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'26CV2352 JO JLB

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

7 **Antony Yair Quispe Cardenas**

CASE NO.: 

8 **Petitioner,**

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

9 vs.

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

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

21 **Respondents.**

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1 Petitioner Antony Yair Quispe Cardenas 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 Antony Yair Quispe Cardenas ("Petitioner" or "Mr. Quispe Cardenas") is
5 a Peruvian asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He
6 fears persecution in Peru on account of the harm and torture he endured from his ex-partner's
7 family. The persecution he fears includes being psychologically and physically harmed, beaten,
8 kidnapped, tortured, and killed by the family of the mother of his child.

9 2. Mr. Quispe Cardenas entered the United States on or about December 26, 2022.

10 3. Petitioner presented himself at the border, and was paroled into the United States on
11 December 31, 2022.

12 4. Respondents commenced removal proceedings against him in immigration court on
13 or around January 23, 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 24, 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. Quispe Cardenas 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. Quispe Cardenas's personal circumstances or individualized facts. Due to
22 his detention, Mr. Quispe Cardenas is at risk of being transferred away from the Southern District of
23 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. Quispe Cardenas—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. Quispe Cardenas seeks declaratory and injunctive relief to compel his immediate
4 release from the immigration jail where he has been held by DHS since being unlawfully detained
5 on or about January 23, 2026, without first being provided a due process hearing to determine
6 whether his incarceration is justified.

7 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Quispe
8 Cardenas’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. Quispe Cardenas’s arrest and inability to contest
11 his arbitrary detention violate his statutory and constitutional rights, including Due Process
12 protections under the U.S. Constitution. Mr. Quispe Cardenas 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. Quispe Cardenas 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 protection under the Convention Against Torture after fleeing persecution in Peru on account of his
2 harm and torture from his ex-partner's family. The persecution he fears includes being
3 psychologically and physically harmed, beaten, kidnapped, tortured, and killed by the family of the
4 mother of his child. He has had no departures since his arrival. He is not married. He has one child.
5 On information and belief, he has one criminal conviction. The criminal conviction resulted from
6 retail theft in the value of less than \$500 (misdemeanor), for which he served two days in the Salt
7 Lake County Jail before being picked up on an ICE detainer. Since the detention on or about
8 January 23, 2026, Mr. Quispe Cardenas has remained in Respondents' custody.

9 22. Mr. Quispe Cardenas is currently residing in Respondents' custody at Otay Mesa
10 Detention Center in San Diego, California, as of the time of the filing of this petition.

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

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

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

27 26. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS and has authority
28 over the actions of all other DHS Respondents in this case, as well as all operations and federal
agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is
charged with faithfully administering the immigration and naturalization laws of the United States.

1 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Quispe Cardenas and is named in his
2 official capacity.

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

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

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

10 EXHAUSTION OF ADMINISTRATIVE REMEDIES

11 30. Petitioner has no administrative remedies to exhaust, as DHS will argue mandatory
12 detention and the immigration court concludes they have no jurisdiction to offer bond.

13 31. Mr. Quispe Cardenas received a NTA on January 23, 2026, which was then filed
14 before the before the Las Vegas Immigration Court to initiate his INA § 240 immigration
15 proceedings. Petitioner was transferred to Otay Mesa Detention Center shortly thereafter.

16 32. Mr. Quispe Cardenas is also challenging the unlawfulness of Respondents' decision
17 to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

18 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Quispe
19 Cardenas's constitutional, statutory, and regulatory rights and restore his liberty.

20 LEGAL FRAMEWORK

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

26 35. The "motivation for the enactment of the Refugee Act" was the United Nations
27 Protocol Relating to the Status of Refugees, "to which the United States had been bound since
28 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
legislative purpose "to give 'statutory meaning to our national commitment to human rights and
humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

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

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

13 39. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.
14 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§
15 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the
16 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on
17 the applicant to present evidence to establish eligibility.).

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

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

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

28 43. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining
that, in general, non-citizens who entered the country without inspection were not considered
detained under 8 U.S.C. § 1225. See *Inspection and Expedited Removal of Aliens, Detention and*

1 Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures. 62 Fed. Reg. 10312,
2 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). *See id.*

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

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

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

18 FACTUAL BACKGROUND

19 47. Petitioner is 22-year-old citizen and national of Peru.

20 48. Mr. Quispe Cardenas fears persecution in Peru on account harm and torture he
21 endured from his ex-partner’s family. The persecution he fears includes being psychologically and
22 physically harmed, beaten, kidnapped, tortured, and killed by the family of the mother of his child.

23 49. Petitioner was the victim of extortion, psychological harm and physical harm by the
24 family of the mother of his child. They made threatening phone calls to Peitioner, explaining what
25 they would do to Petitioner and his family. They also sent letters to his house where they stated that
26 they would kill him if he did not stay away from his ex-partner, and that Petitioner must leave the
27 country if he wanted to continue to live. They beat Petitioner, cut his face with glass, and damaged
28 his vehicle.

50. While en route to the U.S., Petitioner traveled through Mexico. While in Mexico,
Mr. Quispe Cardenas was kidnapped, attacked, extorted, and threatened. He was kidnapped by the
Mexican police in Mexico City and held with no charges.

1 51. The DHS started this removal proceeding on or about January 23, 2026.

2 52. Respondents alleged he was inadmissible to the United States under 8 U.S.C. §
3 1182(a)(6)(A)(i) and commanded him to appear for a hearing on February 23, 2026, in the
4 immigration court in Las Vegas, Nevada.

5 53. On or about March 24, 2026, Petitioner filed his Form I-589 asylum application
6 before the Otay Mesa Immigration Court.

7 **CAUSES OF ACTION**

8 **COUNT ONE**

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

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

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

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

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

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

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

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

10 61. His length of residence, namely having lived in the U.S. for over 3 years, and ties to
11 the community create a heightened liberty interest, and therefore Mr. Quispe Cardenas is entitled to
12 meaningful process in the form of a bond hearing.

13 COUNT TWO

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

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

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

21 64. The Fourth Amendment requires that arrests entail a neutral, judicial determination
22 of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
23 determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in
24 the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,
25 including of a noncitizen, absent a neutral judicial determination of probable cause violates the
26 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,
27 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 65. 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 66. Mr. Quispe Cardenas, 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 67. 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. Quispe
15 Cardenas does not pose any danger to any person in the community at large.

16 68. Respondents’ warrantless arrest of Mr. Quispe Cardenas 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 69. Petitioner restates, realleges, and incorporates by reference each and every allegation
22 in the paragraphs above as if fully set forth herein.

23 70. 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). Mr. Quispe Cardenas has a fundamental
27 interest in liberty and being free from official restraint. The government’s detention of Petitioner
28 without a notice or an opportunity to be heard, and without a meaningful bond and custody
redetermination whether he is a danger or flight risk before detention violates his right to due
process.

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(e)

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

72. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

73. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make “an informed adjudication . . . based on an evaluation of the factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

74. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

75. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy sub silentio or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). At the time of his detention, Mr. Quispe Cardenas had been released from DHS custody for about 3 years. On information and belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.”).

1 76. In deciding to detain Mr. Quispe Cardenas, Respondents further violated the APA by
2 “entirely fail[ing] to consider an important aspect of the problem” – namely, the important
3 procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor*
4 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also*
5 *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding
6 that rescission of immigration policy without considering “particular reliance interests” is arbitrary
and capricious in violation of the APA).

7 77. The arbitrary and capricious detention of Mr. Quispe Cardenas was not made in
8 furtherance of an enumerated reason set forth in the regulations and causes Mr. Quispe Cardenas
9 irreparable harm. For these reasons, the Court should find that the decision to detain Mr. Quispe
10 Cardenas is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. §
706(2)(A), (E).

11 **COUNT FIVE**

12 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with**
13 **Law and in Excess of Statutory Authority, Unlawful Detention**

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

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

18 80. An action is an abuse of discretion if the agency “entirely failed to consider an
19 important aspect of the problem, offered an explanation for its decision that runs counter to the
20 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view
21 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
22 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
U.S. 29, 43 (1983)).

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

26 82. The INA provides that Respondents may release an individual from apprehension or
27 custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. §

1 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a
2 release decision is made, a revocation of the custody determination may be made only when
3 warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. §
4 1236.1(c)(9).

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

11 84. By categorically revoking Mr. Quispe Cardenas' release from DHS custody, and
12 detaining him without notice or consideration of his individualized facts and circumstances,
13 Respondents have violated the INA, implementing regulations, and the APA.

14 85. On information and belief, by detaining Mr. Quispe Cardenas categorically and
15 without notice, Respondents have further abused their discretion because, since the agency made its
16 initial custody determination, on information and belief, there have been no changes to Mr. Quispe
17 Cardenas' specific facts or circumstances that support his detention or the revocation of his release
18 from custody on her own recognizance.

19 86. On information and belief, there have been no changes to the facts of Mr. Quispe
20 Cardenas's proceedings that justify this revocation of his release from DHS custody.

21 PRAYER FOR RELIEF

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

- 23 (1) Assume jurisdiction over this matter;
- 24 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
25 should not be granted within three days;
- 26 (3) Declare that Petitioner's detention without an individualized determination violates
27 the Due Process Clause of the Fifth Amendment;
- 28 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
redetermination hearing violates the INA, APA, and Due Process;

- 1 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
- 2 custody;
- 3 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
- 4 district without the Court's approval;
- 5 (7) Issue an Order requiring Respondents to provide a bond and custody redetermination
- 6 hearing within 14 days to meaningfully consider his eligibility for release from DHS
- 7 custody;
- 8 (8) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 9 (9) Grant any and all other further relief this Court deems just or proper.

9 Dated: April 13, 2026

Respectfully submitted,

11 //s// David Szeles, Esq.

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