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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **EMMANUEL JOSUEE COLON**
13 **TOVAR,**

14 Petitioner-Plaintiff,

15 v.

16 **CHRISTOPHER J. LaROSE**, Warden of
17 Otay Mesa Detention Center; **DANIEL**
18 **BRIGHTMAN**, Director of the U.S.
19 Immigration and Customs Enforcement
20 San Diego Field Office; **DAVID**
21 **VENTURELLA**, Acting Director of U.S.
22 Immigration and Customs Enforcement;
23 **MARKWAYNE MULLIN**, Secretary of
24 the U.S. Department of Homeland
25 Security; and **TODD BLANCHE**,
26 Attorney General of the United States in
27 their official capacities

28 Respondents-Defendants,

Case No. **'26CV3390 AGS DDL**
ROA #

**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

1 Petitioner EMMANUEL JOSUEE COLON TOVAR petitions this Court for a writ of habeas
2 corpus under 28 U.S.C. § 2241 to remedy Respondents' unlawful detention of him in violation of the
3 Due Process Clause of the Fifth Amendment and federal immigration law, and states as follows:

4 **I. INTRODUCTION**

5 1. Petitioner, Emmanuel Josuee Colon Tovar ("Petitioner"), is a Venezuelan national
6 who is being unlawfully detained by Respondents despite possessing Temporary Protected Status
7 ("TPS") that he understands remains valid through November 17, 2026, and despite having a pending
8 application for asylum, withholding of removal, and protection under the Convention Against Torture
9 currently before the Immigration Court.

10 2. Petitioner fled Venezuela after being threatened and extorted by criminal
11 organizations and pro-government groups, including [REDACTED] Fearing for
12 his life and the safety of his family, he departed Venezuela on August 17, 2022 and undertook a
13 dangerous journey through multiple countries before presenting himself at the San Ysidro Port of
14 Entry on January 30, 2023.

15 3. Following his arrival, the Department of Homeland Security initiated removal
16 proceedings. Petitioner subsequently applied for asylum and related humanitarian relief. Those
17 proceedings remain pending and no final order of removal has been issued against him.

18 4. Petitioner further obtained Temporary Protected Status for Venezuela. Petitioner is
19 informed and believes that his TPS authorization remains valid through November 17, 2026.
20 Accordingly, Petitioner is protected from removal during the effective period of his TPS designation.

21 5. On or about March 19, 2026, agents acting under the authority of Immigration and
22 Customs Enforcement arrested Petitioner in San Diego County and placed him into immigration
23 detention, where he remains confined.

24 6. Prior to his detention, Petitioner was residing in the community, maintaining
25 employment, complying with the law, and supporting himself and his family. Petitioner has no known
26 history of violence and does not present a danger to the community. He was actively pursuing lawful
27 immigration relief through his pending asylum application and TPS status.

28

7. Respondents have continued to detain Petitioner despite his pending asylum proceedings, despite his understanding that he remains protected by TPS, and despite the absence of any evidence demonstrating that he poses either a danger to the community or a flight risk. Respondents have failed to identify any legitimate governmental purpose justifying Petitioner's continued detention.

8. Petitioner asserts that his continued detention violates federal immigration law and the Due Process Clause of the Fifth Amendment because Respondents lack lawful authority to detain a TPS beneficiary with pending asylum proceedings absent a sufficient individualized justification.

9. Accordingly, Petitioner respectfully requests that this Court issue a Writ of Habeas Corpus directing Respondents to immediately release him from custody, or alternatively order Respondents to provide an immediate custody review or bond hearing and show cause within three days why this Petition should not be granted.

II. JURISDICTION, AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution (Suspension Clause), because Petitioner is presently in custody under the authority of the United States and challenges his detention as violating the Constitution, laws, or treaties of the United States.

11. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. See *Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

12. Venue is proper in the Southern District of California, pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 2241 because Petitioner is detained at Otay Mesa Detention Center in San Diego, CA.

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

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless 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

1 three days unless for good cause additional time, not exceeding twenty days, is allowed.” Id.
2 (emphasis added).

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

7 15. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he remains
8 detained by Immigration and Customs Enforcement and subject to Respondents’ legal and physical
9 control.

10 16. Because Petitioner is presently detained and alleges that such detention violates the
11 Constitution and laws of the United States, this Court possesses jurisdiction to grant the relief
12 requested herein.

13 IV. PARTIES

14 17. Petitioner Emmanuel Josuee Colon Tovar is a native and citizen of Venezuela who is
15 currently detained at the Otay Mesa Detention Center in San Diego County, California. Petitioner is
16 presently in the legal and physical custody of U.S. Immigration and Customs Enforcement (“ICE”).

17 18. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. He
18 is responsible for the day-to-day operations, of, and the confinement of non-citizens detained at the
19 facility. He is the immediate physical custodian of Petitioner. As such, Mr. LaRose is a legal custodian
20 of Mr. Colon Tovar. He is sued in his official capacity.

21 19. Respondent Daniel Brightman is the San Diego Field Office Director of ICE
22 Enforcement and Removal Operations, which is a division of ICE that manages and oversees the
23 immigration detention system. As such, Mr. Brightman is a legal custodian of Mr. Colon Tovar. He
24 is sued in his official capacity.

25 20. Respondent David Venturella is the Director of ICE. He is responsible for the
26 administration of ICE and the implementation and enforcement of the immigration laws, including
27 immigration detention. As such, Mr. Venturella is a legal custodian of Mr. Colon Tovar. He is sued
28 in his official capacity.

21. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS), which is responsible for the administration of ICE, a subunit of DHS, and the implementation and enforcement of the immigration laws. As such, Mr. Mullin is the ultimate legal custodian of Mr. Colon Tovar. He is sued in his official capacity.

22. Respondent Todd Blanche is the Acting Attorney General of the United States and head of the Department of Justice, which encompasses the Board of Immigration Appeals and the Immigration Courts. Mr. Blanche shares responsibility for implementation and enforcement of the immigration laws with Respondent Mullin. Mr. Blanche is a legal custodian of Mr. Colon Tovar. He is sued in his official capacity.

V. STATEMENT OF FACTS

23. Petitioner Emmanuel Josuee Colon Tovar is a native and citizen of Venezuela born [REDACTED] Prior to departing Venezuela, Petitioner resided in Maracay, Aragua State. Petitioner worked in the private sector and supported his family.

24. Petitioner fled Venezuela on or around August 17, 2022 after being subjected to extortion, threats, intimidation, and criminal activity perpetrated by [REDACTED]

 Petitioner feared for his life and the safety of his family if he remained in Venezuela.

25. Petitioner traveled through multiple countries before arriving at the San Ysidro Port of Entry on January 30, 2023, where he sought protection in the United States.

26. On January 30, 2023, the Department of Homeland Security served Petitioner with a Form I-862 Notice to Appear, commencing removal proceedings before the Immigration Court. (See Akel Decl., Ex. 1).

27. Following his arrival, the Department of Homeland Security initiated removal proceedings against Petitioner.

28. Petitioner subsequently applied for asylum, withholding of removal, and protection under the Convention Against Torture. Those proceedings remain pending before the Immigration Court.

1 29. Petitioner also possessed Temporary Protected Status for Venezuela and understood
2 that his TPS authorization remained valid through November 17, 2026.

3 30. United States Citizenship and Immigration Services approved Petitioner's application
4 for Temporary Protected Status and issued a Form I-797A Notice of Action confirming that approval.
5 (See Akel Decl., Ex. 2).

6 31. Prior to his detention, Petitioner lived openly in San Diego County, maintained
7 employment, and complied with the requirements of his immigration proceedings. Petitioner had a
8 future immigration court hearing scheduled for July 9, 2026 and intended to appear as required.

9 32. On March 19, 2026, at approximately 9:45 a.m., Petitioner exited his residence and
10 walked to his vehicle, a 2007 Kia Rio, to retrieve documents. Moments later, four black vehicles and
11 a silver truck approached. Multiple armed individuals exited the vehicles and surrounded Petitioner.

12 33. Fearing for his safety, Petitioner locked himself inside his vehicle. The officers
13 pointed firearms at him and demanded that he open the doors. The officers broke the windows of
14 Petitioner's vehicle. Broken glass struck Petitioner and caused cuts to portions of his body. Petitioner
15 did not resist arrest. He complied with the officers' commands and repeatedly advised them that his
16 identification was available in his wallet.

17 34. During the encounter, officers repeatedly asked Petitioner whether he was another
18 individual. Petitioner became concerned that officers had mistaken him for someone else. Only after
19 reviewing Petitioner's identification did officers acknowledge his identity and determine that he had
20 an immigration court hearing already scheduled.

21 35. Petitioner was transported to an immigration facility in San Diego where he remained
22 until approximately 11:05 p.m. that evening. Respondents subsequently transferred Petitioner to the
23 Otay Mesa Detention Center where he remains detained.

24 36. As a result of both his experiences in Venezuela and the circumstances surrounding
25 his detention, Petitioner continues to suffer significant psychological distress. Petitioner experiences
26 difficulty sleeping, anxiety, trembling, headaches, and recurring memories associated with the arrest
27 and with the persecution he experienced in Venezuela.

28

37. Petitioner does not pose a danger to the community. Prior to his detention he maintained employment, resided peacefully in the community, and was actively pursuing lawful immigration relief.

38. Petitioner remains detained despite his pending asylum proceedings, despite his significant community ties, despite his history of compliance with immigration proceedings, and despite his understanding that his TPS remained valid through November 17, 2026.

VI. LEGAL FRAMEWORK

39. Federal courts possess jurisdiction under 28 U.S.C. § 2241 to review the legality of immigration detention. Individuals detained by federal immigration authorities may seek habeas corpus relief when their detention violates the Constitution, laws, or treaties of the United States.

40. The Supreme Court has repeatedly recognized that noncitizens physically present within the United States are entitled to the protections of the Due Process Clause of the Fifth Amendment. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

41. Immigration detention is civil rather than criminal in nature. Accordingly, detention must bear a reasonable relationship to a legitimate governmental objective and may not be imposed as punishment. See *Zadvydas*, 533 U.S. at 690.

42. The government generally justifies civil immigration detention based upon its interests in ensuring a noncitizen's appearance at future proceedings and protecting the community from danger. Where those interests are not present, continued detention raises substantial constitutional concerns.

43. Congress created Temporary Protected Status (“TPS”) to provide humanitarian protection to nationals of designated countries experiencing extraordinary conditions that prevent their safe return. See 8 U.S.C. § 1254a. During the period of TPS, a TPS beneficiary shall not be removed from the United States absent withdrawal or termination of TPS status, and shall not be detained on the basis of immigration status. See 8 U.S.C. § 1254a(a)(1)(A), (d)(4).

44. Petitioner is informed and believes that he possessed TPS authorization valid through November 17, 2026. Unless Respondents can establish that Petitioner's TPS was lawfully withdrawn,

1 terminated, or otherwise ineffective at the time of his arrest, Respondents lack authority to detain him
2 on the basis of his immigration status.

3 45. The Due Process Clause further requires that civil detention be supported by an
4 individualized determination demonstrating that detention is necessary and justified under the
5 circumstances of the particular case. Courts have consistently recognized that prolonged or
6 unnecessary immigration detention may violate due process where the government cannot
7 demonstrate a sufficient justification for continued confinement.

8 46. Habeas corpus remains the traditional and appropriate remedy where a petitioner
9 alleges that federal immigration officials are detaining him without lawful authority or in violation of
10 constitutional protections.

11 47. Where detention is found unlawful, federal courts possess authority to order
12 immediate release or, alternatively, direct immigration authorities to provide a prompt and
13 meaningful custody determination consistent with due process.

14 VII. ARGUMENT

15 48. Petitioner's continued detention is unlawful and violates the Due Process Clause of the
16 Fifth Amendment. Petitioner entered the United States through the San Ysidro Port of Entry on
17 January 30, 2023 and remains in active removal proceedings. He has applied for asylum, withholding
18 of removal, and protection under the Convention Against Torture, and no final order of removal has
19 been entered against him. Petitioner further possessed Temporary Protected Status for Venezuela and
20 understood that his TPS authorization remained valid through November 17, 2026.

21 49. Prior to his detention, Petitioner resided openly in San Diego County, maintained
22 employment, and complied with his immigration obligations. He had an immigration court hearing
23 already scheduled for July 9, 2026 and intended to appear. There is no evidence that Petitioner
24 attempted to evade immigration authorities or failed to comply with any court order.

25 50. Petitioner likewise does not present a danger to the community. Prior to his arrest, he
26 was employed, supported himself and his family, and lived peacefully within the community.
27 Respondents have identified no facts demonstrating that Petitioner's detention is necessary to protect
28 public safety.

51. Despite these circumstances, Respondents arrested Petitioner on March 19, 2026 and continue to detain him. Civil immigration detention must bear a reasonable relationship to a legitimate governmental purpose. Where a noncitizen maintains community ties, has a pending immigration case, is actively pursuing lawful relief, and presents neither a danger to the community nor a meaningful risk of flight, continued detention becomes arbitrary and inconsistent with due process.

52. To the extent Petitioner's Temporary Protected Status remained valid at the time of his arrest and detention, Respondents lack authority to detain him on the basis of his immigration status. Congress expressly provided that a TPS beneficiary shall not be detained on the basis of immigration status during the period of TPS.

53. Under these circumstances, Petitioner's continued detention serves no legitimate governmental purpose and violates the Fifth Amendment. Habeas relief is therefore warranted.

54. Alternatively, if the Court determines that Respondents possess some detention authority, fundamental due process requires a prompt individualized custody determination before a neutral decisionmaker. Petitioner therefore requests, in the alternative, an order directing Respondents to provide an immediate custody review or bond hearing at which the government bears the burden of demonstrating that continued detention is necessary.

VIII. PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside the Southern District of California during the pendency of this action;
3. Issue an Order to Show Cause directing Respondents to show cause within three (3) days why the Petition should not be granted;
4. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from immigration detention;
5. Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution;

- 1 6. Declare that Respondents lack lawful authority to continue detaining Petitioner under
- 2 the circumstances alleged herein;
- 3 7. Enter preliminary and permanent injunctive relief prohibiting Respondents from
- 4 continuing Petitioner's unlawful detention;
- 5 8. Alternatively, if the Court declines to order immediate release, order Respondents to
- 6 provide Petitioner with an immediate individualized custody determination or bond
- 7 hearing before a neutral decisionmaker at which Respondents bear the burden of
- 8 establishing that continued detention is justified; and
- 9 9. Grant any further relief this Court deems just and proper.

10 Respectfully submitted,

11 Areeg Akel

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16 619-325-2199
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18 *Pro Bono Counsel for Petitioner*

19 Dated: June 4, 2026

VERIFICATION BY ATTORNEY ACTING ON MR. COLON TOVAR'S BEHALF
PURSUANT TO 28 U.S.C § 2242

I am submitting this verification on behalf of Mr. Colon Tovar because I am his attorney. As Mr. Colon Tovar's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 4, 2026

s/Areeg Akel