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

6

Abraham Garcia Duran,
7 Petitioner,

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8 v.

9 Attorney General of the United States,
Department of Justice;

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Markwayne Mullin, Secretary of
11 Homeland Security;

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12 Todd Lyons, Senior Official
Performing the Duties of the Director
13 of U.S. Immigration and Customs
Enforcement;

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Patrick Divver, Field Office Director of
15 the San Diego Immigration and
Customs Enforcement Office;

16

Jorge Velarde, Assistant Field Office
17 Director of the Immigration and
Customs Enforcement, Otay Mesa
18 Detention Center;

18

19 Christopher J. LaRose; Senior Warden,
Otay Mesa Detention Center;

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Respondents.

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Case No. '26CV2857 CAB BJW

Agency No. 

**PETITION FOR WRIT OF
HABEAS CORPUS BY A
PERSON IN FEDERAL
CUSTODY UNDER
28 U.S.C. § 2241 AND ORDER TO
SHOW CAUSE**

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INTRODUCTION

1. Petitioner, Abraham Garcia Duran () (hereinafter “Petitioner” or “Mr. Garcia Duran”), a 56-year-old Colombian national, has been detained at the Otay Mesa Detention Center, in violation of his due process rights, since his placement in removal proceedings a second time on March 1, 2026. Ex. A, Declaration of Attorney Cabrera, ¶ 4 and 7.
2. This petition alleges Mr. Garcia Duran has been re-detained unjustly in violation of his Constitutional right to liberty. Therefore, he requests this court make an order to show cause; that he may not be transferred during the pendency of this petition; and that he be released immediately upon the conclusion of the review of all filings.
3. Petitioner prefers not to file a temporary restraining order given the clear legal precedent in this case substantiating Petitioner’s claims, and would instead request Respondents be required to provide a response within three days or alternatively timing pursuant to Chief Judge Order No. 144.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
5. 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

1 Constitution (Suspension Clause).

2 6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
3 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs
4 Act, 28 U.S.C. § 1651.

5 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
6 jurisdiction. Petitioner is not contesting the commencement or adjudication of
7 removal proceedings against him, nor is he raising an issue with respect to the
8 execution of removal. The petition is independent of the removal proceedings and
9 all questions related to the commencement of removal proceedings or any part of
10 the removal process. “[C]laims that are independent of or collateral to the removal
11 process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d
12 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit
13 challenges to unlawful practices merely because they are in some fashion
14 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
15 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
16 and 1252(b)(9).

17 **VENUE**

18 8. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center
19 in the County of San Diego, which is within the jurisdiction of this District.
20 Further, a substantial part of the events or omissions giving rise to his claims

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1 occurred in this District (Petitioner was arrested outside the gates of the U.S.
2 Marine Corps base at Camp Pendleton in Oceanside, CA) and no real property is
3 involved in this action. 28 U.S.C. § 1391(e). *See* Ex. A, ¶ 10.

4 **REQUIREMENTS OF 28 U.S.C. § 2243**

5 9. The Court must grant the petition for writ of habeas corpus or issue an order to
6 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not
7 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
8 must require respondents to file a return “within *three days* unless for good cause
9 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
10 10. Courts have long recognized the significance of the habeas statute in protecting
11 individuals from unlawful detention. The Great Writ has been referred to as
12 “perhaps the most important writ known to the constitutional law of England,
13 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
14 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

15 **PARTIES**

16 ***Petitioner***

17 11. Petitioner, Mr. Garcia Duran, is a Colombian national who is in custody at the
18 Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego,
19 CA 92154. When at liberty, he resides in Rancho Santa Margarita, CA. He is in
20 the custody, and under the direct control, of Respondents and their agents.

21 ***Respondents***

1 12. Respondent Todd Blanche, Deputy U.S. Attorney General is sued in his official
2 capacity as the Attorney General of the United States and the senior official of the
3 U.S. Department of Justice (“DOJ”). In that capacity, he has the authority to
4 adjudicate removal cases and to oversee the Executive Office for Immigration
5 Review (“EOIR”), which administers the immigration courts and the Board of
6 Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of
7 Petitioner.

8 13. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland
9 Security (“DHS”) is sued in their official capacity as the Secretary of the DHS. In
10 this capacity, Respondent Secretary is responsible for the implementation and
11 enforcement of the Immigration and Nationality Act, and oversees U.S.
12 Immigration and Customs Enforcement (“ICE”), the component agency
13 responsible for Petitioner’s detention and custody. Respondent Secretary is a legal
14 custodian of Petitioner.

15 14. Respondent Todd Lyons is sued in his official capacity as the Senior Official
16 Performing the Duties of the Director ICE. Respondent Lyons is the legal
17 custodian of Petitioner.

18 15. Respondent Patrick Divver is sued in his official capacity as the Field Office
19 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of
20 Petitioner and has authority to release him.

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1 16. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office
2 Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a
3 legal custodian of Petitioner and has direct authority to release him.

4 17. Respondent Christopher J. LaRose is sued in his official capacity as the Senior
5 Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical
6 custodian of Petitioner and has direct authority to release him.

7 **STATEMENT OF FACTS**

8 18. Petitioner, Mr. Garcia Duran, a 56-year-old Colombian national, who is a
9 husband and father. Ex. A, ¶ 3. Mr. Garcia Duran, his wife, and minor son, came
10 to the United States together in November 2022, by approaching the U.S.-Mexico
11 border fence where a U.S. immigration officer opened a gate and let them pass
12 into the United States. *Id.* The family was then processed and detained together at
13 a family detention center, and later released on their own recognizance together in
14 March 2023. *Id.* at ¶ 4; *see also* Ex. C, Form I-213 (mentioning Form I-220A,
15 Release on Recognizance).

16 19. Mr. Garcia Duran's only entry to the United States was on November 13, 2022 at
17 or near El Paso, TX, without inspection or admission, together with his family.
18 Ex. A, ¶ 3; *see also* Ex. B, Notice to Appear ("NTA"). He has remained living in
19 the United States since without departure, together with his family, supporting
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1 them by working for rideshare and delivery companies, since their release on
2 recognizance in March 2023. Ex. A, ¶ 4.

3 20. While in removal proceedings, he timely applied for protections under asylum
4 and related relief and was granted work authorization. *Id.* at ¶ 8. His claim for
5 relief is presently on appeal with the Board of Immigration Appeals, following an
6 immigration judge's denial of his applications for asylum and related protections
7 on April 26, 2026. *Id.* at ¶ 11.

8 21. Mr. Garcia Duran did not have any issues with law enforcement since his release
9 on recognizance in March 2023 and his removal proceedings were on going
10 before a non-detained court, but ICE still detained him when he was just dropping
11 off a rideshare client at Camp Pendleton. *Id.* at ¶ 7.

12 22. DHS has charged Petitioner as being inadmissible under 8 U.S.C. §
13 1182(a)(6)(A)(i), as someone who entered the United States without inspection
14 and is present without admission, and 8 U.S.C. § 1182(a)(7)(A)(i)(I), a seemingly
15 contradictory charge as an application for admission without adequate entry
16 documents. Ex. B.

17 23. Therefore, upon consideration of the legal bases below, Mr. Garcia Duran
18 requests this court issue a habeas order requiring he be immediately released from
19 custody because there is no basis for his re-detention.

20 **LEGAL FRAMEWORK**

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1 24. The Immigration and Nationality Act (“INA”) prescribes three basic forms of
2 detention for the vast majority of noncitizens in removal proceedings conducted
3 pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of
4 noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C.
5 § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S.
6 who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

7 25. Immigration detention “has two regulatory goals: ensuring the appearance of
8 [noncitizens] at future immigration proceedings and preventing danger to the
9 community.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations
10 omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

11 26. Someone like Mr. Garcia Duran who was previously released from custody has
12 been deemed to be neither a flight risk nor a danger. 8 C.F.R 1236.1(c)(8)
13 (authorizing release of noncitizens under 1226(a) if they “would not pose a
14 danger to property or persons,” and are “likely to appear for any future
15 proceeding”); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens
16 deemed “neither a security risk nor a risk of absconding”). At the time of his re-
17 detention, there were no changes in circumstances to justify his re-detention.

18 27. In cases of individuals previously released by DHS, re-detention under section
19 1226(a) requires an individualized determination of a material change in
20 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968

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1 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
2 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
3 637, 640 (BIA 1981) (“[W]here a previous bond determination has been made by
4 an immigration judge, no change should be made by [DHS] absent a change of
5 circumstance.”).

6 28. The Constitution establishes due process rights for “all ‘persons’ within the
7 United States, including [noncitizens], whether their presence here is lawful,
8 unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990
9 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). These due
10 process rights are both substantive and procedural.

11 29. “The touchstone of due process is protection of the individual against arbitrary
12 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including
13 “the exercise of power without any reasonable justification in the service of a
14 legitimate government objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,
15 846 (1998).

16 30. These protections extend to noncitizens facing detention, as “[i]n our society
17 liberty is the norm, and detention prior to trial or without trial is the carefully
18 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
19 Accordingly, “[f]reedom from imprisonment—from government custody,
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1 detention, or other forms of physical restraint—lies at the heart of the liberty that
2 [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 31. Substantive due process thus requires that all forms of civil detention—including
4 immigration detention—bear a “reasonable relation” to a non-punitive purpose.
5 *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has
6 recognized only two permissible non-punitive purposes for immigration detention:
7 ensuring a noncitizen’s appearance at immigration proceedings and preventing
8 danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*,
9 538 U.S. 510, 519–20, 527–28, 31 (2003).

10 32. Generally, “the Constitution requires some kind of a hearing *before* the State
11 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
12 (1990) (emphasis added). This is so even in cases where that freedom is lawfully
13 revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing *Young v. Harper*, 520
14 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision
15 requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
16 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in
17 parole context).

18 33. After an initial release from custody on conditions, even a person paroled
19 following a conviction for a criminal offense for which they may lawfully have
20 remained incarcerated, has a protected liberty interest in that conditional release.

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1 *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, “[t]he parolee
2 has relied on at least an implicit promise that parole will be revoked only if he
3 fails to live up to the parole conditions.” *Id.* “By whatever name, the liberty is
4 valuable and must be seen within the protection of the [Constitution].” *Id.*

5 34. This reasoning applies with equal if not greater force to people who were granted
6 release on their own recognizance from civil immigration detention and were
7 apprehended before their removal order became final, like Petitioner. Noncitizens
8 living in the United States, like Petitioner, have a protected liberty interest in their
9 ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. “Given the
10 civil context [of immigration detention], [the] liberty interest [of noncitizens
11 released from custody] is arguably greater than the interest of parolees in
12 *Morrissey*.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing
13 *Morrissey*, 408 U.S. at 487).

14 35. Moreover, even should Petitioner’s detention be deemed permissible, he remains
15 eligible for a bond hearing for the same reasons provided in *Maldonado Bautista*¹,
16 that Section 1226(a) governs the detention of noncitizens “inside the United
17 States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89

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19 ¹ Notably, on March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit granted
20 an administrative stay of the *Maldonado Bautista* decision “insofar as the district
21 court’s judgment extends beyond the Central District of California.” *Maldonado
Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 26-1044,
ECF No. 5 (9th Cir. March 6, 2026).

1 (2018) and alternatively, he would request an order declaring Petitioner to be in
2 custody pursuant to 8 U.S.C. § 1226(a) and requiring a bond hearing before a fair
3 and neutral arbiter.

4 **CLAIM FOR RELIEF**

5 **CLAIM ONE**

6 **Violation of the Fifth Amendment to the United States Constitution
(Substantive Due Process – Detention)**

7 36. Petitioner incorporates by reference the allegations of fact set forth in the
8 preceding paragraphs.

9 37. The Due Process Clause of the Fifth Amendment protects all “person[s]” from
10 deprivation of liberty “without due process of law.” U.S. Const. amend.
11 V. “Freedom from imprisonment—from government custody, detention, or other
12 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
13 Clause protects.” *Zadvydas*, 533 U.S. at 690.

14 38. Immigration detention is constitutionally permissible only when it furthers the
15 government’s legitimate goals of ensuring the noncitizen’s appearance during
16 removal proceedings and preventing danger to the community. *See id.* When the
17 Government has previously decided to release a noncitizen and there is no
18 evidence in the record of any changed circumstance that might have caused the
19 Government to reconsider its initial decision to release the noncitizen, courts
20 have found the Government’s interest in re-detention is low. *Doe v. Chestnut*,

1 No. 1:25-cv-01372CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26,
2 2025) (citations omitted).

3 39. “[E]ven when ICE has the initial discretion to detain or release a noncitizen
4 pending removal proceedings, after that individual is released from custody she
5 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792
6 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-
7 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*
8 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);
9 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal.
10 Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

11 40. Many courts in this district have joined a number of district courts to recognize
12 that noncitizens have a significant liberty interest in “continued freedom after
13 release on own recognizance,” *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-
14 MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in
15 “freedom from imprisonment” after “the government grants a [noncitizen] parole
16 into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL
17 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Miguel v.*
18 *Bondi et al.*, 26-CV-1636 JLS (SBC) (S.D. Cal. Mar. 27, 2026) (“Petitioner has a
19 protected liberty interest in remaining out of custody.”); *Tunaca-Galindo v. U.S.*
20 *Attorney General et al.*, No. 3:26-cv-02226-LL-BJW (S.D. Cal. May 5, 2026)

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1 (immediate release granted when Petitioner was re-detained against his liberty
2 interest; Petitioner had an appeal with the BIA pending on his denial of asylum);
3 *Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov.
4 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844
5 (S.D. Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO
6 (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*,
7 No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025);
8 *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal.
9 Oct. 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511
10 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025
11 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-
12 cv-01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B.*
13 *v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19,
14 2025).

15 41. Petitioner is not a flight risk or danger to the community, as evidenced by his
16 complete lack of criminal history and release on recognizance in March 2023
17 with his family and no issues in his over three years of liberty.

18 42. Importantly, the unlawful re-detention of Petitioner caused a legal and physical
19 separation of Petitioner from his family. Now his wife and son's removal
20 proceedings are being processed at different times which means Petitioner may

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1 end up with a final order of removal before his wife and child given that his case
2 is presently on appeal and his family’s case is still awaiting a decision by an
3 immigration judge. Thus, the re-detention in Petitioner’s case is particularly
4 punitive. Accordingly, Petitioner is being detained in violation of the Due
5 Process Clause of the Fifth Amendment.

6 **CLAIM TWO**

7 **Violation of the Fifth Amendment to the United States Constitution**
8 **(Procedural Due Process – Detention)**

9 43. As part of the liberty protected by the Due Process Clause, Petitioner has a
10 weighty liberty interest in avoiding re-detention after his release. *See Young v.*
11 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–
12 82 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at
13 969–70 (holding that a noncitizen has a protected liberty interest in remaining out
of custody following an IJ’s bond determination).

14 44. Accordingly, “[i]n the context of immigration detention, it is well-settled that
15 due process requires adequate procedural protections to ensure that the
16 government’s asserted justification for physical confinement outweighs the
17 individual’s constitutionally protected interest in avoiding physical
18 restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127
19 (Generally, “the Constitution requires some kind of a hearing *before* the State
20 deprives a person of liberty or property.”). In the immigration context, for such

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1 hearings to comply with due process, the government must bear the burden to
2 demonstrate, by clear and convincing evidence, that the noncitizen poses a flight
3 risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th
4 Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

5 45. Petitioner's re-detention without a pre-deprivation hearing violated due
6 process. Over three years after his release in 2023, Respondents re-detained
7 Petitioner with no notice, no explanation of the justification for his re-detention,
8 and no opportunity to contest his re-detention in front of a neutral adjudicator
9 before being taken into custody.

10 46. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*
11 *Wofford*, 2025 WL 2996577, * 4 (E.D. Ca. Oct. 24, 2025) (confirming that
12 noncitizen with an outstanding removal order had a protected liberty interest due
13 to his previous conditional release).

14 47. Prior to his re-detention in March of 2026, Petitioner had no notice of
15 Respondents' intention to re-detain him and no opportunity to contest that action.
16 Because the private interest in freedom from immigration detention is substantial,
17 due process requires the government to bear the burden of proving by clear and
18 convincing evidence that Petitioner is a flight risk or danger to the community
19 before re-detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852,
20 *11 (N.D. Ca. Sep. 16, 2025).

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1 48. The government has no legitimate interest in detaining Petitioner without a
2 hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, *7 (E.D. Ca. Aug. 8,
3 2025) (finding that “the government’s asserted interest is hinged on mere
4 speculation about [the noncitizen’s] risk of flight or dangerousness” given that
5 noncitizen was complying with terms of his probation when detained); *Noori*,
6 2025 WL 2800149 at *11 (“Respondents did not provide Petitioner
7 individualized notice and reasoning prior to his arrest and detention on June 12,
8 2025 and have presented no legitimate reason for why those decisions were
9 made. Any governmental interest of efficient administration of immigration laws
10 . . . does not outweigh these first two factors.”). Bond hearings are a routine part
11 of immigration court proceedings, imposing a minimal cost to the government.
12 *See Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, *6 (E.D. Ca. March 3,
13 2025). Nothing in Petitioner’s record suggests that he would abscond or endanger
14 the community before a bond hearing could be carried out. *See, e.g., Jorge M.F.*
15 *v. Wilkinson*, 2021 WL 783561 *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*,
16 2020 WL 5074312, *3 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s
17 concern that delay in scheduling a hearing could exacerbate flight risk or danger
18 is unsubstantiated in light of petitioner’s strong family ties and his continued
19 employment during the pandemic as an essential agricultural worker”). In fact,
20 Petitioner is represented by counsel and has a demonstrated record of attendance

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1 when scheduled for hearings or immigration-related appointments. The
2 government has not sufficiently demonstrated the changed circumstances that
3 required his detention in March 2023 after he had been at liberty, supporting his
4 family, and no breaking any laws. There is no reason to think that his compliance
5 will change if he is released pending a pre-deprivation custody hearing.

6 **PRAYER FOR RELIEF**

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

- 8 1) Assume jurisdiction over this matter;
- 9 2) Issue an order preventing Respondents from transferring Petitioner away from the
10 Otay Mesa Detention Center, the closest detention center to counsel's office;
- 11 3) Issue an order to show cause and require a response within three days from
12 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §
13 2243;
- 14 4) Issue a writ of habeas corpus requiring Respondents to *immediately release*
15 Petitioner because he is re-detained in violation of his due process rights.
16 Alternatively, that Respondents must provide a bond hearing under 8 U.S.C.
17 § 1226(a)² and that the bond hearing must be before a fair, neutral, open-minded

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19 ² Petitioner believes his immediate release is required under the U.S. Constitution.
20 However, should the court find otherwise, there are sufficient grounds to require
21 Respondents provide a bond hearing to Petitioner. *See, e.g., Arias Torres v. Bondi*,
No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez*
Lopez v. LaRose, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct.

1 arbiter, and if the bond hearing is not fair and neutral, Petitioner be released
2 immediately;

3 5) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
4 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
5 and

6 6) Grant any other and further relief that this Court deems just and proper.

7
8 Dated: May 6, 2026

Respectfully submitted,

9
10 /s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Petitioner

11 **LIST OF EXHIBITS**

- 12 EXHIBIT A: Declaration of Tessa Cabrera
- 13 EXHIBIT B: Notice to Appear
- 14 EXHIBIT C: Warrant and Form I-213, showing release on recognizance pursuant to issued Form I-220A

15 302025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Abraham Garcia Duan, and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22nd day of April, 2026.

/s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Petitioner