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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MENDOZA PEREZ, Anthony Jose

CASE NO. '26 CV2508 DMS MSB

Petitioner-Plaintiff,



vs.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

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

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Respondents-Defendants.

Petitioner Mr. Mendoza Perez petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner Anthony Mendoza Perez ("Petitioner") is a Venezuelan asylum seeker detained at Otay Mesa Detention Center in San Diego, California. He was persecuted in Venezuela on account of his imputed political opinion and social group membership of former military officers who deserted their posts after refusing to support government corruption. The persecution he suffered in Venezuela included an arrest warrant being put out for his dishonorable discharge from the military.

2. On or about September 16, 2023, Mr. Mendoza Perez entered the United States and was released on his own recognizance.

3. Respondents commenced removal proceedings against him in immigration court, entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a.

4. Since then, Petitioner has attended his immigration court hearings. About four months after his arrival in the USA, Petitioner hired an attorney to submit an asylum application, but the attorney never filed it. After months of waiting with no progress, a pro bono attorney assisted in filing another asylum application. On or about September 18, 2025, he filed Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with the immigration court.

5. Mr. Mendoza Perez's Individual Hearing was scheduled for April 20, 2026. However, his case was terminated based on a defective notice to pretermite. Further, the Immigration Judge (IJ) failed to reopen the Respondents' cases with very questionable arguments. The Respondent decided not to appeal the decision. Nonetheless, the Respondent continues on the Respondent's detention.

5. Since approximately mid-May 2025, DHS has implemented a coordinated practice of leveraging immigration detention to strip people like Mr. Mendoza Perez of their substantive and procedural rights and pressure them into deportation.¹ Immigration detention is civil and thus is

¹ Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice-agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9> (last visited September 12, 2025) ("The exact number of arrests is unclear, but footage shows agents detaining people immediately after court appearances.").

1 permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and
2 to prevent danger to the community. But DHS did not arrest and detain Mr. Mendoza Perez—who
3 demonstrably poses no risk of absconding from immigration proceedings or danger to the
community—for either of these reasons.

4 6. In immigration court, noncitizens have the right to pursue claims for relief from
5 removal (including asylum), be represented by counsel, gather and present evidence, and pursue
6 appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a
7 noncitizen's case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to
8 cursory proceedings under 8 U.S.C. § 1225(b)(1) called “expedited removal,” where the procedural
9 protections and opportunities to pursue relief from removal built into regular immigration-court
proceedings do not apply.

10 7. Respondents then redetained Mr. Mendoza Perez without a meaningful opportunity
11 to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based
12 not on Mr. Mendoza Perez's personal circumstances or individualized facts. Due to his detention,
13 Mr. Mendoza Perez is at risk of being transferred away from the Southern District of California
while he remains in Respondents' physical and legal custody.

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

17 9. The Constitution protects Mr. Mendoza Perez—and every other person present in
18 this country—from arbitrary deprivations of his liberty and guarantees him due process of law. The
19 government's power over immigration is broad, but as the Supreme Court has declared, it “is
20 subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
21 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due
Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

22 10. Mr. Mendoza Perez seeks declaratory and injunctive relief to compel his immediate
23 release from the immigration jail where he has been held by DHS since being unlawfully detained,
24 and transferred to Otay Mesa on or about November 5, 2025.

25 11. On December 31, 2025, Mr. Mendoza Perez filed a habeas petition with the US
26 District Court for the Southern District of California. Case number 25-cv-3845-AGS-MMP.
27 Subsequently, on January 8, 2026, the habeas petition was partially granted, ordering an

1 individualized bond hearing by January 22, 2026, to determine whether Mr. Mendoza Perez posed a
2 flight risk or a danger to the community. On January 21, 2026, the IJ denied Mr. Mendoza Perez
3 bond, arguing he was a high risk. Now, Mr. Mendoza Perez argues he should be released
4 immediately because the Respondents failed to provide an individualized custody redetermination
5 hearing under the terms of the habeas order.

6 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Mendoza
7 Perez's plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
8 1225(b)(1), INA § 235(b)(1), without due process. Mr. Mendoza Perez appeared before the Otay
9 Mesa Immigration Court within Otay Mesa Detention Center in San Diego, California. An
10 Immigration Judge at the Adelanto Detention Center informed Mr. Mendoza Perez and his counsel
11 that he was likely not eligible for bond, leading to Mr. Mendoza Perez's counsel withdrawing the
12 bond request at the bond hearing that day. Counsel for DHS confirmed that DHS, too, believed Mr.
13 Mendoza Perez was likely not eligible for bond or release.

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

22 JURISDICTION

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

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

15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
(recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas 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 (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).

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

VENUE

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

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

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

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

20. Mr. Mendoza Perez is "in custody" for the purpose of 28 U.S.C. § 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa

1 Detention Center in San Diego, California. He is under Respondents' and their agents' direct
2 control.

3 **PARTIES**

4 21. Mr. Mendoza Perez ("Petitioner") is a 27-year-old citizen and national of Venezuela.
5 He left Venezuela in May 2021 and came to the USA in September 2023 to seek asylum,
6 withholding of removal, or protection under the Convention Against Torture after fleeing
7 persecution in Venezuela on account of his imputed political opinion and social group membership
8 of former military officers who deserted their post after refusing to support government corruption.
9 He has had no departures since his arrival. Since the transfer to Otay Mesa on or about November 5,
10 2025, Mr. Mendoza Perez has remained in the Respondents' custody.

11 22. Mr. Mendoza Perez is currently residing in Respondents' custody at Otay Mesa
12 Detention Center in San Diego, California, as of the time of the filing of this petition.

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

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

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

26 26. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over
27 the actions of all other DHS Respondents in this case, as well as all operations and federal agencies
28 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with

1 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
2 1103(a). Respondent Noem is a custodian of Mr. H.K. and is named in her 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 Noem
(collectively, "Respondents") all in their official capacities.

9 EXHAUSTION OF ADMINISTRATIVE REMEDIES

10 30. Petitioner has no administrative remedies to exhaust.

11 31. Mr. Mendoza Perez received an NTA, which was then filed before the Immigration
12 Court to initiate his immigration proceedings.

13 32. On November 5, 2025, the Petitioner was transferred to the Otay Mesa Detention
14 Center, and counsel for DHS confirmed that it was unlikely Mr. Mendoza Perez would be released
15 on bond because of the holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). As
16 such, Mr. Mendoza Perez's continued unlawful detention in the Respondents' custody cannot be
17 challenged by way of bond proceedings before an Immigration Judge. Mr. Mendoza Perez is also
18 challenging the unlawfulness of the Respondents' decision to detain him, independent of any
19 decision made by any Immigration Judge in removal proceedings.

20 33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Mendoza
21 Perez's constitutional, statutory, and regulatory rights and restore his liberty.

22 LEGAL FRAMEWORK

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

28 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
1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a

1 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
2 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

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

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

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

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

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

27 47. Asylum is not an admission to the United States, and an applicant for asylum, while
28 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).

52. Thus, in the decades that followed, most people who entered without inspection—
unless they were subject to some other detention authority—received bond hearings. That practice

1 was consistent with many more decades of prior practice, in which noncitizens who were not
2 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8
3 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
4 simply “restates” the detention authority previously found at § 1252(a)).

5 53. 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 54. 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 55. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued
18 for public inspection and effective immediately a designation expanding the scope of expedited
19 removal to apply nationwide and to certain noncitizens who are unable to prove they have been in
20 the country continuously for two years. On January 24, 2025, DHS published a Notice that
21 expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland
22 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January 2025
23 Designation”). The designation was “effective on” January 21, 2025.

24 56. The January 2025 Designation expands the pool of noncitizens who can be subjected
25 to the summary removal process substantially to include noncitizens who are apprehended
26 anywhere in the United States and who have not been in the United States continuously for more
27 than two years. *Id.* at 8140.

28 57. The January 2025 Designation does not state that it applies to noncitizens who were
in the United States before its effective date.

1 58. On information and belief, Mr. Mendoza Perez alleges that Respondents detained
2 him for the purpose of divesting him of his due process rights in his properly filed asylum
3 application.

4 59. On information and belief, Respondents did not afford Petitioner due process before
5 revoking his release from custody, depriving him of his liberty interest, and placing him in detention
6 within Respondents' legal and physical custody.

7 60. On information and belief, Respondents are using the immigration detention system,
8 including extra-territorial transfer and detention, as a means to punish individuals for asserting
9 rights under the Refugee Act.

FACTUAL BACKGROUND

10 61. Petitioner is 27-year-old citizen and national of Venezuela.

11 62. Mr. Mendoza Perez was persecuted in Venezuela on account of imputed political
12 opinion and social group membership of former military officers who deserted their post after
13 refusing to support government corruption. The persecution he suffered in Venezuela included an
14 arrest warrant being put out for his dishonorable discharge of the military.

15 63. While living in Venezuela, Mr. Mendoza Perez served in the National Guard. During
16 one of his posts, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 64. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

1 continued persecution, Petitioner sought help and made it through Colombia, Panama, Costa Rica,
2 Honduras, Guatemala, and Mexico before entering the United States.

3 65. Mr. Mendoza Perez entered the United States on September 16, 2023, and was
4 released under his own recognizance. After that, he attended one or more undetained master
5 calendar hearings. In January 2025, he filed an asylum application with the immigration court.

6 66. The DHS redetained at the Adelanto Immigration Court.

7 67. Respondents alleged he was inadmissible to the United States under 8 U.S.C. §
8 1182(a)(7)(A)(i)(I) and commanded him to appear for his hearings in the immigration court in
9 Adelanto, California.

10 68. On or about January 2025, Petitioner filed his Form I-589 asylum application.

11 69. On or about November 5, 2025, Petitioner's case was transferred to the Otay Mesa
12 Immigration Court, and he was detained at the Otay Mesa Detention Center.

13 70. On or about September 18, 2025, Petitioner re-filed his Form I-589 asylum
14 application before the Otay Mesa Immigration Court.

15 71. The Immigration Judge and counsel for Respondents indicated that Mr. Mendoza
16 Perez would likely be ineligible for bond or release because he is subject to *Matter of M-S-*, 27 I&N
17 509 (2019). Mr. Mendoza Perez remains in the Respondents' legal and physical custody at Otay
18 Mesa Detention Center in San Diego, California.

19 72. Mr. Mendoza Perez's Individual Hearing was scheduled for April 20, 2026.
20 However, his case was terminated based on a defective notice to preterm. Further, the Immigration
21 Judge (IJ) failed to reopen the Respondents' cases with very questionable arguments. The
22 Respondent decided not to appeal the decision. Nonetheless, the Respondent continues on the
23 Respondent's detention.

24 73. On December 31, 2025, Mr. Mendoza Perez filed a habeas petition with the US
25 District Court for the Southern District of California. Case number 25-cv-3845-AGS-MMP.
26 Subsequently, on January 8, 2026, the habeas petition was partially granted, ordering an
27 individualized bond hearing by January 22, 2026, to determine whether Mr. Mendoza Perez posed a
28 flight risk or a danger to the community. On January 21, 2026, the IJ denied Mr. Mendoza Perez
bond, arguing he was a high risk. Now, Mr. Mendoza Perez argues he should be released
immediately because the Respondents failed to provide an individualized custody redetermination
hearing under the terms of the habeas order.

CAUSES OF ACTION

COUNT ONE

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

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

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

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

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

76. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an 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).

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

81. Moreover, Mr. Mendoza Perez has a vital liberty interest in remaining free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal.

1 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14,
2 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a
3 substantial private interest in remaining out of custody” which includes an interest in “...obtaining
4 necessary medical care, [and] maintaining her relationships in the community...”). While on release
5 from DHS custody, Mr. Mendoza Perez was building his emotional support system which helped
6 him cope with the emotional trauma he suffered in Venezuela.

7 82. Even if the initial decision to release a non-citizen from DHS custody is
8 discretionary, “...after that individual is released from custody, she has a protected liberty interest
9 in remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
10 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025
11 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

12 83. Here, Mr. Mendoza Perez was redetained, depriving him of his liberty interest and
13 the bundle of rights associated with his indefinite detention in violation of due process. *See*
14 *generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be
15 heard before deprivation of a legally protected interest). Nor has the government identified any
16 materially changed circumstances warranting detention of Mr. Mendoza Perez after his release on
17 his own recognizance.

18 COUNT TWO

19 Violation of Fifth Amendment Right to Due Process -

20 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.**

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

23 85. Administrative rules “will not be construed to have retroactive effect unless their
24 language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When a
25 “new provision attaches new legal consequences to events completed before its enactment” the new
26 provision is not retroactive unless it is unmistakably clear.

27 86. Applying the January 2025 expedited removal designation to Petitioner’s September
28 2023 entry to the United States to seek asylum would attach new legal consequences including the
loss of significant rights related to his right to seek asylum, particularly because DHS immediately
placed Mr. Mendoza Perez into INA section 240 proceedings in lieu of expedited removal

proceedings. *See* Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (expanding the expedited removal designation).

87. The January 2025 designation does not unmistakably apply to individuals who entered the United States prior to its effective date and were already in INA section 240 proceedings. The designation's language thus does not "require that it be applied retroactively." *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).

88. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997) (requiring statutory language to be "so clear that it could sustain only one interpretation")).

89. Accordingly, Respondents unlawfully subjected Mr. Mendoza Perez to expedited removal.

COUNT THREE

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(c)

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

91. 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).

92. 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).

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

94. 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).

95. 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. Mendoza Perez had been in the United States for over two 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.”).

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

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

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, Unlawful Detention

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

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

4 100. An action is an abuse of discretion if the agency “entirely failed to consider an
5 important aspect of the problem, offered an explanation for its decision that runs counter to the
6 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view
7 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
8 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
9 U.S. 29, 43 (1983)).

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

13 102. The INA provides that Respondents may release an individual from apprehension or
14 custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. §
15 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a
16 release decision is made, a revocation of the custody determination may be made only when
17 warranted by an individual’s specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. §
18 1236.1(c)(9).

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

25 104. By categorically revoking Mr. Mendoza Perez’s release from DHS custody, and
26 detaining him without notice or consideration of his individualized facts and circumstances,
27 Respondents have violated the INA, implementing regulations, and the APA.

28 105. Respondents have made no finding that Petitioner is a danger to the community.

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

 107. On information and belief, by detaining Mr. Mendoza Perez categorically and
without notice, Respondents have further abused their discretion because, since the agency made its

1 initial custody determination, on information and belief, there have been no changes to Mr.
2 Mendoza Perez's specific facts or circumstances that support his detention or the revocation of his
3 release from custody on his own recognizance.

4 108. Respondents have already considered Mr. Mendoza Perez's facts and circumstances
5 and determined that he was not a flight risk or danger to the community. On information and belief,
6 there have been no changes to the facts of Mr. Mendoza Perez's proceedings that justify this
7 revocation of his release from DHS custody.

8 **COUNT FIVE**

9 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with
10 Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1225(b)**

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

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

16 111. Congress has made it clear that the expedited removal statute does not apply and
17 may not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It
18 further applies to the non-citizens seeking admission. Id. § 1225(b)(2).

19 112. Mr. Mendoza Perez is not amenable to, nor may he be subjected to, expedited
20 removal because he was immediately placed into INA section 240 proceedings upon encountering
21 DHS officers in 2023, and not into expedited removal proceedings. *See* 8 U.S.C. §
22 1225(b)(1)(A)(iii)(II), 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring “reasonable opportunity”
23 to explain a non-citizen's status).

24 113. Because Mr. Mendoza Perez is not subject to the January 2025 Designation,
25 Respondents' use of the January 2025 designation to detain him while his INA section 240
26 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.

27 **COUNT SIX**

28 **Violation of the Fourth Amendment of the Constitution**

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

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

116. The Fourth Amendment requires that arrests entail a neutral, judicial determination 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 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

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

118. Mr. Mendoza Perez, at the moment of his arrest and detention, on December 31, 2025, Mr. Mendoza Perez filed a habeas petition with the US District Court for the Southern District of California. Case number 25-cv-3845-AGS-MMP. Subsequently, on January 8, 2026, the habeas petition was partially granted, ordering an individualized bond hearing by January 22, 2026, to determine whether Mr. Mendoza Perez posed a flight risk or a danger to the community. On January 21, 2026, the IJ denied Mr. Mendoza Perez bond, arguing he was a high risk. Now, Mr. Mendoza Perez argues he should be released immediately, asserting that the Respondents failed to provide an individualized custody redetermination hearing under the terms of the habeas order, as the Petitioner is not a flight risk and has provided a proper sponsor.

119. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and

1 demands individualized justification for both the arrest and the extended detention. *See United*
2 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Mendoza
3 Perez did not pose any danger to any person in the community at large.

4 120. Respondents' warrantless arrest of Mr. Mendoza Perez constitutes an unreasonable
5 and unlawful seizure in violation of the Fourth Amendment. Thus, Petitioner should be released
6 immediately to be placed in the same position prior to the redetention since no material change of
7 circumstances warranted the redetention of Mr. Mendoza Perez.

8 **COUNT SEVEN**

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

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

13 122. The government may not deprive a person of life, liberty, or property without due
14 process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,
15 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
16 protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17 123. Mr. Mendoza Perez has a fundamental interest in liberty and being free from official
18 restraint.

19 124. The government's detention of Petitioner without a notice or an opportunity to be
20 heard before detention violates his right to due process.

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

24 **PRAYER FOR RELIEF**

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

- 26 (1) Assume jurisdiction over this matter;
- 27 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
28 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 Respondents' application of the January 2025 Designation to Petitioner
is illegal;

- (5) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;
- (6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (7) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- (8) 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;
- (9) Award Petitioner's counsel reasonable attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (11) Grant any and all other further relief this Court deems just or proper.

Dated: April 20, 2026

Respectfully submitted,

/S/ Mario Portugal

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