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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA '26CV2193 LL DDL

10 Alvino Reyes-Hernandez

CASE NO.: 

11 Petitioner,

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

12 vs.

CHALLENGE TO UNLAWFUL  
INCARCERATION; REQUEST FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

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

24 Respondents.

25  
26  
27  
28

1 Petitioner Alvino Reyes-Hernandez 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 Alvino Reyes-Hernandez (“Petitioner” or “Mr. Reyes-Hernandez”) is a  
5 Mexican asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He was  
6 persecuted in Mexico on account of his race. The persecution he suffered in Mexico included being  
7 threatened and beaten, leaving Petitioner bloody and bruised, threatened with death, and called  
8 derogatory names because of Petitioner’s looks and where Petitioner is from.

9 2. On or about October 5, 2013, Mr. Reyes-Hernandez entered the United States.

10 3. He entered at or near San Ysidro, California, and Petitioner entered without  
11 inspection.

12 4. Respondents commenced removal proceedings against him in immigration court on  
13 or around December 02, 2025 entitling him to present his asylum claim with the due process rights  
14 under 8 U.S.C. § 1229a.

15 5. Since then, Petitioner has attended his immigration court hearings.

16 6. On or about March 18, 2026, he filed a Form I-589 Application for Asylum,  
17 Withholding of Removal, and protection under the Convention Against Torture with the  
18 immigration court.

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

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

27 9. The Constitution protects Mr. Reyes-Hernandez—and every other person present in  
28 this country—from arbitrary deprivations of his liberty and guarantees him due process of law. The  
government’s power over immigration is broad, but as the Supreme Court has declared, it “is  
subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

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

3 10. Mr. Reyes-Hernandez seeks declaratory and injunctive relief to compel his  
4 immediate release from the immigration jail where he has been held by DHS since being unlawfully  
5 detained on or about December 02, 2025, without first being provided a due process hearing to  
6 determine whether his incarceration is justified.

7 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Reyes-  
8 Hernandez’s plight: Respondents will continue—unchecked—to detain him unlawfully under 8  
9 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

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

18 **JURISDICTION**

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

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

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



1 seek asylum, withholding of removal, or protection under the Convention Against Torture after  
2 fleeing persecution in Mexico on account of his race. The persecution he suffered in Mexico  
3 included being threatened and beaten, leaving Petitioner bloody and bruised, threatened with death,  
4 and called derogatory names because of Petitioner's looks and where Petitioner is from. He has had  
5 no departures since his arrival. He is not married. He has no children. On information and belief he  
6 has no criminal convictions. Since the detention on or about December 02, 2025, Mr. Reyes-  
Hernandez has remained in Respondents' custody.

7 22. Mr. Reyes-Hernandez is currently residing in Respondents' custody at Otay Mesa  
8 Detention Center in San Diego, California, as of the time of the filing of this petition.

9 23. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa  
10 Detention Center in San Diego, California, where Mr. Reyes-Hernandez is detained. LaRose is  
11 responsible for the day-to-day operations and confinement of non-citizens detained at that facility.  
12 He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Mr.  
Reyes-Hernandez and is named in his official capacity.

13 24. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San  
14 Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for  
15 local custody decisions relating to non-citizens charged with being removable from the U.S.,  
16 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field  
17 Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent  
Divver is a custodian of Mr. Reyes-Hernandez and is named in his official capacity.

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

22 26. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has authority  
23 over the actions of all other DHS Respondents in this case, as well as all operations and federal  
24 agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is  
25 charged with faithfully administering the immigration and naturalization laws of the United States.  
26 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Reyes-Hernandez and is named in his  
27 official capacity.

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

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

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

### 8 EXHAUSTION OF ADMINISTRATIVE REMEDIES

9 30. Petitioner has no administrative remedies to exhaust.

10 31. Mr. Reyes-Hernandez received a NTA on December 2, 2025, which was then filed  
11 before the before the Otay Mesa Immigration Court to initiate his INA § 240 immigration  
12 proceedings.

13 32. Mr. Reyes-Hernandez is also challenging the unlawfulness of Respondents’ decision  
14 to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

15 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Reyes-  
16 Hernandez’s constitutional, statutory, and regulatory rights and restore his liberty.

### 17 LEGAL FRAMEWORK

18 34. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a  
19 right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the  
20 Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of  
21 persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-  
22 212, 94 Stat. 102 (1980).

23 35. The “motivation for the enactment of the Refugee Act” was the United Nations  
24 Protocol Relating to the Status of Refugees, “to which the United States had been bound since  
25 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a  
26 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and  
27 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

37. The INA gives the Attorney General or the Secretary of Homeland Security  
discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that

1 definition, individuals generally are eligible for asylum if they have experienced past persecution or  
2 have a well-founded fear of future persecution on account of race, religion, nationality, membership  
3 in a particular social group, or political opinions and if they are unable or unwilling to return to and  
4 avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. §

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

8 39. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.  
9 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§  
10 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the  
11 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on  
12 the applicant to present evidence to establish eligibility.).

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

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

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

23 43. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining  
24 that, in general, non-citizens who entered the country without inspection were not considered  
25 detained under 8 U.S.C. § 1225. See *Inspection and Expedited Removal of Aliens, Detention and*  
26 *Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures*, 62 Fed. Reg. 10312,  
27 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). See *id.*

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

1 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,  
2 690 (2001).

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

11 46. On information and belief, Respondents are using the immigration detention system,  
12 including extra-territorial transfer and detention, as a means to punish individuals for asserting  
13 rights under the Refugee Act.

14 47. //

15 48. //

16 49. //

#### 17 FACTUAL BACKGROUND

18 50. Petitioner is 55-year-old citizen and national of Mexico.

19 51. Mr. Reyes-Hernandez was persecuted in Mexico on account of his race. The  
20 persecution he suffered in Mexico included being threatened and beaten, leaving Petitioner bloody  
21 and bruised, threatened with death, and called derogatory names because of Petitioner’s looks and  
22 where Petitioner is from.

23 52. While living in Mexico, Petitioner’s former brother-in-law attacked Petitioner and  
24 beat him, leaving his face bloody and bruised. He threatened to kill Petitioner and threatened to take  
25 Petitioner away to a place where Petitioner’s family would never see him again. Additionally, some  
26 people in Mexico would call Petitioner “indigena” (“indigenous”) because of the way he looks and  
27 where he is from. People would mistreat Petitioner, call him derogatory names, say that Petitioner is  
28 uneducated and uncivilized, not developed emotionally, and that he should go back to tending to  
pigs.

53. The DHS started this removal proceeding on or about December 2, 2025.

1 54. Respondents alleged he was inadmissible to the United States under 8 U.S.C. §  
2 1182(a)(6)(A)(i) and commanded him to appear for a hearing on December 15, 2025, in the  
3 immigration court in Otay Mesa Detention Center.

4 55. On or about March 18, 2026, Petitioner filed his Form I-589 asylum application  
5 before the Otay Mesa Immigration Court.

6 **CAUSES OF ACTION**

7 **COUNT ONE**

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

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

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

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

19 59. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. §  
20 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the  
21 United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]  
22 status, may apply for asylum.” *Id.*

23 60. Because the denial of the right to apply for asylum can result in serious harm or  
24 death, the statutory right to apply is robust and meaningful. It includes the right to legal  
25 representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to  
26 present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an  
27 adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§  
28 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision  
determining removability, *see id.* § 1229a(c)(6)-(7).

61. In sum, applying for asylum in removal proceedings comes with a panoply of greater  
protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders*

1 *Law Center v. Mayorkas*, 2023 WL 3149243, at \*29 (C.D. Cal. Mar. 15, 2023) (“Individuals in  
2 regular removal proceedings enjoy far more robust due process protections [than those in expedited  
3 removal] because Congress has conferred additional statutory rights on them.”).

4 62. Moreover, Mr. Reyes-Hernandez has a vital liberty interest in being free from DHS  
5 custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*4 (N.D. Cal. July  
6 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)  
7 (explaining that a non-citizen that ICE released from custody after initial apprehension “has a  
8 substantial private interest in remaining out of custody” which includes an interest in “...obtaining  
9 necessary medical care, [and] maintaining her relationships in the community...”).

10 63. His length of residence, namely having lived in the U.S. for over 20 years, and ties to  
11 the community create a heightened liberty interest, and therefore he is entitled to meaningful  
12 process in the form of a bond hearing.

## 13 COUNT TWO

### 14 **Violation of the Fourth Amendment of the Constitution**

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

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

23 66. The Fourth Amendment requires that arrests entail a neutral, judicial determination  
24 of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial  
25 determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in  
26 the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,  
27 including of a noncitizen, absent a neutral judicial determination of probable cause violates the  
28 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,  
57 (1991). This determination must occur within 48 hours of detention, which includes weekends,

1 unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside*  
2 *v. McLaughlin*, 500 U.S. 44, 57 (1991). This did not happen in petitioner’s case.

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

8 68. Mr. Reyes-Hernandez, at the moment of his arrest and detention by Respondents, did  
9 not receive any judicial determination of probable cause for his arrest or continued detention by  
10 Respondents.

11 69. The Government cannot salvage this seizure by invoking generalized immigration  
12 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and  
13 demands individualized justification for both the arrest and the extended detention. *See United*  
14 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Reyes-  
15 Hernandez does not pose any danger to any person in the community at large.

16 70. Respondents’ warrantless arrest of Mr. Reyes-Hernandez constitutes an unreasonable  
17 and unlawful seizure in violation of the Fourth Amendment.

18 **COUNT THREE**

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

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

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

27 73. Mr. Reyes-Hernandez has a fundamental interest in liberty and being free from  
28 official restraint.

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

1 75. The government’s detention of Petitioner without a meaningful bond and custody  
2 redetermination hearing to determine whether he is a flight risk or danger to others violates his right  
3 to due process.

4 **PRAYER FOR RELIEF**

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

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
8 should not be granted within three days;
- 9 (3) Declare that Petitioner’s detention without an individualized determination violates  
10 the Due Process Clause of the Fifth Amendment;
- 11 (4) Declare that refusal to allow Petitioner a meaningful bond and custody  
12 redetermination hearing violates the INA, APA, and Due Process;
- 13 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from  
14 custody;
- 15 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this  
16 district without the Court’s approval;
- 17 (7) Issue an Order requiring Respondents to provide a bond and custody redetermination  
18 hearing within 14 days to meaningfully consider his eligibility for release from DHS  
19 custody;
- 20 (8) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 21 (9) Grant any and all other further relief this Court deems just or proper.

22 Dated: April 7, 2026

23 Respectfully submitted,

24 //s// David Szeles, Esq.

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