

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **CARLOS JESUS MORAO QUERO,**

12 Petitioner,

13 v.

14 **CHRISTOPHER LAROSE,** Warden, Otay Mesa

15 Detention Center;

16 **Markwayne MULLIN,** Secretary, U.S.

17 Department of Homeland Security;

18 **Todd LYONS,** Acting Director, U.S.

19 Immigration and Customs Enforcement;

20 **Todd BLANCHE,** Acting Attorney General of the

21 United States, U.S. Department of Justice.

22 Respondents

Case No.: '26CV3478 RBM AHG



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

1 1. Petitioner, Carlos Jesus Morao Quero, petitions this Court for a writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention and
3 alleges as follows:

4 **INTRODUCTION**

5 2. Petitioner, Carlos Jesus Morao Quero, is a native and citizen of Venezuela currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his
8 continued immigration detention following the government's re-detention of Petitioner after
9 previously granting him parole into the United States and permitting him to reside at liberty in
10 the community for approximately two years.

11 4. Petitioner lawfully entered the United States through a government-authorized parole
12 program on or about May 15, 2024. Following inspection and processing by the Department of
13 Homeland Security ("DHS"), Petitioner was granted parole and issued a Form I-94 reflecting
14 authorization valid through May 14, 2026. (Ex. 1.) Following that grant of parole, Petitioner was
15 permitted to physically enter the United States and reside openly in the community.

16 5. During the ensuing two-year period, Petitioner complied with his immigration
17 obligations, filed an application for asylum, received employment authorization from the federal
18 government, established substantial ties in the United States, married a United States citizen, and
19 pursued available immigration relief, including a pending Form I-130 petition filed on his behalf.

20 6. On or about May 1, 2026, Petitioner was arrested by immigration authorities in Key
21 Largo, Florida. Following that arrest, Immigration and Customs Enforcement took Petitioner into
22 custody and subsequently transferred him to the Otay Mesa Detention Center.

23 7. Prior to re-detaining Petitioner, Respondents did not provide Petitioner with
24 individualized written notice terminating his parole, did not provide a meaningful opportunity to
25 contest any proposed termination of parole, and did not provide any constitutionally adequate
26 pre-deprivation process before depriving Petitioner of his physical liberty.

1 8. Following his re-detention, Immigration Judges repeatedly concluded that they lacked
2 custody-redetermination jurisdiction based upon Respondents' classification of Petitioner as an
3 arriving alien. As a result, no neutral adjudicator has conducted a meaningful review of the
4 legality of Petitioner's detention.

5 9. Respondents' continued detention of Petitioner is unlawful. Once the government
6 exercised its discretion to grant parole, documented that grant through issuance of a Form I-94,
7 authorized Petitioner to reside and work in the United States, and permitted him to remain at
8 liberty in the community for approximately two years, Petitioner acquired substantial liberty
9 interests protected by the Due Process Clause.

10 10. Although the government may seek to terminate parole or impose immigration
11 detention under appropriate circumstances, it may not deprive Petitioner of his liberty without
12 complying with the procedures governing parole termination and without providing
13 constitutionally adequate process. The Constitution does not permit the government to detain
14 first and justify later.

15 11. By continuing to detain Petitioner without complying with the requirements
16 governing parole termination and without providing constitutionally adequate process,
17 Respondents have deprived Petitioner of liberty in violation of the Due Process Clause of the
18 Fifth Amendment.

19 12. Absent intervention by this Court, no neutral adjudicator will review the legality of
20 Petitioner's detention. Petitioner therefore respectfully requests that this Court declare his
21 detention unlawful and order his immediate release and restoration to the status quo ante, or, in
22 the alternative, require Respondents to provide constitutionally adequate process before
23 continuing to deprive Petitioner of his liberty.

24 **CUSTODY**

25 13. Petitioner is currently in the legal and physical custody of Respondents and is
26 detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of
27 this Court.

JURISDICTION AND VENUE

14. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner’s detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

15. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents’ custody under the United States’ color of authority, and such custody violates the Constitution, laws, or treaties of the United States. This Court’s jurisdiction is not limited by a petitioner’s nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

16. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner’s detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held “in custody in violation of the Constitution or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act’s jurisdictional restrictions.

17. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

18. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have occurred here, Petitioner is detained here, and his custodian resides here. Venue is also proper under 28 U.S.C. § 2243 because Petitioner’s immediate custodian resides in this District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451–52 (2004) (Kennedy, J., concurring).

1 19. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar this Court's jurisdiction
2 because Petitioner challenges only the legality of his detention, not the validity of removal
3 proceedings or any removal order. Federal courts have consistently recognized that habeas
4 corpus remains available to review the statutory and constitutional basis of immigration
5 detention. Petitioner's claims therefore fall squarely within this Court's habeas jurisdiction under
6 28 U.S.C. § 2241.

7 **PARTIES**

8 20. Petitioner, Carlos Jesus Morao Quero, is a native and citizen of Venezuela currently
9 detained at the Otay Mesa Detention Center in San Diego, California.

10 21. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in
11 San Diego, California, is Petitioner's immediate custodian, and is responsible for Petitioner's
12 confinement.

13 22. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
14 Security (DHS).

15 23. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
16 Enforcement (ICE).

17 24. Respondent Todd Blanche is the Acting Attorney General of the United States and
18 the head of the U.S. Department of Justice (DOJ).

19 25. All Respondents are named in their official capacities.

20 **STATEMENT OF FACTS**

21 26. Following inspection and processing by the Department of Homeland Security
22 ("DHS"), Petitioner was granted parole into the United States and issued a Form I-94 reflecting
23 parole authorization valid through May 14, 2026. (Ex. 1.)

24 27. Following that grant of parole, DHS permitted Petitioner to physically enter the
25 United States and reside at liberty in the community.

26 28. During the period following his release, Petitioner complied with his immigration
27 obligations and received employment authorization from the federal government. (Ex. 2.)

1 29. Petitioner married a United States citizen and is the beneficiary of a pending Form I-
2 130 petition filed on his behalf by his United States citizen spouse. (Ex. 3.)

3 30. On or about May 1, 2026, Petitioner was arrested by immigration authorities in Key
4 Largo, Florida.

5 31. Following that arrest, Immigration and Customs Enforcement took Petitioner into
6 custody and subsequently transferred him to the Otay Mesa Detention Center in San Diego,
7 California, where he remains detained.

8 32. Following Petitioner's arrest, DHS issued a Notice to Appear alleging that Petitioner
9 was present in the United States without having been admitted or paroled. (Ex. 4.)

10 33. DHS subsequently amended the Notice to Appear and expressly acknowledged that
11 Petitioner had been granted parole into the United States on or about May 15, 2024. DHS
12 withdrew the prior allegation that Petitioner had not been admitted or paroled and replaced it
13 with allegations consistent with Petitioner's parole status. (Ex. 5.)

14 34. Petitioner thereafter sought a custody redetermination before the Immigration Court.
15 The Immigration Judge concluded that the court lacked custody-redetermination jurisdiction
16 based upon Petitioner's classification as an arriving alien. (Ex. 6.)

17 35. Petitioner subsequently renewed his request for custody review. The Immigration
18 Judge again declined to provide a custody redetermination and denied relief. (Ex. 7.)

19 36. As a result of Respondents' position that Petitioner is an arriving alien and the
20 Immigration Judge's resulting jurisdictional determinations, no neutral adjudicator has conducted
21 a meaningful review of the legality or necessity of Petitioner's continued detention.

22 37. Prior to re-detaining Petitioner, Respondents did not provide Petitioner with
23 individualized written notice terminating his parole, did not provide a meaningful opportunity to
24 contest any proposed termination of parole, and did not provide any constitutionally adequate
25 pre-deprivation process before depriving Petitioner of his physical liberty.

1 38. Respondents continue to detain Petitioner despite the absence of any individualized
2 determination by a neutral decisionmaker that Petitioner presents a danger to the community, a
3 risk of flight, or otherwise requires continued detention.

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

5 39. Under 28 U.S.C. § 2243, the Court “must” grant the petition for a writ of habeas
6 corpus or issue an order to show cause (“OSC”) “forthwith,” unless the petitioner is not entitled
7 to relief. If an OSC is issued, the statute requires that Respondents file a return “within three
8 days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
9 (emphasis added).

10 40. Federal courts have long emphasized the importance of habeas corpus as a
11 protection against unlawful restraint. The Supreme Court has described the Great Writ as
12 “perhaps the most important writ known to the constitutional law of England, affording as it
13 does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v.*
14 *Noia*, 372 U.S. 391, 400 (1963).

15 41. Congress and the courts have repeatedly reaffirmed that habeas corpus must remain
16 a prompt and expeditious remedy. As the Ninth Circuit has explained, “The statute itself directs
17 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
18 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000)
19 (citation omitted). The court cautioned that delays in habeas proceedings risk creating the
20 impression “that courts are more concerned with efficient trial management than with the
21 vindication of constitutional rights.” *Id.*

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 42. In habeas corpus proceedings, exhaustion of administrative remedies is prudential
24 rather than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Prudential
25 exhaustion may be excused where administrative remedies are inadequate, pursuit of
26 administrative remedies would be futile, or irreparable injury would result. *Id.*; *Laing v. Ashcroft*,
27 370 F.3d 994, 1000 (9th Cir. 2004).

1 43. Exhaustion should be excused in this case because Petitioner has already sought
2 custody review before the Immigration Court and has been denied any meaningful opportunity to
3 obtain review of the legality of his detention. The Immigration Judge concluded that the court
4 lacked custody-redetermination jurisdiction based upon Petitioner's classification as an arriving
5 alien and therefore declined to conduct an individualized custody determination. (Ex. 6.)

6 44. Petitioner subsequently renewed his request for custody review, but the Immigration
7 Judge again declined to provide meaningful custody review and denied relief. (Ex. 7.) Under
8 these circumstances, requiring further administrative proceedings would serve no purpose
9 because the agency has already determined that it lacks authority to provide the relief Petitioner
10 seeks.

11 45. Exhaustion is independently excused because Petitioner's claims present
12 constitutional and legal questions that fall outside the agency's authority to finally resolve.
13 Petitioner challenges the legality of his continued detention, the absence of constitutionally
14 adequate process before deprivation of his liberty, and Respondents' failure to comply with the
15 procedures governing parole termination. No administrative proceeding can provide a final
16 resolution of those constitutional questions.

17 46. Petitioner also suffers irreparable harm for each additional day he remains detained.
18 The loss of physical liberty constitutes irreparable injury, particularly where Petitioner
19 previously resided at liberty in the community for approximately two years following a grant of
20 parole from the federal government. Continued detention therefore warrants waiver of any
21 prudential exhaustion requirement.

22 **LEGAL FRAMEWORK**

23 47. The Due Process Clause of the Fifth Amendment protects all persons within the
24 United States from arbitrary deprivations of liberty. Freedom from physical restraint lies at the
25 core of the liberty protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

1 48. Once the government grants parole, permits a noncitizen to physically enter the
2 United States, and allows that individual to reside at liberty in the community, the individual
3 acquires substantial liberty interests protected by the Due Process Clause.

4 49. The government may not revoke that liberty and re-detain the individual without
5 providing constitutionally adequate process. At a minimum, due process requires notice and a
6 meaningful opportunity to be heard before the government deprives an individual of a previously
7 granted liberty interest absent extraordinary circumstances.

8 50. The government's decision to release an individual from custody creates an implicit
9 promise that the individual's liberty will not be revoked arbitrarily. Where the government seeks
10 to revoke that liberty and impose detention, due process requires procedures sufficient to guard
11 against erroneous deprivation of liberty.

12 51. The Administrative Procedure Act prohibits agency action that is arbitrary,
13 capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). An agency must provide a
14 reasoned explanation for its actions based on the relevant facts and circumstances.

15 52. Re-detaining a noncitizen after a prolonged period of liberty—without providing an
16 individualized justification, without constitutionally adequate process, and without applying the
17 proper statutory framework—constitutes arbitrary, capricious, and unlawful agency action.

18 **CLAIM FOR RELIEF**

19 **COUNT 1**

20 **Violation of Due Process U.S. Constitution Amendment V**

21 53. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all
22 preceding paragraphs.

23 54. The Due Process Clause of the Fifth Amendment prohibits the federal government
24 from depriving any person of "life, liberty, or property, without due process of law." U.S.
25 CONST. amend. V. This protection applies to all persons within the United States, including
26 noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent."
27 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

1 55. Petitioner was granted parole into the United States on or about May 15, 2024 and
2 was issued a Form I-94 reflecting parole authorization valid through May 14, 2026. (Ex. 1.)
3 Following that grant of parole, Petitioner was permitted to physically enter the United States and
4 reside at liberty in the community. Petitioner subsequently received employment authorization
5 from the federal government and became the beneficiary of a pending Form I-130 petition filed
6 on his behalf by his United States citizen spouse. (Exs. 2-3.) Following his arrest on May 1,
7 2026, Respondents took Petitioner into immigration custody without providing constitutionally
8 adequate pre-deprivation process.

9 56. Having previously been permitted to physically enter the United States and reside at
10 liberty in the community for a prolonged period of time, Petitioner acquired substantial liberty
11 interests protected by the Due Process Clause. Continued detention without an individualized
12 determination and without constitutionally adequate process constitutes an arbitrary deprivation
13 of liberty in violation of the Fifth Amendment. See *Mathews v. Eldridge*, 424 U.S. 319, 333
14 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

15 57. Respondents did not provide Petitioner with individualized written notice terminating
16 his parole, did not provide a meaningful opportunity to contest any proposed termination of
17 parole, and did not provide constitutionally adequate process before depriving Petitioner of his
18 liberty. Respondents nevertheless re-detained Petitioner and continue to hold him in immigration
19 custody.

20 58. By continuing to detain Petitioner without an individualized custody determination
21 and without constitutionally adequate custody review, Respondents have violated the Due
22 Process Clause of the Fifth Amendment.

23 COUNT 2

24 Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) (Agency Action Not 25 in Accordance with Law and in Excess of Statutory Authority)

26 59. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
27 allegations in the paragraphs above.

60. Under the Administrative Procedure Act, a court shall “hold unlawful and set aside agency action” that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

61. Agency action is arbitrary and capricious where the agency fails to consider relevant factors, offers an explanation that runs counter to the evidence, or fails to articulate a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983).

62. An agency must provide a reasoned explanation for its actions based on the facts and circumstances of the individual case. *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019).

63. Here, Respondents re-detained Petitioner after previously granting him parole into the United States, issuing documentation reflecting that grant, authorizing him to reside and work in the United States, and permitting him to remain at liberty in the community for approximately two years. Respondents have provided no reasoned explanation for Petitioner's continued detention and have failed to provide any individualized custody determination or constitutionally adequate process before depriving Petitioner of that liberty.

64. Respondents' own charging documents confirm that Petitioner had been granted parole into the United States. After initially alleging that Petitioner had not been admitted or paroled, DHS amended the Notice to Appear and expressly acknowledged Petitioner's parole status. (Exs. 4-5.) Despite that acknowledgment, Respondents continue to detain Petitioner without providing a reasoned explanation for revoking the liberty previously granted through parole.

65. By continuing to detain Petitioner without a reasoned explanation, without individualized custody review, and without applying the proper constitutional and statutory framework, Respondents have acted arbitrarily, capriciously, and contrary to law.

66. Accordingly, Respondents’ decision to detain Petitioner must be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

1 WHEREFORE, Petitioner respectfully requests that this Court:

2 A) Assume jurisdiction over this matter;

3 B) Issue the writ of habeas corpus or, in the alternative, an order to show cause directing
4 Respondents to show cause, within three days of the filing of this Petition, why the relief
5 requested should not be granted, and set a hearing within five days of Respondents' return,
6 consistent with 28 U.S.C. § 2243;

7 C) Declare that Petitioner's continued detention without an individualized custody determination
8 or constitutionally adequate custody review violates the Due Process Clause of the Fifth
9 Amendment;

10 D) Declare that Respondents' continued detention of Petitioner without complying with the
11 procedures governing parole termination and without constitutionally adequate process is
12 unlawful under the Constitution and laws of the United States;

13 E) Declare that Respondents' actions detaining Petitioner without a reasoned explanation,
14 without an individualized justification, and without complying with governing procedures were
15 arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the
16 Administrative Procedure Act, 5 U.S.C. § 706(2);

17 F) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to 5
18 U.S.C. § 706(2)(A);

19 G) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
20 custody;

21 H) Order Respondents to return Petitioner's personal property and identity documents, including
22 his driver's license, employment authorization document, and any other personal belongings
23 confiscated in connection with his detention.

24 I) In the alternative, order a constitutionally adequate custody hearing at which DHS bears the
25 burden of justifying Petitioner's continued detention by clear and convincing evidence, and the
26 neutral adjudicator must consider alternatives to detention and Petitioner's ability to pay any
27 bond imposed;

1 J) Enjoin Respondents from transferring Petitioner outside this District without prior approval of
2 this Court;

3 K) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
4 2412, and any other basis authorized by law; and

5 L) Grant such other and further relief as the Court deems just and proper.

6 Respectfully submitted,

7 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

8 Alex Monsalve Law Firm, PC

9 240 Woodlawn Ave, Suite 9

10 Chula Vista, CA 91910

11 Phone: (619) 777-6796

12 Email: info@alexmonsalvelawfirm.com

13 Counsel for Petitioner

14 Dated: June 10, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and Petitioner's spouse, my personal visit with Petitioner at the Otay Mesa Detention Center, and my review of available immigration records, court records, and supporting documentation relating to Petitioner's immigration history, detention, and removal proceedings, including the documents attached as exhibits to this Petition.

Based on my review of that information, and to the best of my knowledge, information, and belief, I declare that the factual statements contained in this Petition are true and correct and accurately reflect Petitioner's circumstances and the procedural history of his detention.

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner

Dated: June 10, 2026