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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13 San Diego Division
14

15 ABELINO PEREZ ALVAREZ

16 Petitioner,

17 v.

18 CHRISTOPHER J. LAROSE, Senior
19 Warden Core Civic, Otay Mesa, CA.;
20 PATRICK DIVVER, San Diego Field
21 Office Director, Immigration and
22 Customs Enforcement and Removal
23 Operations (ICE/ERO); TODD LYONS,
24 Acting Director of Immigration and
25 Customs Enforcement (ICE); MARK.
26 MULLIN, Acting Secretary of the
27 Department of Homeland Security,
28 TODD BLANCHE, Acting Attorney
GENERAL OF THE UNITED STATES,

Respondents.

Case No: '26CV2566 LL DEB
Agency No. ~~XXXXXXXXXX~~

PETITION FOR WRIT OF
HABEAS CORPUS

ORAL ARGUMENT
REQUESTED

Expedited Hearing Requested

INTRODUCTION

1
2 1. Petitioner is a 59 year-old Guatemalan National who seeks protection
3 from being removed by Respondents from the U.S. to Guatemala.

4 2. Petitioner last entered the U.S. without inspection in 1989 and has
5 remained in the U.S. since his entry in 1989.

6 3. Petitioner is married to Martha ZAPATA QUISHPE, a citizen of
7 Ecuador, who he normally lives with in Los Angeles. They have a U.S. Citizen
8 daughter Veronica, born in Los Angeles, in 1992.

9 4. Martha has a pending U-Visa as of August of 2025, with D.H.S. as
10 does Petitioner through his marital relationship with Martha. U-Visas are for those
11 who have the victim of certain violent crimes and assist the prosecutor and their
12 immediate relatives such as spouses. See 8 U.S.C. §§1101(a)(15)(U) and
13 1182(d)(14).

14 5. In July of 2025, Veronica filed a petition for the benefit of Petitioner
15 which would allow Petitioner to become a Permanent Resident.

16 6. Petitioner was placed into D.H.S. custody on June 25, 2025, where he
17 remains in Otay Mesa, California.

18 7. On June 25, 2025, Respondents placed Petitioner into removal
19 proceedings charging Petitioner with being removable on account of Petitioner's
20 entry into the U.S. without inspection.

21 8. Petitioner was represented by prior counsel before the immigration
22 court who provided Petitioner with ineffective assistance of counsel.

23 9. On October 8, 2025, the immigration judge granted Petitioner's
24 motion to substitute counsel to current counsel. Moments after the judge granted
25 the motion the judge advised new counsel that the judge had ordered prior counsel
26 to file with the judge Petitioner's applications for Asylum, Withholding and CAT
27 protections by October 8, 2025, and because Petitioner had not; the judge ordered
28

1 Petitioner removed to Guatemala. This was the first time current counsel was
2 advised of the judge's prior order.

3 10. On October 10, 2025, Petitioner filed his appeal to the Board of
4 Immigration Appeals through current counsel.

5 11. Briefing before the Board of Immigration Appeals was completed by
6 the parties on March 2, 2026. As of April 22, 2026, the Board of Immigration
7 Appeals has not ruled on the appeal.

8 12. Petitioner had a conviction that has been expunged. Petitioner does
9 not stand convicted of any crimes.

10 13. Accordingly, to vindicate Petitioner's rights, this Court should grant
11 the instant petition for writ of habeas corpus. Petitioner asks that this Court find
12 that Respondents' continuing custody of Petitioner is in violation of Petitioner's
13 rights, the law and order Respondents to release Petitioner from its custody.

14 15 JURISDICTION 16

17 14. This action arises under the Constitution of the United States and the
18 Immigration and Nationality Act (INA), 8 U.S.C. §1101 et. seq.

19 15. This court has subject matter jurisdiction under 28 U.S.C. 2241
20 (habeas corpus), 28 U.S.C. 1331 (federal question), and Article I, §9, cl. 2 of the
21 United States Constitution (Suspension Clause).

22 16. This Court may grant relief under the habeas corpus statutes, 28
23 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
24 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
25 U.S.C. § 1251(e)(2).

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VENUE

17. Venue is proper because Petitioner is in Respondents' custody in Otay Mesa, 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' custody 28 U.S.C. §1391(e).

18. For these same reasons, divisional venue is proper under the local rules.

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

19. The court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," because Petitioner is 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.*

20. 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).

21. Petitioner is "in custody" for the purpose of §2241 because he is arrested and detained by Respondents.

PARTIES

22. Petitioner, Abelino PEREZ ALVAREZ, is a 59 year old citizen

1 of Guatemala. Petitioner is a very long time resident of Southern California
2 having lived in California since 1989. Petitioner is a father to U.S. Citizen and
3 present within the state of California as of the time of the filing of this petition.

4 23. Respondent Christopher J. LaRose is the Senior Warden of the
5 private facility Petitioner is currently held in, operated by Core Civic in Otay
6 Mesa, California, custody services for which are paid for by the U.S. Government.

7 24. Respondent Patrick Divver is the Field Office Director for
8 the San Diego Field Office, Immigration Customs and Enforcement and Removal
9 Operations ("ICE"). The San Diego Field Office is responsible for local custody
10 decisions relating to non-citizens (aliens) charged with being removable from the
11 U.S., including the arrest, detention, and custody status of non-citizens. The San
12 Diego Field Office's area of responsibility includes San Diego and Otay Mesa,
13 California where Petitioner is currently held in DHS custody. Respondent Divver
14 is a legal custodian of Petitioner.

15 25. Respondent Todd Lyons is the acting director of U.S. Immigration
16 Customs and Enforcement, and has authority over the actions of Respondent
17 Divver and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18 26. Respondent Markwayn Mullins is the Acting Secretary of the
19 Department of Homeland Security (DHS) and has authority over the actions of all
20 other DHS Respondents in this case, as well as all operations of DHS. Respondent
21 Mullins is a legal custodian of Petitioner and is charged with faithfully
22 administering the immigration laws of the United States.

23 27. Respondent Todd Blanche is the Acting Attorney General of the
24 United States, and as such has authority over the Department of Justice and is
25 charged with faithfully administering the immigration laws of the United States.

26 28. Respondent U.S. Immigration Customs and Enforcement (ICE) is the
27 federal agency responsible for custody decisions relating to non-citizens charged
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1 with being removable from the United States, including arrest, detention, and
2 custody status of non-citizens.

3 29. Respondent U.S. Department of Homeland Security (D.H.S.) is the
4 federal agency that has authority over the actions of ICE and all other D.H.S.
5 Respondents.

6 30. This action is commenced against all Respondents in their official
7 capacities.

8 9 **EXHAUSTION OF ADMINISTRATIVE REMEDY**

10 31. Those Respondents who are direct employees of the U.S. Government
11 have announced that those aliens who last entered the U.S. without permission are
12 ineligible to even seek release on bond and are subject to mandatory custody
13 thereby eliminating any administrative remedies that might normally be available
14 to Petitioner as they relate to custody. Requesting a bond hearing for Petitioner
15 would be futile.

16 17 **LEGAL FRAMEWORK**

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19 32. Department of Homeland Security immigration custody is civil in
20 nature and is not meant to be punitive. See *Zadvydas v. Davis*, 533 U.S. 678
21 (2001).

22 33. Petitioner last entered the U.S. in 1989. Petitioner was placed into
23 Respondents' custody on June 25, 2025, where he remains. Petitioner was ordered
24 removed from the U.S. October 8, 2025. Normally, the Government can hold a
25 non-citizen for 90 days while it tries to execute the removal. See *Johnson v.*
26 *Guzman Chavez*, 594 U.S. 523 (2021).

27 34. Presumptively, the longest the U.S. Government may hold an alien in
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1 its custody for removal proceedings in six months. See *Zadvydas v. David*, 533
2 U.S. 678 (2001).

3 35. Indefinite detention of aliens in removal proceedings violates due
4 process. Presumptively, the longest the U.S. government may hold an alien its
5 custody for removal proceedings is six months. See *Zadvydas v. Davis*, 533 U.S.
6 678 (2001).

7 36. In light of the totality of the circumstances, there does not exist a legal
8 justification to continue to hold Petitioner in Respondents' custody while
9 simultaneously refusing to allow Petitioner an opportunity to show that Petitioner
10 should be released because he his not a danger to the community nor likely to flee.

11 12 CLAIMS FOR RELIEF

13 COUNT ONE

14 Violation of Fifth Amendment Right to Due Process

15 Procedural Due Process

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17 37. Petitioner restates and re-alleges all paragraphs as if fully set forth
18 here.

19 38. The Due Process Clause of the Fifth Amendment to the U.S.
20 Constitution prohibits the U.S. Federal Government from depriving a person of
21 their "life, liberty, or property, without due process of law." U.S. Const. Amend.
22 V. Due process protects "all 'persons' within the United States, including [non-
23 citizens], whether their presence her is lawful, or unlawful, temporary, or
24 permanent. *Zadvydas*, at 693.

25 39. Due process requires that government action be rational and non-
26 arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
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28

- 1 (4) Declare that Respondents' continued detention of Petitioner as
- 2 violating the Due Process Clause of the Fifth Amendment;
- 3 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
- 4 Petitioner from Respondents' custody;
- 5 (6) Award Petitioner's attorney's fees and costs under the Equal Access
- 6 to Justice Act, and on any other basis justified under the law; and
- 7 (7) Grant any further relief this Court deems just and proper.
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9 Dated: April 22, 2026

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