

1 ANNA M HYSELL
CA SBN 232564
2 LAW OFFICES OF ANNA HYSELL
PO BOX 300278
3 ESCONDIDO, CA 92030
760-233-0800
4 COUNSEL FOR PETITIONER

5
6 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

7 **JUAN CARLOS MARCOS NICOLAS,**

8 Petitioner,

9 v.

10 **Markwayne MULLIN**, Secretary, U.S.
11 Department of
Homeland Security;

12 **Todd LYONS**, Acting Director, U.S.
13 Immigration and Customs Enforcement;

14 **Patrick DIVVER**, Field Office Director, San
15 Diego Field Office, U.S. Immigration and
Customs Enforcement.


16 **Christopher LAROSE**, Senior Warden, Otay
Mesa Detention Center;

17 **Sirce OWEN**, Acting Director of the Executive
18 Office for Immigration Review (EOIR),
U.S. Department of Justice.

19 **Todd BLANCHE**, Attorney General, U.S.
20 Department of Justice.

21 Does 1-2
22 Respondents.

Case No.: **'26CV2464 JLS MMP**

Agency File No.: 

**PETITION FOR WRIT OF
HABEAS CORPUS**

24

1 INTRODUCTION

2 1. Petitioner Juan Carlos Marcos Nicolas, (Petitioner) is a noncitizen who has been
3 detained without proper cause by Defendants-Respondents for nearly one year.

4 2. Petitioner entered the United States without inspection on February 15, 2024, to
5 seek asylum from his native Guatemala, based on persecution he suffered as a mentally disabled
6 minor child, which caused him to fear for his life.

7 3. Petitioner was only 19 years old at the time of his entry and he has been diagnosed
8 with Cognitive Disability which renders his mental maturity of that of a minor. *See Exhibit A:*
9 *Psychology Evaluations by Dr. Maria Shibley PsyD.*

10 4. Petitioner was detained at the border and issued an initial Notice to Appear (“NTA”)
11 on February 16, 2024. However, the Department did not keep him detained and released him on
12 his own recognizance into the United States where he went to live with his Lawful Permanent
13 Aunt. (“LPR”)

14 5. After releasing the Petitioner on his own recognizance, DHS filed the Notice to
15 Appear with the San Diego Immigration Court. However, the Court subsequently dismissed the
16 matter for the Department of Homeland Security’s failure to prosecute.

17 6. On March 19, 2025, the Department of Homeland Security issued and filed with
18 the San Diego Immigration Court a subsequent NTA. That case was dismissed again on June 24,
19 2025 on the Department of Homeland Security’s own motion. However, after moving to dismiss
20 his removal proceedings, Defendants had officers outside the courtroom took Petitioner into
21 custody without any notice at that moment. He was transferred to the Otay Mesa Detention Facility
22 in San Diego California where he has remained.

1 7. Petitioner was issued a new NTA on July 8, 2025 and the NTA was filed with the
2 Otay Mesa Immigration Court where his case remains pending.

3 8. Petitioner is charged with, inter alia, having entered the United States without
4 inspection, without having been admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

5 9. Petitioner is charged with, at the time of admission, not being in valid possession
6 of an unexpired immigrant visa or proper entry document. *See* 8 U.S.C. § 1182(a)(7)(A)(i).

7 10. Petitioner filed his I-589 Application for Asylum, Withholding, and Convention
8 against Torture on July 29, 2025.

9 11. Since his initial detention, Petitioner has had several preliminary hearings pursuant
10 to his claim for Asylum, Withholding, and Convention against Torture.

11 12. On October 21, 2025, while detained, Petitioner was the victim of a violent assault
12 and battery by another detainee who was also stealing his food. *See* Exhibit B: Affidavit of
13 Petitioner's Lawful Permanent Resident ("LPR") Aunt and Sponsor.

14 13. Respondents' failed to provide adequate protection to Petitioner, who barely over
15 the age of majority and has a Mental Disability.

16 14. Petitioner has a pending master hearing to determine his competency on April 21,
17 2026.

18 15. Petitioner's detention without written notice and a meaningful opportunity to be
19 heard violates federal regulations and the Due Process Clause of the Fifth Amendment.

20 16. Petitioner's detention by Respondents occurred without consideration of his
21 individualized facts in violation of the Administrative Procedure Act ("APA").

22 17. Respondents also violated the Fourth Amendment by subjecting Petitioner to an
23 unreasonable and unlawful seizure.

24

1 18. Department of Homeland Security (“DHS”) has unlawfully denied Petitioner
2 release from immigration custody.

3 19. Petitioner’s ongoing detention on this basis violates the plain language of the INA
4 and its implementing regulations.

5 20. Petitioner is not a danger to the community nor a flight risk based on the core factors
6 to be used by Immigration Courts. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

7 21. Petitioner has a Lawful Permanent Resident (“LPR”) sponsor Aunt who willing to
8 care for him during the remainder of his proceedings. *See Exhibit C: LPR Sponsor Aunt*
9 *Identification*.

10 22. Petitioner now challenges his continued detention as illegal and unconstitutional
11 and requests his immediate release.

12
13 **JURISDICTION**

14 23. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
15 Otay Mesa Detention Center in San Diego, California.

16 24. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.
17 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
18 Suspension Clause).

19 25. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
20 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

1 **VENUE**

2 26. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
3 500 (1973), venue lies in the United States District Court for the Southern District, the judicial
4 district in which Petitioner currently is detained.

5 27. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
6 Respondents are employees, officers, and agencies of the United States, and because a substantial
7 part of the events or omissions giving rise to the claims occurred in the Southern District of
8 California.

9 **REQUIREMENTS OF 28 U.S.C. § 2241, 2243**

10 28. The Court must grant the petition for writ of habeas corpus or issue an order to
11 show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
12 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file return “within three
13 days unless good cause additional time, not exceeding twenty days, is allowed.” *Id.* Courts have
14 long recognized the significance of the habeas statute in protecting individuals from unlawful
15 detention.

16 29. Habeas corpus is “perhaps the most important writ known to the constitutional
17 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
18 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
19 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
20 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
21 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

1 30. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he was
2 arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention
3 center in Otay Mesa, California. He is under Respondents’ and their agents’ direct control.

4 **PARTIES**

5 31. Petitioner Juan Carlos Marcos Nicolas is a citizen of Guatemala who has been in
6 immigration detention since June 24, 2025. Petitioner was detained in San Diego, CA, without
7 notice or a custody redetermination hearing on June 24, 2025.

8 32. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE’s
9 Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner’s immediate
10 custodian and is responsible for Petitioner’s detention and removal. He is named in his official
11 capacity.

12 33. Respondent, Todd Lyons, is the Acting Director of US Immigration and customs
13 enforcement. As such, Todd Lyons is responsible for Petitioner’s detention and is named in his
14 official capacity.

15 34. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
16 Security. She is responsible for the implementation and enforcement of the Immigration and
17 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
18 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

19 35. Respondent Department of Homeland Security (DHS) is the federal agency
20 responsible for implementing and enforcing the INA, including the detention and removal of
21 noncitizens.

22 36. Respondent Todd Blanche is the Attorney General of the United States. He is
23 responsible for the Department of Justice, of which the Executive Office for Immigration Review
24

1 and the immigration court system it operates is a component agency. He is sued in his official
2 capacity.

3 37. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
4 responsible for implementing and enforcing the INA in removal proceedings, including for custody
5 redeterminations in bond hearings.



6 38. Respondent Christopher LAROSE is employed by CoreCivic as Warden of the
7 Otay Mesa Detention Facility where Petitioner is detained. He has immediate physical custody of
8 Petitioner. He is sued in his official capacity.

9 **FACTUAL BACKGROUND**

10 39. Petitioner has been detained since June 24, 2025.

11 40. Petitioner was detained pursuant to 8 USC §1225(b)(1) after being released on his own
12 recognizance after his entry into the US on February 2024. He was not provided any
13 notice as to why his prior release was being revoked.

14 41. Petitioner has been in the United States since February 2024. He has never left the United
15 States since his first arrival.

16 42. Petitioner has a fixed address and had resided with his LPR Aunt at 
17  since his arrival into the United States in February
18 2024 up until his detention.

19 43. Respondents failed to provide any notice to Respondent as to why they were re-detaining
20 him in June 2025. Respondents presented no legitimate reason for why those decisions
21 were made nor any opportunity to respond.

22 44. On July 17, 2025, a psychological exam and competency assessment was conducted by
23 Dr. Maria Shibley PsyD. *See* Exhibit A. Petitioner's cognitive profile is consistent with
24 a diagnosis of Intellectual Disability. *Id.* Petitioner suffers from significant deficits in
abstract reasoning, information processing speed, and executive functioning. *Id.*

1 Petitioner lacks the cognitive capacity to maintain a rational and factual understanding of
2 the complex legal nature and objectives of removal proceedings. *Id.* Petitioner is unable
3 to grasp the procedural requirements of the court.

4 45. On October 21, 2025, Petitioner was abused, beaten, and humiliated at the Otay Mesa
5 Detention Center by another detainee. *See Exhibit B.* Petitioner notified an officer after
6 another detainee continuously stole his food. *See Id.* Petitioner bought his food often on
7 Sundays in order to ration for the entire week. *See Id.* Petitioner often bought cookies on
8 Sundays. *See Id.* A short time after Petitioner notified the officer that his food was being
9 stolen, the perpetrator confronted Petitioner and asked for verbal confirmation that it was
10 him who had made the accusation. *See Id.* When Petitioner responded affirmatively, he
11 was immediately punched in the face by the thief detainee. *See Id.* This was a
12 traumatizing and humiliating event for Petitioner and the officers at Otay Mesa failed in
13 their basic duty to safeguard Petitioner, who is a vulnerable detainee based on his
14 cognitive deficiencies.

15 46. Respondents were notified of the physical altercation and assault and Petitioner's counsel
16 had to request Respondents have appropriate medical evaluations and treatment be given.

17 47. Prior to his apprehension by the Department of Homeland Security, Petitioner was under
18 the safe care of his lawful permanent resident Aunt and was living a crime-free life.
19 Petitioner has never been arrested for any crime outside of his charged immigration
20 infractions.

21 48. Petitioner filed an I-589 application for Asylum, Withholding, and Convention against
22 Torture on July 29, 2025. An Asylum officer interviewed Petitioner who determined he
23 has a credible fear of persecution or torture in his home country. This application
24 remains pending with the Otay Mesa Immigration Court. The next scheduling hearing is
April 21, 2026, at which time the Judge will consider Petitioner's competency.

1 49. Petitioner has an LPR Aunt willing to ensure he appears for any and all ongoing
2 immigration hearings and check-ins. Petitioner has every intention to rightfully pursue the
3 relief to which he is entitled.

4 50. Petitioner has zero criminal history. His only close family member is in the United States
5 and is a LPR (Aunt). Petitioner's own mother was extremely abusive to him back in
6 Guatemala, both mentally and physically, due to his cognitive disabilities. Petitioner has
7 no relationship with her.

8 51. Petitioner has the mental cognitive maturity of a minor. *See* Exhibit A. He has suffered
9 extensive physical and psychological abuse while under Respondents control and has
10 already been detained for nearly a year.

11 **LEGAL FRAMEWORK**

12 52. A petitioner must exhaust administrative remedies by appealing to the BIA before seeking
13 judicial remedies and include bond determinations. *Leonardo v. Crawford*, 646 F.3d 1157,
14 1160 (9th Cir. 2011). “[A] court may waive the prudential exhaustion requirement if
15 ‘administrative remedies are inadequate or not efficacious, pursuit of administrative
16 remedies would be a futile gesture, irreparable injury will result, or the administrative
17 proceedings would be void.’” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017)
18 (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). “The party moving the
19 court to waive prudential exhaustion requirements bears the burden of demonstrating that
20 at least one of these Laing factors applies.” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL
21 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

22 53. Here, Petitioner is challenging both the lawfulness of his initial detention, and the ongoing
23 detention. Respondents' position is that Petitioner is not eligible for a custody
24

1 redetermination hearing pursuant to Section 236(a) of the Immigration and Nationality Act
2 and therefore will deny any request for a bond hearing for Petitioner. Therefore any request
3 for such hearing at this stage would be futile and require the instant petition for relief.

4 54. Petitioner is challenging the unlawfulness of Respondents' initial decision to detain him,
5 independent of any decision made by any Immigration Judge in removal proceedings.

6 55. Therefore, a writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional,
7 statutory, and regulatory rights and restore his liberty.

8 56. Courts have recognized the significance of the habeas statute in protecting individuals from
9 unlawful detention, which affords "a swift and imperative remedy in all cases of illegal
10 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*,
11 208 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious
12 determination of petitions).

13 57. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
14 to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.
15 "It is well established that the Fifth Amendment entitles [noncitizens] to due process of
16 law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno*
17 *v. Flores*, 507 U.S. 292, 306 (1993)).

18 58. Due process requires "adequate procedural protections" to ensure that the government's
19 asserted justification for physical confinement "outweighs the individual's constitutionally
20 protected interest in avoiding physical restraint." *Zadvydas, v. Davis*, 533 U.S. 678, 690
21 (2001) (internal quotation marks omitted).

1 59. In the immigration context, the Supreme Court has recognized two valid purposes for civil
2 detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*;
3 *Demore*, 538 U.S. at 528.

4 60. The test for procedural due process claims, the Mathews test balances: (1) the private
5 interest threatened by governmental action; (2) the risk of erroneous deprivation of such
6 interest and the value of additional or substitute safeguards; and (3) the government interest.
7 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see also *Sho v. Current or Acting Field*
8 *Off. Dir.*, No. 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023),
9 report and recommendation adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421
10 (E.D. Cal. June 21, 2023) (using Mathews factors to assess a habeas petitioner’s due
11 process claims and collecting cases doing the same). Here, each factor weighs in
12 Petitioner’s favor, and Petitioner’s release is justified due to his interest in avoiding
13 prolonged or unjustified detention. Petitioner poses no danger to the community, nor is a
14 flight risk.

15 61. Respondents have failed to demonstrate that Petitioner is a flight risk or danger to his
16 community warranting his detention after being released on his own recognizance.

17 Immigration Courts are required to consider the following non-exhaustive *Matter of*
18 *Guerra* list of factors to decide if a respondent is a danger to the community or a flight risk:

- 19
- 20 • Fixed Address: Whether the individual has a stable fixed address in the United States. Here, Petitioner has a Legal Permanent Resident Sponsor who is committed to supporting him and where he was residing prior to his detention. *See Exhibit C.*
 - 21 • Length of Residence: How long the individual has resided in the United States. Petitioner has been in the United States for over 2 years.
 - 22 • Family Ties: Presence of family in the United States. Petitioner’s closest family member is his Aunt, who is a legal permanent resident, and also Petitioner’s caretaker/sponsor. Petitioner’s mother in Guatemala was one of his persecutors and was extremely abusive to him.
 - 23 • Employment History: A record of stable employment.
- 24

- 1 • Court Appearance Record: A history of appearing for court hearings. Petitioner has never failed to appear for any hearing and intends to pursue his applications for relief.
- 2
- 3 • Criminal Record: The extensiveness, recency, and seriousness of criminal activity. Petitioner has zero criminal history in the United States nor Abroad.
- 4 • Immigration Violations: A history of previous immigration violations. Here, Petitioner entered the United States to escape persecution in Guatemala. His only violation was entering without an authorized entry document. There is no official “Asylum” visa, thus compliance with this statute was not feasible. Furthermore, Petitioner is a mentally disabled asylee with no concrete grasp of legal implications. His manner and method of entry were reasonable based on his cognitive capacity and credible fear of persecution.
- 5
- 6 • Manner of Entry: How the individual entered the United States.
- 7 • Flight risk: Attempts to flee prosecution or escape authorities. Petitioner made no attempt to flee authorities.
- 8

9 *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006)

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

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

21 64. Generally, due process protections depend on the situation and must account for (1) the
22 private interest at issue, (2) the risk of erroneous deprivation of that interest through the
23 procedures used, and (3) the Government's interest. *Mathews v. Eldridge*, 424 U.S. 319,
24

1 334–35 (1976). Here, Petitioner was detained and subject to mandatory detention without
2 any opportunity to be heard prior to his detention.

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

5 66. Petitioner has a vital liberty interest in remaining free from DHS custody.

6 67. *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
8 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
9 apprehension “has a substantial private interest in remaining out of custody” which
10 includes an interest in “...obtaining necessary medical care, [and] maintaining her
11 relationships in the community...”). While on release from DHS custody, Petitioner had
12 an emotional support system with his Aunt Sponsor. While in DHS custody, Petitioner
13 was physically and emotionally abused.

14 68. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
15 “...after that individual is released from custody, he has a protected liberty interest in
16 remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
17 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-
18 PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

19 69. Once a non-citizen is released, should the Department decide to re-detain him, he is entitled
20 to notice as to what reasons he is being re-detained, such as which alleged violations of
21 conditions of his release. 8 CFR 241.4(l)(1) (2024). That did not occur here.

1 70. Here, Petitioner was detained in a hasty manner after being free for over a year. He had no
2 violations of the conditions of his release. Rather, the Department of Homeland Security
3 played games with his removal case, dismissing it and detaining him.

4 71. Petitioner has no criminal history. He came to the U.S. to seek asylum and to escape the
5 threats he endured in Guatemala. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333
6 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally
7 protected interest). Nor has the government identified any materially changed
8 circumstances that would warrant detaining Petitioner.

9 **COUNT TWO**

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

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

15 73. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
16 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction
17 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C.
18 § 706(2)(A)-(D).

19 74. Once a removal proceeding has been initiated, regulations enumerate the reasons for which
20 proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss,
21 the Immigration Judge must make “an informed adjudication . . . based on an evaluation
22 of the factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284
23 (BIA 1998).
24

1 75. The initiation of expedited removal proceedings is not an enumerated ground upon which
2 a removal proceeding may be dismissed.

3 76. It is a well-established administrative principle that “agency action taken without lawful
4 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d
5 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015);
6 see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016)
7 (invalidating agency action because it was taken by unauthorized official).

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

18 78. In deciding to detain Petitioner, Respondents further violated the APA by “entirely fail[ing]
19 to consider an important aspect of the problem” – namely, the important procedural rights
20 that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs.*
21 *Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see also *Dep't*
22 *of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding
23
24

1 that rescission of immigration policy without considering “particular reliance interests” is
2 arbitrary and capricious in violation of the APA).

3 79. The arbitrary and capricious detention of Petitioner was not made in furtherance of an
4 enumerated reason set forth in the regulations and causes Petitioner irreparable harm. For
5 these reasons, the Court should find that the decision to detain Petitioner is arbitrary,
6 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

7 **COUNT THREE**

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

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

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

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

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

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

7 85. By detaining Petitioner without notice or consideration of his individualized facts and
8 circumstances, Respondents have violated the INA, implementing regulations, and the
9 APA.

10 86. Respondents have made no finding that Petitioner is a danger to the community.

11 87. Respondents have made no finding that Petitioner is a flight risk.

12 88. By detaining Petitioner categorically and without notice, Respondents have further abused
13 their discretion because, since the agency made its initial custody determination, on mere
14 conjecture, there have been no changes to Petitioner's specific facts or circumstances that
15 support his detention.

16 **COUNT FOUR**

17 **Violation of the Fourth Amendment of the Constitution**

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

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

1 (acknowledging that deportation proceedings are civil, but the Fourth Amendment still
2 applies to the “seizure” of the person).

3 91. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
4 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
5 determination can occur either before the arrest, in the form of a warrant, or promptly
6 afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and
7 detention of a person, including of a noncitizen, absent a neutral judicial determination of
8 probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of*
9 *Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48
10 hours of detention, which includes weekends, unless there is a bona fide emergency or
11 other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57
12 (1991).

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

18 93. Petitioner did not receive any judicial determination of probable cause for his arrest or
19 continued detention by the Respondents.

20 94. The Government cannot salvage this seizure by invoking generalized immigration
21 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific
22 and demands individualized justification for both the arrest and the extended detention. *See*
23 *United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114.

1 Petitioner did not pose any danger to any person in the community at large, and in fact, has
2 a credible fear of returning to Guatemala as the government is ill-equipped to protect those
3 with cognitive impairments from abuse and persecution.

4 95. Respondents' arrest of Petitioner constitutes an unreasonable and unlawful seizure in
5 violation of the Fourth Amendment.

6 **CLAIM FOR RELIEF**

7 **1. Violation of Fifth Amendment Right to Due Process**

8 96. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
9 the preceding paragraphs as if fully set forth herein.

10 97. Here, Petitioner has "passed through our gates" and "may be expelled only after
11 proceedings conforming to traditional standards of fairness encompassed in due process of
12 law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Because
13 Petitioner has developed an interest in remaining during his time here, "the procedures used
14 to remove [him] must adequately protect" that interest. *Make the Rd. New York v. Noem*,
805 F. Supp. 3d 139, 159 (D.D.C. 2025).

15 98. In this case, Petitioner has been present in our country for over 2 years. This substantial
16 amount of time indicates he is afforded the Fifth Amendment's guaranteed due process
17 before removal. *See Yamataya v. Fisher*, 189 U.S. 86, 87 (1903) (finding a noncitizen was
18 entitled to due process before removal despite having spent only four days in the US).

19 99. There is no basis to find Petitioner is a flight risk or presents a danger to the community,
20 which are core guideposts for parole, and Respondents have not supplied any additional
21 information to the contrary. Denying Petitioner notice and reasoning upon his detainment
22 took away a meaningful opportunity to contest and violated due process. *See Pinchi*, 792
23 F. Supp. 3d at 1032-35; *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146-47 (D. Or. 2025)
24 (D. Or. July 9, 2025).

1 100. Continued detention violates the Fifth Amendment, and Habeas relief is required
2 to remedy this constitutional violation.

3
4 **Counts 2 and 3: Violation of the Administrative Procedure Act – 5 U.S.C. §**
5 **706(2)(A); Unlawful Detention;**

6 101. Petitioner repeats, re-alleges, and incorporates by reference each and every
7 allegation in the preceding paragraphs as if fully set forth herein.

8 102. Petitioner was not provided any notice as to the termination of his parole.
9 Respondents must provide at minimum some reasoning explaining why the Petitioner
10 would now be considered a flight risk or danger to the community. See Castellon, 2025
11 WL 2373425, at *12; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032-35 (N.D. Cal. July 24,
12 2025). Given Respondent has not attempted to justify the revocation for Petitioner, this
13 demonstrates they have acted arbitrarily and capriciously in violation of the APA.

14 103. Habeas relief is required to remedy this Constitutional violation.

15 **4. Fourth Amendment Violation and Irreparable Harm**

16 104. Petitioner did not receive any judicial determination of probable cause for his arrest
17 or continued detention by the Respondents.

18 105. Continued detention based on this warrantless arrest causes severe and irreparable
19 harm, including loss of liberty, emotional and psychological harm, separation from family,
20 and interference with the ability to pursue legal claims.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 23 a. Assume jurisdiction over this matter;
24 b. Issue a writ of habeas corpus;
c. Declare the Petitioner's detention is unlawful;
d. Declare the Respondents' actions a violation of his due process rights;

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- e. Order Respondents to immediately release Petitioner, affirmatively and expressly, without any Alternatives to Detention (“ATD”) which constitute an unjust and ongoing liberty restraint;
- f. Award Petitioner attorney’s fees and costs as permitted by law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 17th of April, 2026.

/S/ ANNA M HYSELL
Attorney for Petitioner