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'26CV2222 RSH MMP

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

10 **Wilfredo Rodriguez 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.**

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1 Petitioner Wilfredo Rodriguez Hernandez petitions this Court for a writ of habeas corpus  
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4 1. Petitioner Wilfredo Rodriguez Hernandez ("Petitioner" or "Mr. Rodriguez  
5 Hernandez") is a Mexican asylum seeker detained at Otay Mesa Detention Center in San Diego,  
6 California. He fears persecution in Mexico on account of his perceived status of wealth due to living  
7 in the United States. The persecution he fears includes being harmed, mistreated, kidnapped,  
8 tortured, held for ransom, and killed by 

9 2. Mr. Rodriguez Hernandez entered the United States when he was about six months  
10 old.

11 3. Petitioner entered without inspection.

12 4. Respondents commenced removal proceedings against him in immigration court on  
13 or around January 24, 2026, 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 30, 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. He also filed a 42B Cancellation of Removal Application for Non-LPRs.

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

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

28 9. The Constitution protects Mr. Rodriguez Hernandez—and every other person  
present in 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 His length of residence in the U.S., having resided here since he was a baby, entering around  
4 October of 1988, causes him to have a heightened liberty interest.

5 10. Mr. Rodriguez Hernandez seeks declaratory and injunctive relief to compel his  
6 immediate release from the immigration jail where he has been held by DHS since being unlawfully  
7 detained on or about January 24, 2026, without first being provided a due process hearing to  
8 determine whether his incarceration is justified.

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

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

### 20 JURISDICTION

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

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

27 15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens  
28 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)  
(recognizing habeas jurisdiction over immigration detention challenges); *Zadydas v. Davis*, 533  
U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*3

1 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL  
2 2420068, at \*7 (E.D. Cal. Aug. 21, 2025) (same).

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

#### 6 VENUE

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


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

18 18. The Court must grant the petition for writ of habeas corpus or issue an order to show  
19 cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. §  
20 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days  
21 unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

22 19. Courts have long recognized the significance of the habeas statute in protecting  
23 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most  
24 important writ known to the constitutional law of England, affording as it does a swift and  
25 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400  
26 (1963).

27 20. Mr. Rodriguez Hernandez is "in custody" for the purpose of 28 U.S.C. § 2241  
28 because he was arrested by Respondents and remains in their legal and physical custody at Otay  
Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct  
control.

#### PARTIES

1 21. Mr. Rodriguez Hernandez (“Petitioner”) is a 38-year-old citizen and national of  
2 Mexico. He came to the USA when Petitioner was about six months old, and has sought asylum,  
3 withholding of removal, or protection under the Convention Against Torture on account of his  
4 perceived status of wealth due to his length of residence in the United States. The persecution he  
5 fears includes being harmed, mistreated, kidnapped, tortured, held for ransom, and killed by the  
6  He has had no departures since his arrival. He is not  
7 married. He has one U.S. citizen child. On information and belief, he has one criminal conviction  
8 and a few dismissed cases with withheld adjudications from the state of Utah. The criminal  
9 conviction resulted from Impaired Driving where Petitioner served no jail time and completed 48  
10 hours of community service in lieu of jail time. Since the detention on or about January 24, 2026,  
11 Mr. Rodriguez Hernandez has remained in Respondents’ custody.

12 22. Mr. Rodriguez Hernandez is currently residing in Respondents’ custody at Otay  
13 Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

14 23. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa  
15 Detention Center in San Diego, California, where Mr. Rodriguez Hernandez is detained. LaRose is  
16 responsible for the day-to-day operations and confinement of non-citizens detained at that facility.  
17 He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Mr.  
18 Rodriguez Hernandez and is named in his official capacity.

19 24. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in San  
20 Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for  
21 local custody decisions relating to non-citizens charged with being removable from the U.S.,  
22 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field  
23 Office’s area of responsibility includes San Diego and Imperial Counties in California. Respondent  
24 Divver is a custodian of Mr. Rodriguez Hernandez and is named in his official capacity.

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

26 26. Respondent Markwayne Mullin (“Mullin”) is the Secretary of DHS and has authority  
27 over the actions of all other DHS Respondents in this case, as well as all operations and federal

1 agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is  
2 charged with faithfully administering the immigration and naturalization laws of the United States.  
3 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Rodriguez Hernandez and is named in  
4 his official capacity.

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

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

10 29. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin  
11 (collectively, "Respondents") all in their official capacities.

#### 12 EXHAUSTION OF ADMINISTRATIVE REMEDIES

13 30. Petitioner has no administrative remedies to exhaust as the immigration judge states  
14 for respondents similarly situated that he has subject to mandatory detention and therefore has no  
15 jurisdiction to conduct bond proceedings.

16 31. Mr. Rodriguez Hernandez received a NTA on January 24, 2026, which was then  
17 filed before the before the Las Vegas Immigration Court to initiate his INA § 240 immigration  
18 proceedings. Petitioner was transferred to Otay Mesa Detention Center shortly thereafter.

19 32. Mr. Rodriguez Hernandez is also challenging the unlawfulness of Respondents'  
20 decision to detain him, independent of any decision made by any Immigration Judge in removal  
21 proceedings.

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

#### 24 LEGAL FRAMEWORK

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

35. The "motivation for the enactment of the Refugee Act" was the United Nations  
Protocol Relating to the Status of Refugees, "to which the United States had been bound since

1 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a  
2 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and  
3 humanitarian concerns.” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

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

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

16 39. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.  
17 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§  
18 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the  
19 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on  
20 the applicant to present evidence to establish eligibility.).

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

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

28 42. 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 43. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining  
2 that, in general, non-citizens who entered the country without inspection were not considered  
3 detained under 8 U.S.C. § 1225. *See* Inspection and Expedited Removal of Aliens, Detention and  
4 Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312,  
10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). *See id.*

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

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

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

#### 18 FACTUAL BACKGROUND

19 47. Petitioner is 38-year-old citizen and national of Mexico.

20 48. Mr. Rodriguez Hernandez fears persecution in Mexico on account of his perceived  
21 status of wealth due to living in the United States for seemingly his entire life. The persecution he  
22 fears includes being harmed, mistreated, kidnapped, tortured, held for ransom, and killed by the

23 49. Petitioner was personally aware of [REDACTED]  
24 This incident reinforced the Petitioner’s understanding of [REDACTED]  
25 [REDACTED] the serious risk of harm faced by those perceived as vulnerable or  
26 without protection.

27 50. The DHS started this removal proceeding on or about January 24, 2026.

1 51. 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 March 2, 2026, in the immigration  
3 court in Las Vegas, Nevada.

4 52. On or about March 30, 2026, Petitioner filed his Form I-589 asylum application  
5 before the Otay Mesa Immigration Court. He also filed a 42B cancellation application.

6 53. On or about January 24, 2020, Petitioner received an NTA but the case was  
7 dismissed and no further proceedings commenced. DHS has made no determinations of flight risk  
8 or danger to the community since dismissing those proceedings in 2020. Detention without a new,  
9 valid proceeding violates the Due Process Clause of the Fifth Amendment.

10 **CAUSES OF ACTION**

11 **COUNT ONE**

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

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

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

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

23 57. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. §  
24 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the  
25 United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]  
26 status, may apply for asylum.” *Id.*

27 58. Because the denial of the right to apply for asylum can result in serious harm or  
28 death, the statutory right to apply is robust and meaningful. It includes the right to legal  
29 representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to  
30 present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an  
31 adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§

1 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision  
2 determining removability, *see id.* § 1229a(c)(6)-(7).

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

8 60. Moreover, Mr. Rodriguez Hernandez has a vital liberty interest in being free from  
9 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*4 (N.D. Cal.  
10 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14,  
11 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a  
12 substantial private interest in remaining out of custody” which includes an interest in “...obtaining  
13 necessary medical care, [and] maintaining her relationships in the community...”)).

14 61. His length of residence, namely having lived in the U.S. for over 37 years, and ties to  
15 the community create a heightened liberty interest, and therefore Mr. Rodriguez Hernandez is  
16 entitled to meaningful process in the form of a bond hearing.

## 17 COUNT TWO

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

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

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

27 64. The Fourth Amendment requires that arrests entail a neutral, judicial determination  
28 of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial  
determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in  
the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,  
including of a noncitizen, absent a neutral judicial determination of probable cause violates the

1 Fourth Amendment of the Constitution. *Id.*; see also *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,  
2 57 (1991). This determination must occur within 48 hours of detention, which includes weekends,  
3 unless there is a bona fide emergency or other extraordinary circumstances. See *Cnty. of Riverside*  
4 *v. McLaughlin*, 500 U.S. 44, 57 (1991). This did not happen in petitioner’s case.

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

10 66. Mr. Rodriguez Hernandez, at the moment of his arrest and detention by Respondents,  
11 did not receive any judicial determination of probable cause for his arrest or continued detention by  
12 Respondents.

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

18 68. Respondents’ warrantless arrest of Mr. Rodriguez Hernandez constitutes an  
19 unreasonable and unlawful seizure in violation of the Fourth Amendment.

20 **COUNT THREE**

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

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

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

71. Mr. Rodriguez Hernandez has a fundamental interest in liberty and being free from  
official restraint.

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

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

**PRAYER FOR RELIEF**

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

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

Dated: April 8, 2026

Respectfully submitted,

//s// David Szeles, Esq.

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