioner was stunned seeing how badly wounded the man was and Petitioner told them he could not take him. Out of anger that Petitioner denied their request, one of them pulled out a knife and slashed Petitioner's chest open. The criminals stole Petitioner's belongings such as his chain, cell phone, and helmet. A man, who was also a member, then came running towards them and told Petitioner to leave. In pain, Petitioner got on his motorcycle and tried to drive home. He was 15 min away from his house. He was able to drive a certain distance before falling from his motorcycle. He fell hard on the ground and dislocated his jaw, which caused him to break his tooth, and a finger. Neighbors nearby saw him and came to his aid. They lifted his jaw with a sweater and covered his chest wounds because he was bleeding profusely. Petitioner was then taken to the hospital. From that day, he became afraid of the criminal groups that resided in Colombia.

27. After this encounter, Petitioner spent the following years living in fear that he would be harassed by another criminal organization. When he would drive his motorcycle down the street, he would see members of the  a well-known criminal organization in Colombia. They are known for extortion, kidnapping, narcotrafficking, human trafficking, and other violent crimes. The members, who made it obvious that they were part of the group


because they would verbally state it, would often signal to him. It was common knowledge among civilians that these signals often meant that the gang was trying to recruit someone. Petitioner tried to ignore their signals, which happened often.

28. In approximately 2018/2019, Petitioner and his friend were approached by a man who lived in their neighborhood. Petitioner and his friend were aware that the man was a member of [REDACTED]. [REDACTED] The man asked them if they were interested in joining [REDACTED] and that they would benefit from joining. They both refused and the man left.

29. On June 29, 2022, Petitioner was working in telecommunications with a company called [REDACTED] in Cartagena, Colombia. He was sent to a site to do some work on a house. His coworker was on the roof, and Petitioner was on the ground level. Suddenly, Petitioner saw two men pull up on a motorcycle and one of them shot a man that was near the work site. Petitioner and his coworker immediately called the "Seguridad Industrial Colombia" (Industrial Safety Of Colombia) who investigate these crimes. Emergency personal was also called. Petitioner and his coworker immediately left the site because they were afraid that other members of [REDACTED] might come and kill them for witnessing the murder. A couple hours passed, and by the time Petition was home, his mother told Petitioner that someone stopped by their home and left a note for him. He opened the note, and it was a death threat from [REDACTED] towards the end of the letter it said, [REDACTED]. [REDACTED] Petitioner was scared for his life. [REDACTED] are a very powerful criminal group in Colombia. Petitioner knew that if he didn't flee the country, the criminal group would come after him for witnessing a murder.

30. Petitioner left Colombia on July 6, 2022. He took a plane to Mexico where he lived for

approximately a month. On August 1, 2022, he entered through Calexico, California. He turned himself to the U.S. Border Patrol and was detained. He was given an order of deportation and was forcibly returned to Medellin, Colombia.

31. Petitioner resided in Medellin, Colombia for only 3-5 days, he was afraid he would be caught and killed by  for fleeing the first time. Petitioner left Colombia and travelled through Ecuador, Peru, Bolivia, and Brazil. He stayed in Brazil for a month, then decided to head to Chile, where he arrived on November 29, 2022. He settled in the city of Santiago, where he lived for a year and three months.

32. In February 2024, Petitioner made the decision to return to Colombia because he wanted to take care of his elderly parents and wanted to watch over his daughter, who has ongoing kidney problems.

33. On May 2, 2024, while living in Colombia, Petitioner was walking with his daughter on Calle del Perro in the city of Cartagena de Indias when he was attacked by two men on a motorcycle. He suffered a cut to his left arm and a blow to his spine by an aluminum baton. As the attackers fled, one of the passengers shouted, "there you go." People rushed to Petitioner's aid. His daughter, was nervous and in tears, screaming for her dad. When Petitioner was able to stand up, he decided to go home and not to the hospital. If he went to the hospital, the same people who attacked him would be at the hospital waiting to kill him. These incidents are very common in Colombia. Members of criminal organizations go to the hospital and kill the victim before the victims report it to the police.

34. As a result of this incident, Petitioner suffered an injury in his back, waist, and legs due to a spinal deviation. In September 2024, after recovering from his injuries, Petitioner once again decided to leave Colombia. In September 2024, Petitioner took a plane from Cartagena,

Colombia, to Cancun, Mexico. He lived in Teoloyucan, Mexico and applied for an appointment on the CBP One application.

35. On December 14, 2024, Petitioner received a notification that his appoint was set for December 29, 2024. Petitioner appeared at the El Paso, Texas port of entry for my appointment.

36. Petitioner has now been detained for almost 9 months. Since being detained, Petitioner has experienced lack of sleep, stress, anxiety, and loss of appetite.

37. During Petitioners time in detention, Respondents have not provided a bond hearing before a neutral decision maker to determine whether his prolonged detention is justified.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

38. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

39. The Due Process Clause requires the government to establish, at an individualized hearing before a neutral decisionmaker, that Petitioner’s prolonged detention is justified by clear and convincing evidence of flight risk or danger, even after consideration of whether alternatives to detention could sufficiently mitigate that risk.

40. Petitioner’s detention has become prolonged as he has been detained for 9 months and faces months, if not years, of continued detention while his asylum appeal remains pending.

41. For these reasons Petitioner’s ongoing prolonged detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment.

#### **COUNT TWO**

#### **Violation of 8 U.S.C. § 1226(a)**

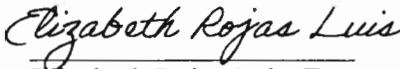
42. Petitioner is detained under 1226(a), not 1225(b), because he was not “arriving” or “seeking admission” when he was arrested by ICE since he is not a recent entrant. Petitioner was paroled by Respondent’s and had his case closed by an Immigrating Judge for failure to prosecute. His continued detention without a bond hearing violates the Immigration and Nationality act and the Fifth Amendment of the Constitution.

**PRAYER FOR RELIEF**

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

- (1) Order Petitioner’s immediate release from detention, or, in the alternative, order a bond hearing at which the government must prove by clear and convincing evidence that his continued detention is necessary.

Respectfully submitted,

  
Elizabeth Rojas Luis, Esq.  
Attorney for Respondent

*Counsel for Petitioner*

Dated: April 7, 2026

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Cesar Augusto Ospino Guardo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 7, 2026

  
Elizabeth Rojas Luis, Esq.