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DETAINED

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

LUQUIN DE GARZA, Maria de la Paz

CASE NO.: '26CV3607 JES JLB

Petitioner-Plaintiff,



vs.

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

**WARDEN/OFFICER IN CHARGE,
current ICE detention facility;
SAN DIEGO FIELD OFFICE DIRECTOR,
U.S. Immigration and Customs Enforcement;
SENIOR OFFICIAL PERFORMING THE
DUTIES OF DIRECTOR,
U.S. Immigration and Customs Enforcement;
SECRETARY, U.S. Department of Homeland
Security;
U.S. Immigration and Customs Enforcement
and U.S. Department of Homeland Security,**

Respondents-Defendants.

**PETITION FOR WRIT OF HABEAS CORPUS; EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER; REQUEST FOR ORDER TO
SHOW CAUSE WITHIN THREE DAYS**

1 Petitioner Maria de la Paz Luquin de Garza ("Ms. Luquin") petitions this Court for a
2 writ of habeas corpus under 28 U.S.C. § 2241, declaratory and injunctive relief, and
3 emergency temporary restraining relief under Federal Rule of Civil Procedure 65 to
4 remedy Respondents' unlawful civil immigration detention following her completion
5 of a federal criminal sentence, release from criminal custody, and years of
6 demonstrated rehabilitation and reintegration into society.
7

8 INTRODUCTION

- 9
- 10 1. This case arises from the immigration detention and removal proceedings of
11 Petitioner Maria de la Paz Luquin de Garza ("Ms. Luquin"),  Ms.
12 Luquin is currently detained and is presently in removal proceedings before the
13 Otay Mesa Immigration Court. Removal proceedings are currently pending before
14 the Otay Mesa Immigration Court, with a hearing scheduled for July 2, 2026.
15
- 16 2. The Government's allegations are based on criminal conduct that occurred on
17 January 3, 2019. According to documents submitted, Ms. Luquin was arrested
18 after Customs and Border Protection officers discovered packages concealed
19 within a vehicle she was driving at the Otay Mesa Port of Entry.
20
- 21 3. The criminal proceedings arising from those events resulted in federal convictions
22 for importation of methamphetamine and importation of heroin under 21 U.S.C.
23 §§ 952 and 960. Ms. Luquin pleaded guilty to federal drug-importation offenses,
24 and judgment was entered against her on August 23, 2019.
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1 4. The original judgment imposed a sentence of seventy-one months' imprisonment
2 on each count, to run concurrently, followed by a four-year term of supervised
3 release.

4
5 5. On April 5, 2023, the district court entered an amended judgment modifying the
6 term of imprisonment to time served pursuant to 18 U.S.C. § 3582(c)(1). The
7 amended judgment left in place the conviction and a four-year term of supervised
8 release.

9
10 6. In the present removal proceedings, DHS has submitted certified conviction
11 records and related criminal court documents in support of its case. Those records
12 consist of the same criminal proceedings that resulted in Ms. Luquin's federal
13 convictions and sentence.

14
15 **JURISDICTION**
16

17 7. This action arises under the Constitution and laws of the United States, including
18 28 U.S.C. §§ 1331, 2241, 2242, and 2243; the Fifth Amendment to the United
19 States Constitution; the Immigration and Nationality Act ("INA"); the Declaratory
20 Judgment Act, 28 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. §
21 1651.
22

23 8. This Court has jurisdiction under 28 U.S.C. § 2241 because Ms. Luquin is
24 presently in immigration custody and challenges the legality of that detention.
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1 Through this Petition, she seeks review of whether Respondents possess lawful
2 authority to re-detain her, depriving her of liberty.

3 9. Federal courts have long recognized their authority to review constitutional and
4 legal challenges to immigration detention. Accordingly, this Court may consider
5 Petitioner's claims that her continued detention violates federal law and the
6 protections guaranteed by the Constitution.
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8 10. Petitioner does not seek review of the merits of any removal determination.
9 Rather, she challenges the legality of her present detention and requests relief
10 necessary to ensure meaningful judicial review of that custody.
11

12 11. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that the Court issue
13 a writ or an Order to Show Cause requiring Respondents to identify and justify
14 the legal basis for her continued detention.
15

16
17 **VENUE**

18 12. Venue is proper in the Southern District of California because Petitioner's
19 immigration proceedings are pending before the Otay Mesa Immigration Court,
20 and the underlying federal criminal proceedings arose in the Southern District of
21 California.
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CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, AND 2243

13. Ms. Luquin is in custody for purposes of 28 U.S.C. § 2241 because Respondents, through DHS and ICE, exercise physical and legal custody over her in connection with ongoing removal proceedings.

14. Pursuant to 28 U.S.C. § 2242, this Petition identifies Petitioner, the officials responsible for her custody, and the factual and legal grounds upon which she challenges that detention.

15. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that this Court promptly issue a writ or an Order to Show Cause directing Respondents to state the legal and factual basis for her continued detention.

16. Emergency relief is necessary because Petitioner remains in custody and any transfer or removal prior to judicial review could interfere with this Court's ability to provide meaningful habeas relief.

PARTIES

17. Petitioner Maria de la Paz Luquin de Garza ("Ms. Luquin") is a native and citizen of Mexico. Her Alien Registration Number is 

18. Ms. Luquin is the individual whose liberty is restrained. She brings this action pursuant to 28 U.S.C. § 2241 to challenge the legality of her continued immigration detention and to seek declaratory, injunctive, and temporary restraining relief.

1 19. Respondents are the federal officials and agencies responsible for Petitioner's
2 detention, custody, and removal proceedings. Each Respondent is sued in his or
3 her official capacity.

4
5 20. Through the Department of Homeland Security ("DHS") and U.S. Immigration
6 and Customs Enforcement ("ICE"), Respondents exercise legal and physical
7 custody over Ms. Luquin and possess the authority to implement any relief ordered
8 by this Court.
9

10 11 LEGAL FRAMEWORK

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13 21. Courts have recognized the significance of the habeas statute in protecting
14 individuals from unlawful detention, which affords "a swift and imperative
15 remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
16 400 (1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting
17 that habeas statute requires expeditious determination of petitions).
18

19 22.27. The Court must grant the petition for writ of habeas corpus or issue an
20 order to show cause to Respondents "forthwith," unless Petitioner is not entitled
21 to relief. 28 U.S.C. § 2243.
22

23 23.28. "It is well established that the Fifth Amendment entitles [noncitizens] to
24 due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510,
25 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
26
27

1 24.29. Due process requires “adequate procedural protections” to ensure that the
2 government’s asserted justification for physical confinement “outweighs the
3 individual’s constitutionally protected interest in avoiding physical restraint.”
4
5 Zadvydas, v. Davis, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

6 25.30. In the immigration context, the Supreme Court has recognized two valid
7 purposes for civil detention—to mitigate the risks of danger to the community and
8 to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

10 26.31. The test for procedural due process claims, the Mathews test balances: (1)
11 the private interest threatened by governmental action; (2) the risk of erroneous
12 deprivation of such interest and the value of additional or substitute safeguards;
13 and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);
14 see also *Sho v. Current or Acting Field Off. Dir.*, No. 1:21CV-01812 TLN AC,
15 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and recommendation
16 adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
17 2023) (using Mathews factors to assess a habeas petitioner’s due process claims
18 and collecting cases doing the same). Here, each factor weighs in Petitioner’s
19 favor, and Petitioner’s release is justified due to his interest in avoiding prolonged
20 or unjustified detention. Petitioner poses no danger to the community, nor is a
21 flight risk.
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FACTUAL BACKGROUND

A. Ms. Luquin became a lawful permanent resident and has lived in the United States for decades.

52. Ms. Luquin is a native and citizen of Mexico. She entered the United States and was granted lawful permanent resident status in 1975.

53. She has lived in the United States for approximately fifty-two years. Her adult life, family, community, and rehabilitation are centered in the United States.

54. She has adult United States citizen children. These ties weigh strongly in favor of release and demonstrate an incentive to comply with supervision and court requirements.

B. The known adverse history is old, completed, and known to the Government.

55. The San Diego County case-index material supplied to counsel identifies one criminal case entry associated with the name Maria De La Paz LUQUIN DE GARZA, birth year 1954. The Case No. [REDACTED] filed August 23, 2019, in the U.S. District Court for the Southern District of California. Under PC 21:952, 960, importation of Methamphetamine (Felony); and 21:952,960, importation of heroin (felony).

56. The information supplied to counsel further states that, in 2019, Ms. Luquin was convicted of a methamphetamine-related offense involving

1 methamphetamine. As a result, she was sentenced to three and a half years and released
2 after serving her sentence. Further, she received three and a half years of probation.

3 57. Removal was not initiated after the 2019 sentence. That fact is critical:
4
5 DHS has long known of the criminal case and decided to exercise prosecutorial
6 discretion.

7 58. The 2019 criminal histories are serious. But they are not new. They are
8
9 complete criminal sentences, known to the Government, and predate her later release,
10 rehabilitation, apprenticeship, and community service.

11 60. If Respondents rely on these old convictions to justify present detention,
12
13 they must explain why the same known facts that did not result in successful removal
14 or continued custody for decades suddenly justify detention now. Absent a material
15 change, the old record cannot carry the Government's burden.

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17 **C. The record shows release, rehabilitation, employment, training, and public**
18 **recognition.**

19 61. After incarceration, Ms. Luquin returned to the community. Public labor-
20
21 community records identify her as a housekeeper.

22 62. Ms. Luquin also has longstanding community ties. Those equities further
23
24 demonstrate that she is not a person who should be detained based on stale facts without
25 current individualized findings.

D. The current detention lacks a material change in circumstances justification.

67. Respondents currently restrain Ms. Luquin's liberty through ICE custody or DHS control. The current custody decision rests, on the available record, on the same adverse information already known to DHS: U.S. District Court for the Southern District case entry, the 2019 federal conviction.

68. The record supplied to counsel does not identify a new conviction, a new violent incident, a recent failure to appear, a violation of supervision, a refusal to cooperate with travel documents.

69. Respondents must produce evidence showing that removal is now significantly likely in the reasonably foreseeable future. A mere hope that removal may someday become possible is not enough under *Zadvydas*, *Clark*, and 8 C.F.R. § 241.13.

70. The absence of current danger evidence is also decisive. Respondents cannot ignore years of work, rehabilitation, family ties, and volunteering, while relying exclusively on old convictions with a criminal sentence served.

71. Reasonable alternatives to detention can address any legitimate governmental concern, including release on an order of supervision, reporting, check-ins, travel restrictions, electronic or telephonic monitoring if necessary, sponsor placement with family, and continued cooperation with travel-document requests.

ARGUMENT

I. The Court should issue the writ or an Order to Show Cause forthwith.

72. The Petition states substantial habeas claims. Ms. Luquin is detained or restrained by federal immigration officials; she has a final removal order that could not be executed because Laos declined to accept her return; she later lived at liberty and rebuilt her life; and Respondents have not identified a material change justifying renewed detention.

73. Section 2243 requires a prompt response. Respondents should be ordered within three days to identify the precise statutory authority for custody, the date and basis of detention, the custody-review history, any order of supervision or release conditions, the alleged changed circumstances, and any evidence that Laos will issue travel documents or accept her return in the reasonably foreseeable future.

74. Respondents should also produce the custody file, removal file, travel-document communications, post-order custody reviews, notices of revocation, criminal conviction records relied upon, and any risk assessment or memorandum used to justify detention.

II. Due process prohibits re-detention after release without notice, a neutral review, and proof of a material change in circumstances.

81. Ms. Luquin lived at liberty after the Government could not re-detain her. That period of liberty, work, family life, and community integration created a

1 legitimate expectation that the Government would not revoke her freedom based on the
2 same facts it already knew.

3 82. A released person's liberty interest is not erased by immigration status or
4 old criminal history. *Morrissey and Young* establish that release from physical custody
5 creates protected liberty. *Saravia* and *Ortega* apply that principle in immigration re-
6 detention contexts.
7

8 83. The Government, therefore, must show a material change in
9 circumstances. Proof of a new violation of release conditions, proof of noncooperation,
10 or current evidence that no reasonable conditions can address danger or flight risk.
11

12 84. Respondents have not identified any such change. The 2019 federal
13 conviction was known or knowable long before the current detention. Stale facts cannot
14 become changed circumstances merely because DHS has decided to rely on them
15 again.
16

17 85. Due process requires notice of the reasons for detention, disclosure of the
18 evidence, a meaningful opportunity to respond, access to counsel, a neutral
19 decisionmaker, and consideration of alternatives to detention. Without those
20 safeguards, the risk of erroneous deprivation is unacceptably high.
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22 86. The *Mathews* factors favor Petitioner. Her private interest is freedom from
23 physical detention and family/community disruption; the risk of error is high because
24 Respondents appear to rely on old facts while ignoring rehabilitation and removal
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1 infeasibility; and the Government's interests can be met through release conditions and
2 a lawful custody review.

3 **III. The old criminal history does not establish current danger or a lawful basis**
4 **for civil detention.**
5

6 87. Petitioner acknowledges the seriousness of the 2019 drug-related
7 conviction. But the civil detention question is not whether the past conduct was serious.
8 The question is whether detention now is reasonably related to a legitimate regulatory
9 purpose and supported by current individualized evidence.
10

11 88. Completed criminal sentences cannot be converted into indefinite civil
12 immigration detention. *Zadvydas* specifically involved individuals with criminal
13 histories, yet the Supreme Court still required a statutory limit where removal was not
14 reasonably foreseeable.
15

16 89. Current evidence cuts against detention. Ms. Luquin completed federal
17 custody and was respected by employers and contractors.
18

19 90. Her adult United States citizen children, community ties, and
20 rehabilitation show strong incentives to comply with supervision and no reason to treat
21 detention as the only available tool.
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23 91. Respondents must consider less restrictive alternatives. An order of
24 supervision, check-ins, reporting, travel-document cooperation, stable sponsor
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1 placement, and other conditions can address any legitimate concerns without physical
2 detention.

3 **IV. Respondents' actions are arbitrary, capricious, contrary to law, and without**
4 **observance of required procedure.**
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6 92. The APA requires courts to hold unlawful and set aside agency action that
7 is arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to
8 constitutional right, in excess of statutory authority, or without observance of procedure
9 required by law. 5 U.S.C. § 706(2)(A)-(D).
10

11 93. Respondents acted contrary to law by detaining Ms. Luquin beyond the
12 time reasonably necessary to effect removal without showing a material change of
13 circumstances for redetention.
14

15 94. Respondents acted without observance of procedure required by law by
16 failing to provide the meaningful review required by 8 C.F.R. §§ 241.4 and 241.13,
17 including notice, an opportunity to respond, a written decision grounded in the record,
18 and a changed-circumstances showing.
19
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21 95. Respondents acted arbitrarily by failing to consider key aspects of the
22 problem: the age of the adverse facts, the completion of criminal sentences,
23 rehabilitation, community service, family ties, and alternatives to detention.
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1 96. A rational custody decision must connect current facts to present
2 detention. The current record contains no rational connection between decades-old and
3 completed events and a present need for civil detention.
4

5 **V. A TRO staying removal and transfer is necessary to prevent irreparable harm**
6 **and preserve jurisdiction.**

7 97. Petitioner is likely to succeed, or at minimum raises serious questions, on
8 her *Zadvydas*, due process, APA, and regulatory claims. The record shows a final order
9 that could not be executed because Laos declined return, years of release and
10 rehabilitation, and no identified material change.
11

12 98. Irreparable harm is immediate. Loss of physical liberty is irreparable.
13 Transfer would impair counsel access and evidence gathering. Removal would likely
14 defeat meaningful habeas review and deprive this Court of the ability to decide whether
15 detention is lawful before the consequences become irreversible.
16

17 99. The balance of equities favors Petitioner. She seeks only preservation of
18 the status quo, a lawful custody review, and release or supervision under reasonable
19 conditions. Respondents suffer no cognizable harm from being required to comply with
20 the Constitution and governing regulations.
21

22 100. The public interest favors lawful immigration enforcement, individualized
23 custody decisions, accurate post-order review, preservation of habeas jurisdiction, and
24 release under reasonable conditions when detention is not legally necessary.
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101. The Court should therefore stay removal, prohibit transfer outside the District or to a location that frustrates counsel access absent advance notice and Court approval, and require Respondents to show cause within three days.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1231(a)(6), *Zadvydas*, and *Clark* - Unlawful Re-detention

102. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

103. Section 1231(a)(6), as construed by *Zadvydas* and *Clark*, authorizes post-order detention only for a period reasonably necessary to effect removal.

104. Ms. Luquin has good reason to believe there is no significant material change of circumstances that warrant detention.

105. Respondents' continued detention violates § 1231(a)(6), *Zadvydas*, and *Clark* unless Respondents prove that removal is significantly likely in the reasonably foreseeable future.

106. The Court should issue the writ and order Ms. Luquin released under reasonable conditions of supervision.

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COUNT TWO

**Violation of the Fifth Amendment - Re-Detention Without Due Process or
Material Changed Circumstances**

107. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

108. The Fifth Amendment prohibits Respondents from depriving any person of liberty without due process of law.

109. By releasing or allowing Ms. Luquin to live at liberty after the Government knew her criminal history and after Laos declined return, Respondents created a legitimate expectation that she would remain at liberty absent a material change in circumstances and fair process.

110. Respondents violated due process by detaining or continuing to detain her based on stale facts without notice, a neutral hearing, disclosure of evidence, an opportunity to respond, and proof of a material change bearing on danger, flight risk, violation of release conditions, noncooperation, or likelihood of removal.

111. The Court should declare the detention unconstitutional and order release or a constitutionally adequate custody hearing at which the Government bears the burden of proof.

COUNT THREE

Violation of the APA and 8 C.F.R. §§ 241.4 and 241.13

112. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

113. The APA requires courts to hold unlawful agency action that is arbitrary, capricious, an abuse of discretion, contrary to law, contrary to constitutional right, in excess of statutory authority, or without observance of procedure required by law. 5 U.S.C. § 706(2)(A)-(D).

114. Respondents were required to comply with 8 C.F.R. §§ 241.4 and 241.13 before continuing detention under a final order where removal is not significantly likely in the reasonably foreseeable future.

115. If Respondents revoked release because removal allegedly became foreseeable, 8 C.F.R. § 241.13(i)(2)-(3) required changed circumstances, notice of reasons, a prompt opportunity to respond, and consideration of evidence that removal remains not significantly likely.

116. Respondents' failure to provide those procedures is arbitrary, capricious, contrary to law, and without observance of required procedure.

COUNT FOUR

Violation of the Fifth Amendment - Arbitrary Civil Detention and Failure to Consider Alternatives

117. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

118. Civil immigration detention may not be punitive. It must be reasonably related to a legitimate regulatory purpose such as ensuring appearance or protecting the community.

119. Respondents have not made a lawful current individualized finding that Ms. Luquin presents a danger or flight risk that cannot be addressed through reasonable conditions.

120. Respondents failed to give meaningful weight to rehabilitation, family ties, and the availability of supervision conditions.

121. Detention under these circumstances is excessive, arbitrary, and unconstitutional.

COUNT FIVE

All Writs Act, Rule 65, and Habeas Authority - Stay of Removal and Transfer

122. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as if fully set forth herein.

1 123. The All Writs Act authorizes this Court to issue all writs necessary or
2 appropriate in aid of its jurisdiction. 28 U.S.C. § 1651(a). Rule 65 authorizes temporary
3 restraining relief to prevent irreparable harm.

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5 124. Removal or transfer before this Court adjudicates the legality of custody
6 would frustrate habeas jurisdiction, impair counsel access, and risk irreparable harm.

7 125. Petitioner satisfies the *Winter*, *Nken*, and *Leiva-Perez* standards because
8 she raises serious and likely meritorious legal questions, faces irreparable harm, and
9 seeks relief consistent with the public interest.

10
11 126. The Court should stay removal and transfer pending further order.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner respectfully requests that this Court grant the following
15 relief:

- 16
17 (1) Assume jurisdiction over this matter;
18 (2) Issue an Order to Show Cause requiring Respondents to show cause within three
19 days why the writ should not be granted;
20
21 (3) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6),
22 *Zadvydas v. Davis*, *Clark v. Martinez*, the *Fifth Amendment*, the APA, and 8 C.F.R. §§
23 241.4 and 241.13;
24
25 (4) Declare that Respondents may not detain or re-detain Petitioner based on facts
26 known before release, absent fair process and a material change in circumstances;
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1 (5) Declare that Respondents must produce reliable evidence of material change of
2 circumstances before continuing detention under § 1231(a)(6);

3 (6) Issue a writ of habeas corpus ordering Respondents to release Petitioner from
4 custody under reasonable conditions of supervision;

6 (7) In the alternative, order Respondents to provide a prompt constitutionally
7 adequate custody hearing or post-order custody review before a neutral decisionmaker,
8 with the Government bearing the burden to justify detention by clear and convincing
9 evidence;

11 (8) Order Respondents to produce the full custody file, removal file, travel-
12 document communications, post-order custody-review records, release or supervision
13 records, revocation records, and all evidence relied upon to justify detention;

15 (9) Issue a Temporary Restraining Order staying Petitioner's removal from the
16 United States pending further order of this Court;

18 (10) Issue a Stay of Removal Order prohibiting Respondents from transferring
19 Petitioner outside this District, or to any location that would frustrate counsel access or
20 this Court's jurisdiction, without advance notice to counsel and leave of Court;

22 (11) Require Respondents to preserve all custody, removal, travel-document,
23 supervision, criminal-history, release, transfer, and communications records
24 concerning Petitioner;
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1 (12) Set no bond under Rule 65(c), or only nominal bond, because the requested relief
2 protects constitutional rights and imposes no monetary harm on Respondents;

3 (13) Grant such other and further relief as the Court deems just, equitable, and proper.
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7 Dated: June 18, 2026

Respectfully submitted,

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9
10 //s// Mario Portugal

11 _____
12 Mario Portugal,
13 Attorney for Petitioner
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