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

Luis Alberto JAIMES RIVERA,

Petitioner,

v.

Patrick DIVER, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations San Diego Field Office; **Markwayne MULLIN**, in his official capacity as Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY**; **Todd BLANCHE**, in his official capacity as U.S. Acting Attorney General, or his successor; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; **Jeremy CASEY**, in his official capacity as Warden of the Imperial Regional Detention Facility

Respondents.

Case No. '26CV2578 JAO SBC

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 AND
ORDER TO SHOW CAUSE
WITHIN THREE DAYS**

**IMMIGRATION HABEAS
CASE**

Petitioner, Luis Alberto JAIMES RIVERA (“Petitioner”), through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests an order to show cause within three days why Petitioner should not be released. In support, Petitioner alleges as follows:

I. INTRODUCTION

1. Petitioner is a citizen of Venezuela who seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 because his immigration detention violates the Due Process Clause of the Fifth Amendment. (See Ex. A, Biographic Page of Venezuelan Passport.) Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California, which lies within this Court’s jurisdiction. (See Ex. E, ICE Locator Printout.)

2. Petitioner entered the United States after requesting asylum at the San Ysidro, California port-of-entry on December 29, 2024. Petitioner was interviewed, provided identity documents and subsequently, the Department of Homeland Security (“DHS”) exercised its discretion to parole him into the United States. (See Ex. B, Form I-94 showing parole pursuant to INA § 212(d)(5)). DHS also initiated removal proceedings, issuing a Notice to Appear (“NTA”) indicating an initial master hearing date on June 8, 2027. (See Ex. C, NTA). Petitioner is in active removal proceedings and is not subject to any final order of removal.

3. After his release, Petitioner complied with U.S. immigration law and established substantial ties within the United States. He obtained an employment authorization document, has no criminal history, has lived and worked peacefully in the community, and has a pending asylum application before the Executive Office for Immigration Review (“EOIR”).

4. Over a year after DHS initially released Petitioner into the United States, immigration authorities abruptly re-detained him during a vehicle stop while he was traveling within the United States. DHS subsequently subjected Petitioner to immigration detention without providing any meaningful individualized custody determination.

5. Petitioner’s case is materially indistinguishable from numerous recent decisions in this District holding that the re-detention of noncitizens who were previously released into the United States—without an individualized custody determination—violates the Due Process Clause of the Fifth Amendment. In those cases, courts have held that once the government determines an individual may safely remain at liberty, it may not revoke that liberty without constitutionally adequate procedures. Absent any materially different facts, the same conclusion applies here.

6. As in those cases, DHS released Petitioner into the community, determining that he did not pose a danger or flight risk sufficient to justify detention

and allowing him to reside in the United States while pursuing immigration relief. That decision gave rise to a substantial liberty interest in his continued freedom from physical confinement, which cannot be revoked without constitutionally adequate procedural safeguards.

7. When the government affirmatively releases an individual into the community, it creates a form of conditional liberty that cannot be revoked without constitutionally adequate procedural protections. Courts have long recognized in analogous contexts—such as parole and supervised release—that once liberty has been granted, it may not be withdrawn without notice and a meaningful opportunity to be heard before a neutral decisionmaker.

8. There are no materially changed circumstances that would justify revoking DHS's prior determination. Nevertheless, Respondents have re-detained Petitioner without providing him with any meaningful opportunity to challenge his detention.

9. This re-detention - without notice, without a neutral custody determination, and without demonstrating that detention is necessary to mitigate any particularized flight risk or danger - violates Petitioner's right to due process under the Fifth Amendment.

10. Petitioner therefore seeks emergency intervention by this Court through a writ of habeas corpus ordering his immediate release from unlawful detention while he pursues his rights under the INA and the United States Constitution.

11. In the alternative, Petitioner requests that this Court order Respondents to provide a prompt and constitutionally adequate individualized custody determination before a neutral decisionmaker at which the government bears the burden of justifying continued detention by clear and convincing evidence that Petitioner poses a danger to the community or a risk of flight.

II. JURISDICTION & VENUE

12. This case arises under the INA, 8 U.S.C. §§ 1101–1538, its implementing regulations, and the United States Constitution.

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

14. 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, Federal Rule of Civil Procedure 65, and the Court's inherent equitable powers.

15. Venue is proper in this District because Petitioner is detained within the Southern District of California and Respondents exercise custody over Petitioner within this District.

III. EXHAUSTION

16. Petitioner is not required to exhaust administrative remedies prior to seeking habeas relief. Exhaustion for habeas claims is prudential rather than jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be futile, or irreparable injury would result. *Id.* at 1000.

17. Administrative remedies would be futile, inadequate, and not efficacious for Petitioner. Exhausting his constitutional claim would be futile because the agency does not have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion”).

18. Moreover, Petitioner has no meaningful administrative mechanism through which to challenge the legality of his continued detention because Respondents have not provided him with a constitutionally adequate individualized custody determination. Requiring exhaustion under these circumstances would

therefore be futile and would only prolong Petitioner's unlawful deprivation of liberty.

19. Even if exhaustion were not futile, waiver is warranted because Petitioner's claims present purely legal issues that are appropriately resolved by this Court. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless it appears from the application that the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.* (emphasis added).

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been described 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) (emphasis added).

V. PARTIES

22. Petitioner, Luis Alberto JAIMES RIVERA, is a citizen of Venezuela who entered the United States seeking asylum on December 29, 2024. He is currently detained by Respondents at the Imperial Regional Detention Facility. (See Ex. E, ICE Locator Printout.)

23. Respondent Patrick DIVVER is the Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”). In that capacity, he oversees immigration enforcement and detention operations within this District and is responsible for decisions regarding the custody and removal of noncitizens detained by ICE in this jurisdiction.

24. Respondent Markwayne MULLIN is the Secretary of DHS. The Secretary is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner’s detention. The Secretary has ultimate custodial authority over Petitioner and is sued in his official capacity.

25. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

26. Respondent Todd BLANCHE is the Acting Attorney General of the United States, or his successor. He is responsible for the Department of Justice, of

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

27. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

28. Respondent Jeremy CASEY is the Warden of the Imperial Regional Detention Facility, the official responsible for the custody and day-to-day detention of Petitioner at the Imperial Regional Detention Facility in Calexico, California, where Petitioner is currently detained. He is sued in his official capacity.

VI. FACTUAL ALLEGATIONS

29. Petitioner Luis Alberto JAIMES RIVERA is a citizen of Venezuela who first entered the United States seeking asylum on December 29, 2024. He sought entry through the CBP One application. He presented proof of his identity, was inspected by immigration officials, after which DHS exercised its discretion to release Petitioner into the United States on humanitarian parole. The parole authorized Petitioner to remain in the United States for a limited period. DHS also issued an NTA noting that Petitioner's first hearing would be on June 8, 2027. The NTA was filed with the EOIR on January 23, 2025. (See Ex. D, EOIR Case Status Printout).

30. After his release, Petitioner resided in the United States, complied with all conditions of his parole and U.S. immigration law, maintained good moral character, established strong ties to the community, including stable residence, obtained employment authorization based on his parole status, lawfully worked in the United States, and filed a defensive application for asylum with the EOIR, which remains pending.

31. On April 12, 2026, Petitioner was stopped by U.S. Border Patrol agents near Indio, California while driving. Immigration authorities detained Petitioner and transferred him to the Imperial Regional Detention Facility in Calexico, California, where he remains detained. A timeline summarizing these events, compiled from the underlying records, is attached as Exhibit F.

32. Petitioner's detention occurred over a year after DHS exercised its discretion to release him into the United States and after he had been living and working in the community while pursuing lawful protection through the asylum process.

33. Petitioner has no criminal history and poses no danger to the community.

34. Petitioner's continued detention has deprived him of liberty and interferes with his ability to pursue his pending asylum claim and meaningfully access counsel and other support.

35. Petitioner therefore seeks immediate release from custody through this petition for writ of habeas corpus, as his continued detention violates the INA and the Due Process Clause of the Fifth Amendment.

VII. LEGAL FRAMEWORK

36. For purposes of immigration custody, Petitioner has been treated as an applicant for admission. His detention and potential release are therefore governed by DHS's parole authority under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), and the implementing regulations, including 8 C.F.R. § 212.5.

37. DHS must exercise its parole authority on an individualized, case-by-case basis consistent with the statutory and regulatory framework and in a manner consistent with the Due Process Clause. The governing regulations require consideration of relevant factors such as danger to the community, risk of flight, and whether release would serve humanitarian purposes or a significant public benefit.

38. Petitioner is an appropriate candidate for release from custody because he has strong community ties, no criminal history, a pending asylum application, and his detention imposes severe hardship and interferes with his ability to pursue lawful protection and access counsel.

39. Continued detention absent a meaningful and timely parole determination—or detention based on an erroneous or unsupported rationale—constitutes arbitrary and unconstitutional confinement warranting habeas relief.

40. Petitioner filed a defensive application for asylum, which remains pending. Under the governing regulatory framework, individuals with pending asylum applications may remain in the United States during the pendency of their proceedings. *See* 8 C.F.R. § 208.7. The asylum process therefore contemplates that applicants will be present while pursuing their claims for protection. Petitioner's pending asylum application reflects that he has been actively and in good faith pursuing lawful protection under immigration law while residing in the United States.

41. Furthermore, Petitioner was permitted to live and work in the United States for over a year with the government's knowledge and authorization before being abruptly re-detained. Under these circumstances, the government's actions implicate a substantial liberty interest that cannot be extinguished without meaningful procedural safeguards.

42. As the Ninth Circuit has recognized, civil immigration detention is subject to constitutional due process constraints and requires meaningful, individualized procedures. *See Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

VIII. CAUSES OF ACTION

Count I: Violation of Fifth Amendment Due Process Rights

43. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

44. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Civil immigration detention is subject to constitutional limitations and must bear a reasonable relationship to a legitimate governmental purpose. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

45. The Due Process Clause applies to all persons within the United States, including noncitizens, and prohibits the government from depriving individuals of liberty without fair and meaningful procedures.

46. Procedural due process requires that individuals be provided notice and a meaningful opportunity to be heard before being deprived of liberty. As the Supreme Court has explained, “the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

47. Petitioner had been living at liberty in the community for over a year following DHS’s decision to release him into the United States on parole. During that time, he complied with U.S. immigration law, obtained employment authorization and filed an asylum application with the EOIR.

48. On April 12, 2026, immigration authorities abruptly re-detained Petitioner during a vehicle stop near Indio, California and placed him into immigration detention without any individualized custody determination.

49. Petitioner's sudden re-detention, over a year after DHS released him into the United States—despite his compliance with immigration law and his pursuit of lawful protection through the asylum process—bears no reasonable relationship to the limited purposes of civil immigration detention. Nothing in the materials presently before the Court suggests any intervening conduct or circumstance that would justify revoking the liberty previously granted by the government. Respondents' decision to re-detain Petitioner under these circumstances therefore constitutes the revocation of previously granted liberty without constitutionally adequate process in violation of the Due Process Clause of the Fifth Amendment.

50. Multiple courts in this District have granted habeas relief where noncitizens were re-detained after being released into the United States without an individualized custody determination. *See, e.g., Gil v. Warden, Otay Mesa Detention Center*, No. 3:25-cv-03279-DMS-VET, 2025 WL 3675153, at *3 (S.D. Cal. Dec. 17, 2025); *Makarova v. Brightman*, No. 3:26-cv-00373-DMS-JLB (S.D. Cal. Feb. 18, 2026); *Alegria Palma v. LaRose*, No. 3:25-cv-01942-BJC-MMP (S.D. Cal. Aug. 11, 2025); *Vicky v. Casey*, No. 3:26-cv-00949-JLS-JLB (S.D. Cal. Mar. 4, 2026); *Singh v. Archambeault*, No. 3:26-cv-01072-JES-MSB (S.D. Cal. Feb. 27, 2026). These

decisions recognize that when the government permits a noncitizen to live in the community for a significant period and then revokes that liberty without adequate procedural safeguards or individualized justification, the resulting detention raises serious due process concerns.

51. Where the government has already exercised its discretion to release an individual into the community and no intervening conduct demonstrates that the individual poses a danger or flight risk, continued detention bears no reasonable relationship to the limited purposes of civil immigration detention and warrants prompt judicial intervention to restore the liberty previously granted.

52. Detaining an individual who has been living openly in the United States for years while pursuing lawful immigration relief, without meaningful procedural safeguards or individualized justification, constitutes arbitrary governmental action and violates the Due Process Clause.

53. Because Respondents continue to detain Petitioner without constitutionally adequate procedures and without individualized justification, Petitioner's detention is unlawful and he is entitled to habeas relief.

Count II: Unlawful Detention and Failure to Provide a Meaningful Parole Determination (INA § 212(d)(5), 8 C.F.R. § 212.5, and the Fifth Amendment)

54. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

55. For purposes of detention and custody classification, DHS has treated Petitioner as an applicant for admission. His release from custody is therefore governed by DHS's parole authority under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), and the implementing regulations at 8 C.F.R. § 212.5.

56. Under that statutory and regulatory framework, DHS must exercise parole authority on an individualized, case-by-case basis and must consider whether detention is necessary to address a particularized risk of flight, danger to the community, or other relevant factors.

57. Petitioner is an appropriate candidate for release on parole. He has strong community ties, no criminal history, a pending asylum application, and has lived peacefully in the United States while pursuing lawful protection under the immigration laws.

58. Despite these circumstances, Respondents have continued to detain Petitioner without providing a meaningful and timely individualized parole determination applying the correct legal standards, rendering his detention arbitrary and unlawful.

59. Because Respondents have detained Petitioner without meaningful parole consideration and without an individualized showing that his detention is necessary to address a specific danger or flight risk, Petitioner's continued

confinement violates the INA, governing regulations, and the Due Process Clause of the Fifth Amendment.

60. Petitioner is therefore entitled to habeas relief, including immediate release or, at minimum, a prompt individualized parole determination conducted in accordance with the governing legal standards.

Count III: Violation of the Administrative Procedure Act – Arbitrary and Capricious Detention

61. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

62. The Administrative Procedure Act (“APA”) prohibits agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

63. Respondents’ decision to re-detain Petitioner over a year after DHS exercised its discretion to release him into the United States, without applying the proper parole framework or providing meaningful individualized consideration, constitutes arbitrary and capricious agency action.

64. DHS previously permitted Petitioner to reside in the United States, and granted him employment authorization, while he pursued lawful protection through the asylum process.

65. Despite Petitioner’s compliance with U.S. immigration law and his lack of any criminal history, Respondents abruptly detained him during a vehicle stop

near Indio, California and placed him into immigration detention without any meaningful individualized custody determination.

66. Respondents' continued detention of Petitioner without applying the proper parole framework or providing meaningful individualized consideration constitutes agency action that is arbitrary, capricious, and not in accordance with law.

67. Absent intervention by this Court, Respondents' unlawful detention of Petitioner will continue to deprive him of liberty and interfere with his ability to pursue his pending asylum claim and meaningfully access counsel.

68. Petitioner is therefore entitled to relief under the APA, including injunctive relief requiring Respondents to apply the correct legal standards and to provide a prompt, individualized parole determination consistent with the governing statutory and regulatory framework.

IX. PRAYER FOR RELIEF

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

- a. Assume jurisdiction and proper venue over this matter;
- b. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from immigration detention because his continued confinement violates the INA and the Due Process Clause of the Fifth Amendment;

- c. In the alternative, order Respondents to immediately release Petitioner on parole pursuant to INA § 212(d)(5) and 8 C.F.R. § 212.5, or, at minimum, to conduct a prompt, individualized parole redetermination under the correct legal standards at which the government bears the burden of demonstrating, by clear and convincing evidence, that continued detention is necessary;
- d. In the further alternative, issue an order requiring Respondents to show cause within three (3) days why Petitioner should not be released from custody;
- e. In the further alternative, order that Respondents may not re-detain Petitioner without notice of the reasons for revocation of his release and a pre-deprivation hearing before a neutral immigration judge, at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight;
- f. Declare that Petitioner's detention is unlawful under the INA, the U.S. Constitution, and the Administrative Procedure Act;
- g. Consider a future motion for Petitioner's attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

- h. Grant any other and further relief that this Court deems just and proper, including the return of Petitioner's personal property and identification documents necessary to facilitate his release.

DATED this 23rd day of April 2026.

/s/ Rose M. Thompson
Rose M. Thompson
Attorney at Law
Attorney for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: April 23, 2026

Respectfully submitted,

/s/ Rose M. Thompson

Rose M. Thompson
Attorney at Law

Attorney for Petitioner