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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Wilfredo Rodriguez Hernandez

CASE NO.: '26CV3620 LL SBC
RELATED CASE: 3:26-CV-02222-RSH-MMP

Petitioner,



vs.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security,

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

Respondents.

1 Petitioner Wilfredo Rodriguez Hernandez petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4 1. Petitioner Wilfredo Rodriguez Hernandez ("Petitioner" or "Mr. Rodriguez
5 Hernandez") is a Mexican asylum seeker detained at Otay Mesa Detention Center in San Diego,
6 California. He fears persecution in Mexico on account of his perceived status of wealth due to living
7 in the United States. The persecution he fears includes being harmed, mistreated, kidnapped,
8 tortured, held for ransom, and killed by the Cartel and by other organized criminal groups.

9 2. Mr. Rodriguez Hernandez entered the United States when he was about six months
10 old.

11 3. Petitioner entered without inspection.

12 4. Respondents commenced removal proceedings against him in immigration court on
13 or around January 24, 2026, entitling him to present his asylum claim with the due process rights
14 under 8 U.S.C. § 1229a.

15 5. Since then, Petitioner has attended his immigration court hearings.

16 6. On or about March 30, 2026, he filed a Form I-589 Application for Asylum,
17 Withholding of Removal, and protection under the Convention Against Torture with the
18 immigration court. He also filed a 42B Cancellation of Removal Application for Non-LPRs. He was
19 denied all relief on June 04, 2026, and has 30 days to appeal the decision to the BIA.

20 7. Respondents seek to keep Mr. Rodriguez Hernandez detained without a meaningful
21 opportunity to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents
22 do so based not on Mr. Rodriguez Hernandez's personal circumstances or individualized facts. Due
23 to his detention, Mr. Rodriguez Hernandez is at risk of being transferred away from the Southern
24 District of California while he remains in Respondents' physical and legal custody.

25 8. But Respondents cannot evade due process requirements so easily. The U.S.
26 Constitution requires the Respondents provide at least the rights available to him when he filed his
27 application for asylum.

28 9. The Constitution protects Mr. Rodriguez Hernandez—and every other person
present in this country—from arbitrary deprivations of his liberty and guarantees him due process of
law. The government's power over immigration is broad, but as the Supreme Court has declared, it
"is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

1 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due
2 Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
3 His length of residence in the U.S., having resided here since he was a baby, entering around
4 October of 1988, causes him to have a heightened liberty interest.

4 10. Mr. Rodriguez Hernandez seeks declaratory and injunctive relief to compel his
5 immediate release from the immigration jail where he has been held by DHS since being unlawfully
6 detained on or about January 24, 2026, without first being provided a due process hearing to
7 determine whether his incarceration is justified.

8 11. Absent review in this Court, no other neutral adjudicator will examine Mr.
9 Rodriguez Hernandez’s plight: Respondents will continue—unchecked—to detain him unlawfully
10 under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

11 12. For the reasons outlined below, Mr. Rodriguez Hernandez’s arrest and inability to
12 contest his arbitrary detention violate his statutory and constitutional rights, including Due Process
13 protections under the U.S. Constitution. Mr. Rodriguez Hernandez respectfully requests that this
14 Court should grant the instant petition for a writ of habeas corpus, without any bond requirement,
15 and for declaratory and injunctive relief, to prevent such harms from recurring. Mr. Rodriguez
16 Hernandez also asks this Court to find that Respondents’ attempts to detain, transfer, and deport him
17 are arbitrary and capricious and in violation of the law, and to immediately issue an order
18 preventing his transfer out of this district.

17 JURISDICTION

18 13. This action arises under the Constitution of the United States and the Immigration
19 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

20 14. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
21 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution
22 (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs
23 Act).

24 15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
25 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
26 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533
27 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3

1 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
2 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

3 16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
4 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs Act, 28 U.S.C. § 1651,
5 and the Court's inherent equitable powers.

6 VENUE

7 17. Venue is proper because Petitioner is in Respondents' legal and physical custody at
8 Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial
9 part of the events or omissions giving rise to Petitioner's claims occurred in this District, where
10 Petitioner is now in Respondents' legal and physical custody, including his current and ongoing
11 detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa
12 Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas
13 petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep't of*
14 *Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2 (S.D. Cal. Feb. 5, 2019)
(district of confinement is the preferable forum even if the Court otherwise has personal
jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

15 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

16 18. The Court must grant the petition for writ of habeas corpus or issue an order to show
17 cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. §
18 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days
unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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

23 20. Mr. Rodriguez Hernandez is "in custody" for the purpose of 28 U.S.C. § 2241
24 because he was arrested by Respondents and remains in their legal and physical custody at Otay
25 Mesa Detention Center in San Diego, California. He is under Respondents' and their agents' direct
26 control.

27 PARTIES

1 21. Mr. Rodriguez Hernandez ("Petitioner") is a 38-year-old citizen and national of
2 Mexico. He came to the USA when Petitioner was about six months old, and has sought asylum,
3 withholding of removal, or protection under the Convention Against Torture on account of his
4 perceived status of wealth due to his length of residence in the United States and relief in the 42B
5 application for cancellation of removal and adjustment of status for certain non-permanent
6 residents. The persecution he fears includes being harmed, mistreated, kidnapped, tortured, held for
7 ransom, and killed by the Cartel and by other organized criminal groups. He has had no departures
8 since his arrival. He is not married. He has one U.S. citizen child. On information and belief, he has
9 one criminal conviction and a few dismissed cases with withheld adjudications from the state of
10 Utah. The criminal conviction resulted from Impaired Driving where Petitioner served no jail time
and completed 48 hours of community service in lieu of jail time. Since the detention on or about
January 24, 2026, Mr. Rodriguez Hernandez has remained in Respondents' custody.

11 22. Mr. Rodriguez Hernandez is currently residing in Respondents' custody at Otay
12 Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

13 23. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa
14 Detention Center in San Diego, California, where Mr. Rodriguez Hernandez is detained. LaRose is
15 responsible for the day-to-day operations and confinement of non-citizens detained at that facility.
16 He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Mr.
Rodriguez Hernandez and is named in his official capacity.

17 24. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San
18 Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for
19 local custody decisions relating to non-citizens charged with being removable from the U.S.,
20 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field
21 Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent
Divver is a custodian of Mr. Rodriguez Hernandez and is named in his official capacity.

22 25. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has
23 authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
24 decisions relating to non-citizens charged with being removable from the U.S., including the arrest,
25 detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr.
26 Rodriguez Hernandez and is named in his official capacity.

26. Respondent Markwayne Mullin (“Mullin”) is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In his capacity as Secretary of DHS, Respondent Mullin is charged with faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Rodriguez Hernandez and is named in his official capacity.

27. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens.

28. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

29. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin (collectively, “Respondents”) all in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

30. Petitioner has no administrative remedies to exhaust as the immigration judge states for respondents similarly situated that he has subject to mandatory detention and therefore has no jurisdiction to conduct bond proceedings. His NTA indicates he is an alien who has not been admitted or paroled. DHS contends he is subject to mandatory detention under Matter of Yajure Hurtado and Otay Mesa Judges agree.

31. Mr. Rodriguez Hernandez received a NTA on January 24, 2026, which was then filed before the before the Las Vegas Immigration Court to initiate his INA § 240 immigration proceedings. Petitioner was transferred to Otay Mesa Detention Center shortly thereafter.

32. Mr. Rodriguez Hernandez is also challenging the unlawfulness of Respondents’ decision to detain him, independent of any decision made by any Immigration Judge in removal proceedings.

33. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Rodriguez Hernandez’s constitutional, statutory, and regulatory rights and restore his liberty.

LEGAL FRAMEWORK

34. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of

1 persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
212, 94 Stat. 102 (1980).

2 35. The “motivation for the enactment of the Refugee Act” was the United Nations
3 Protocol Relating to the Status of Refugees, “to which the United States had been bound since
4 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
5 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
6 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

7 36. The Refugee Act established the right to apply for asylum in the United States and
8 defines the standards for granting asylum. It is codified in various sections of the INA.

9 37. The INA gives the Attorney General or the Secretary of Homeland Security
10 discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that
11 definition, individuals generally are eligible for asylum if they have experienced past persecution or
12 have a well-founded fear of future persecution on account of race, religion, nationality, membership
13 in a particular social group, or political opinions and if they are unable or unwilling to return to and
14 avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. §
1101(a)(42)(A).

15 38. Although a grant of asylum may be discretionary, the right to apply for asylum is
16 not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is
17 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

18 39. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.
19 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§
20 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the
21 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on
22 the applicant to present evidence to establish eligibility.).

23 40. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment
24 to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

25 41. Noncitizens who are applicants for asylum are entitled to a full hearing in
26 immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent
27 with due process, noncitizens may seek administrative appellate review before the Board of
28 Immigration Appeals of removal orders entered against them and judicial review in federal court
upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*

42. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

43. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who entered the country without inspection were not considered detained under 8 U.S.C. § 1225. *See* Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). *See id.*

44. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

45. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

46. On information and belief, Respondents are using the immigration detention system, including extra-territorial transfer and detention, as a means to punish individuals for asserting rights under the Refugee Act.

FACTUAL BACKGROUND

47. Petitioner is 38-year-old citizen and national of Mexico.

48. Mr. Rodriguez Hernandez fears persecution in Mexico on account of his perceived status of wealth due to living in the United States for seemingly his entire life. The persecution he fears includes being harmed, mistreated, kidnapped, tortured, held for ransom, and killed by the Cartel and by other organized criminal groups.

49. Petitioner was personally aware of an individual who was killed by Cartel members. This incident reinforced the Petitioner’s understanding of the Cartels’ reach, their willingness to

1 carryout violent reprisals, and the serious risk of harm faced by those perceived as vulnerable or
2 without protection.

3 50. The DHS started this removal proceeding on or about January 24, 2026.

4 51. Respondents alleged he was inadmissible to the United States under 8 U.S.C. §
5 1182(a)(6)(A)(i) and commanded him to appear for a hearing on March 2, 2026, in the immigration
6 court in Las Vegas, Nevada.

7 52. On or about March 30, 2026, Petitioner filed his Form I-589 asylum application
8 before the Otag Mesa Immigration Court. He also filed a 42B cancellation application.

9 53. On or about January 24, 2020, Petitioner received an NTA but the case was
10 dismissed and no further proceedings commenced. DHS has made no determinations of flight risk
11 or danger to the community since dismissing those proceedings in 2020. Detention without a new,
12 valid proceeding violates the Due Process Clause of the Fifth Amendment. DHS then filed a new
13 NTA on or around January 24, 2026.

14 CAUSES OF ACTION

15 COUNT ONE

16 **Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due 17 Process, U.S. Const. Amend. V.**

18 54. Petitioner restates, realleges, and incorporates by reference each and every allegation
19 in the paragraphs above as if fully set forth herein.

20 55. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits
21 the federal government from depriving any person of “life, liberty, or property, without due process
22 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,
23 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
24 *Zadvydas*, 533 U.S. at 693.

25 56. Due process requires that government action be rational and non-arbitrary. *See U.S.*
26 *v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

27 57. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. §
28 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the
United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]
status, may apply for asylum.” *Id.*

1 58. Because the denial of the right to apply for asylum can result in serious harm or
2 death, the statutory right to apply is robust and meaningful. It includes the right to legal
3 representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to
4 present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an
5 adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§
6 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision
determining removability, *see id.* § 1229a(c)(6)-(7).

7 59. In sum, applying for asylum in removal proceedings comes with a panoply of greater
8 protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders*
9 *Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) (“Individuals in
10 regular removal proceedings enjoy far more robust due process protections [than those in expedited
removal] because Congress has conferred additional statutory rights on them.”).

11 60. Moreover, Mr. Rodriguez Hernandez has a vital liberty interest in being free from
12 DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal.
13 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14,
14 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a
15 substantial private interest in remaining out of custody” which includes an interest in “...obtaining
necessary medical care, [and] maintaining her relationships in the community...”)).

16 61. His length of residence, namely having lived in the U.S. for over 37 years, having a
17 child in the U.S., and ties to the community create a heightened liberty interest, and therefore Mr.
18 Rodriguez Hernandez is entitled to meaningful process in the form of a bond hearing.

19 COUNT TWO

20 **Violation of the Fourth Amendment of the Constitution**

21 62. Petitioner restates, realleges, and incorporates by reference each and every allegation
in the paragraphs above as if fully set forth herein.

22 63. The Fourth Amendment protects “[t]he right of the people to be secure in their
23 persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme
24 Court has recognized that immigration arrests and detentions are “seizures” within the meaning of
25 the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
26 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
27 person).

64. The Fourth Amendment requires that arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This did not happen in petitioner's case.

65. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

66. Mr. Rodriguez Hernandez, at the moment of his arrest and detention by Respondents, did not receive any judicial determination of probable cause for his arrest or continued detention by Respondents.

67. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Rodriguez Hernandez does not pose any danger to any person in the community at large.

68. Respondents' warrantless arrest of Mr. Rodriguez Hernandez constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT THREE

Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V.

69. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

70. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody,

1 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 71. Mr. Rodriguez Hernandez has a fundamental interest in liberty and being free from
4 official restraint.

5 72. The government’s detention of Petitioner without a notice or an opportunity to be
6 heard before detention violates his right to due process.

7 73. The government’s detention of Petitioner without a meaningful bond and custody
8 redetermination hearing to determine whether he is a flight risk or danger to others violates his right
9 to due process.

10 **COUNT FOUR**

11 **Prolonged detention violates due process under the 5th amendment**

12 74. Petitioner restates, realleges, and incorporates by reference each and every allegation in
13 the paragraphs above as if fully set forth herein.

14 75. Petitioner has been detained for 5 months without a neutral, individualized hearing to
15 determine whether his continued confinement is necessary. This prolonged, bondless detention
16 violates his rights to due process under the Fifth Amendment of the United States Constitution

17 **PRAYER FOR RELIEF**

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

- 19 (1) Assume jurisdiction over this matter;
- 20 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition
21 should not be granted within three days;
- 22 (3) Declare that Petitioner’s detention without an individualized determination violates
23 the Due Process Clause of the Fifth Amendment;
- 24 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
25 redetermination hearing violates the INA, APA, and Due Process;
- 26 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
27 custody;
- 28 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
district without the Court’s approval;

1 (7) Issue an Order requiring Respondents to provide a bond and custody redetermination
2 hearing within 14 days to meaningfully consider his eligibility for release from DHS
3 custody;

4 (8) Grant such further relief as the Court deems just, equitable, and appropriate; and

5 (9) Grant any and all other further relief this Court deems just or proper.

6 Dated: June 18, 2026

Respectfully submitted,

7 //s// David Szeles, Esq.

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