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DETAINED

Attorney for Petitioner Celimar CHIRINOS DE HERNANDEZ

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

CHIRINOS DE HERNANDEZ, Celimar
Petitioner-Plaintiff,

CASE NO.: '26CV3629 RBM SBC

vs.

LaRose, WARDEN/OFFICER IN CHARGE,
Otay Mesa Detention Center, U.S. Immigration
and Customs Enforcement, Enforcement and
Removal Operations; DIRECTOR OR ACTING
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 AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER

CHALLENGE TO UNLAWFUL RE-
DETENTION; REQUEST FOR
EMERGENCY STAY OF REMOVAL
AND TRANSFER

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

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

Petitioner Celimar Yormali Chirinos de Hernandez (“Ms. Chirinos”), by and through undersigned counsel, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241, declaratory and injunctive relief, and emergency temporary restraining relief under Federal Rule of Civil Procedure 65 to remedy Respondents’ unlawful civil immigration detention of her at Otay Mesa Detention Center.

Ms. Chirinos is a Venezuelan national in pending removal proceedings before the Executive Office for Immigration Review. Her Alien Registration Number is [REDACTED] The immigration record reflects that her case had proceeded as a non-detained matter, and that further Immigration Court proceedings remain scheduled. However, on or about April 10, 2026, U.S. Immigration and Customs Enforcement detained Ms. Chirinos and placed her in custody. Now, she is at Otay Mesa Detention Center, located at 7844 Calzada De La Fuente, San Diego, CA 92154.

Ms. Chirinos also requests an immediate stay of removal and an order preventing her transfer from Otay Mesa Detention Center, or any other action that would interfere with counsel’s access, this Court’s habeas jurisdiction, or the Court’s ability to adjudicate the legality of her custody.

INTRODUCTION

1. This case presents an urgent civil immigration detention challenge. Petitioner Celimar Yormali Chirinos de Hernandez (“Ms. Chirinos”), [REDACTED] is a native and citizen of Venezuela. She is currently detained by U.S. Immigration and Customs Enforcement at Otay Mesa Detention Center in San Diego, CA.
2. Ms. Chirinos is not serving a criminal sentence. She is being held in civil immigration custody while her removal proceedings remain pending before the Executive Office for Immigration Review.

- 1 3. The record shows that ICE detained Ms. Chirinos on or about April 10, 2026. Her immigration
2 case includes pending protection-related issues, including DHS's motion to preterm her
3 applications for asylum, withholding of removal, and protection under the Convention Against
4 Torture.
- 5 4. The Government's own filings show that further Immigration Court proceedings are necessary
6 to resolve outstanding issues. Yet Ms. Chirinos remains physically detained while those
7 proceedings continue.
- 8 5. This habeas petition does not ask this Court to decide the merits of Ms. Chirinos's protection
9 claims. It asks the Court to review the legality of her detention.
- 10 6. Immediate relief is necessary. Continued detention causes irreparable harm each day. Transfer
11 would impair counsel's access and risk this Court's jurisdiction over the habeas petition.
- 12 7. Ms. Chirinos respectfully asks this Court to preserve its jurisdiction, stay removal and transfer,
13 order Respondents to justify her continued detention as no material change of circumstances
14 warrants re-detention, and grant immediate release or a constitutionally adequate custody
15 redetermination hearing.

16 JURISDICTION

- 17 8. This action arises under the Constitution of the United States, 28 U.S.C. §§ 1331, 2241, 2242,
18 and 2243; Article I, § 9, cl. 2 of the United States Constitution; the Fifth Amendment; the
19 Immigration and Nationality Act ("INA"), including 8 U.S.C. §§ 1225 and/or 1226, and, only
20 to the extent Respondents invoke it, 8 U.S.C. § 1231; the Administrative Procedure Act
21 ("APA"), 5 U.S.C. §§ 702 and 706; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and
22 2202; the All Writs Act, 28 U.S.C. § 1651; and Federal Rule of Civil Procedure 65.

1 9. This Court has habeas jurisdiction because Ms. Chirinos is in the Respondents' physical and
2 legal custody at Stewart Detention Center in Lumpkin, Georgia, and she challenges the
3 legality of that custody. 28 U.S.C. § 2241(c)(3).

4 10. This Court is the proper court to hear this habeas petition because Ms. Chirinos is detained
5 within this District and the restraint is occurring at the Otay Mesa Detention Center.

6 11. Federal courts retain jurisdiction to review constitutional and legal challenges to civil
7 immigration detention. This Petition challenges Ms. Chirinos's custody, not the merits of her
8 removal case.

9 12. This Petition does not ask the Court to decide Ms. Chirinos's removability, the merits of her
10 protection applications, DHS's motion to pretermitt, or the proper country of removal. It
11 challenges only her current detention, the legal authority for that detention, the absence of a
12 constitutionally adequate custody hearing, and the risk that transfer or removal will defeat
13 meaningful habeas review.

14 13. Section 2243 requires expedited treatment. The Court must award the writ or issue an order
15 to show cause forthwith unless it appears from the petition that Ms. Chirinos is not entitled to
16 relief. If an order to show cause issues, Respondents must make a return within three days
17 unless, for good cause, the Court allows additional time not exceeding twenty days.

18 14. The Court may grant declaratory, injunctive, and temporary restraining relief when necessary
19 to preserve its habeas jurisdiction and make habeas relief meaningful, including relief
20 preventing transfer or removal before the Court can adjudicate the legality of Ms. Chirinos's
21 detention.

22 15. Immediate jurisdiction-preserving relief is necessary because Ms. Chirinos remains in ICE
23 custody while her immigration proceedings continue. Transfer would impair counsel access
24

1 and risk frustrating this Court's jurisdiction. Removal before judicial review would defeat
2 meaningful habeas relief.

3 **VENUE**

4 16. Venue is proper in the Southern District of California, because Ms. Chirinos is currently
5 detained at Otay Mesa Detention Center in San Diego, CA, within this District and Division.
6 28 U.S.C. § 1391(e).

7
8 17. The proper habeas forum is the district of confinement. Ms. Chirinos challenges her present
9 physical custody, and her immediate physical custodian is the Warden or Officer in Charge of
10 Otay Mesa Detention Center.

11 18. Respondents exercise legal and practical custody over Ms. Chirinos through DHS and ICE,
12 including decisions concerning her detention, transfer, release, and removal.

13 19. If Respondents contend that Ms. Chirinos has been transferred or that another custodian is
14 now the proper respondent, Ms. Chirinos respectfully requests emergency preservation of this
15 Court's jurisdiction and transfer to the proper district rather than dismissal. 28 U.S.C. §§
16 1404(a), 1406(a), 1631; *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

17
18 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243**

19 20. Ms. Chirinos is in custody for purposes of 28 U.S.C. § 2241 because Respondents physically
20 confine her in ICE custody at Stewart Detention Center and exercise legal custody over her
21 through DHS and ICE.

22 21. The record identifies Ms. Chirinos as Celimar Yormali Chirinos de Hernandez, 

23  The record further shows that ICE detained her on or about April 10, 2026, and that she
24 is being held at Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, CA
25 92154.
26

1 22. The immigration record incorrectly identifies Ms. Chirinos as an arriving alien in removal
2 proceedings under section 240 of the Immigration and Nationality Act. The record also
3 reflects that a prior section 235(b)(1) order was vacated after an asylum officer found that she
4 demonstrated a credible fear of persecution or torture. Ms. Chirinos has an expectation of
5 liberty after being released into the U.S. after entry on March 11, 2025. Further, no material
6 changes warranted re-detention on April 10, 2025.

7
8 23. Section 2242 requires this Petition to allege facts concerning Ms. Chirinos's detention, the
9 person having custody over her, and the claimed authority for custody, if known. This Petition
10 identifies the custodial officials and alleges facts showing that Ms. Chirinos is physically
11 detained by ICE while her removal proceedings remain pending.

12 24. The documents presently available do show pending removal proceedings, pending
13 protection-related issues, and DHS's request for further Immigration Court proceedings to
14 resolve outstanding matters.

15
16 25. Ms. Chirinos challenges the legality of her continued civil immigration detention. She does
17 not ask this Court to decide the merits of her protection applications, DHS's motion to
18 pretermite, or the proper country of removal.

19 26. Section 2243 requires swift judicial action. The Court should issue the writ or an order to show
20 cause forthwith and require Respondents to certify the true cause of Ms. Chirinos's detention
21 within three days, including the statutory authority relied on, any ICE or DHS custody
22 determination, any parole determination, and the factual basis for continued detention.

23
24 27. Emergency relief is necessary because Ms. Chirinos remains physically detained while her
25 immigration proceedings continue. Transfer would impair counsel's access and risk
26 frustrating this Court's habeas jurisdiction.

1 28. Removal before this Court adjudicates the legality of custody would prevent meaningful
2 habeas review. Ms. Chirinos therefore requests immediate jurisdiction-preserving relief,
3 including an order preventing transfer or removal while this Court reviews the legality of her
4 detention.

5 29. Ms. Chirinos further requests immediate release or, at a minimum, a constitutionally adequate
6 custody process, including an individualized custody hearing, parole review, or other lawful
7 custody determination consistent with due process.
8

9 **PARTIES**

10 30. Petitioner Celimar Yormali Chirinos de Hernandez is a native and citizen of Venezuela. Her
11 Alien Registration Number is  Ms. Chirinos is the person whose liberty is
12 restrained. She brings this action to challenge Respondents' current civil immigration
13 detention and to seek release, a temporary restraining order preventing removal and transfer,
14 and constitutionally adequate custody process.
15

16 31. Ms. Chirinos is currently detained by U.S. Immigration and Customs Enforcement at Otay
17 Mesa Detention Center, located at San Diego, CA.

18 32. Respondent Warden, Officer in Charge, or Facility Administrator of Stewart Detention
19 Center, or the Officer in Charge of Ms. Chirinos's current ICE detention facility, is Ms.
20 Chirinos's immediate physical custodian and is responsible for her day-to-day confinement.
21 This Respondent is named in an official capacity.
22

23 33. Respondent Atlanta Field Office Director, U.S. Immigration and Customs Enforcement,
24 Enforcement and Removal Operations, or the ICE official exercising custody authority over
25 Stewart Detention Center, is responsible for ICE custody, transfer, release, supervision, and
26 removal decisions affecting Ms. Chirinos. This Respondent is named in an official capacity.
27

1 34. Respondent Director or Acting Director of U.S. Immigration and Customs Enforcement
2 exercises authority over ICE detention policy and the actions of subordinate ICE officials.

3 This Respondent is named in an official capacity.

4 35. Respondent Secretary of the U.S. Department of Homeland Security exercises authority over
5 DHS components, including ICE. This Respondent is named in an official capacity.

6 36. Respondent U.S. Immigration and Customs Enforcement is the federal agency responsible for
7 immigration arrest, detention, custody classification, transfer, release decisions, supervision,
8 and removal operations affecting Ms. Chirinos.

9 37. Respondent U.S. Department of Homeland Security is the federal agency with authority over
10 ICE and the immigration enforcement actions challenged here.

11 38. Respondents collectively hold Ms. Chirinos in physical and legal custody and are capable of
12 providing the relief ordered by this Court.

13
14 **LEGAL FRAMEWORK**

15 **a. Habeas review is available for unlawful immigration detention.**

16
17 39. A person in federal custody may seek habeas relief under 28 U.S.C. § 2241 when the custody
18 violates the Constitution, laws, or treaties of the United States.

19 40. Ms. Chirinos is in ICE custody at Stewart Detention Center. She therefore satisfies the custody
20 requirement for habeas review.

21 41. Federal courts may review legal and constitutional challenges to immigration detention. This
22 Petition challenges Ms. Chirinos's detention, not the merits of her removal case.

23 42. This Petition does not ask the Court to decide whether Ms. Chirinos is removable, whether
24 she qualifies for asylum or protection, or whether DHS's motion to pretermitt should be
25 granted. It asks only whether her continued detention is lawful.

26
27 43.

B. Civil immigration detention must have lawful authority and basic due process.

44. Immigration detention is civil, not criminal. Because it involves physical restraint, the Government must have lawful authority to detain and must provide constitutionally adequate process.

45. The Fifth Amendment protects persons in the United States from arbitrary deprivation of liberty. Continued detention without a meaningful custody process raises serious due process concerns.

46. The present record does not show that Ms. Chirinos has a final order of removal. The available documents show that her immigration proceedings remain pending.

47. Because Ms. Chirinos remains detained while her case is pending, Respondents must identify the legal authority for her detention and the factual basis for continuing to hold her.

48. At minimum, due process requires a meaningful custody review, a non-arbitrary decision, and an opportunity to be considered for release or other less restrictive custody conditions.

C. Emergency relief may be necessary to preserve habeas review.

49. A court may issue temporary injunctive relief when necessary to prevent irreparable harm and preserve meaningful judicial review.

50. Transfer could interfere with counsel's access and complicate this Court's ability to review the legality of Ms. Chirinos's custody.

51. Removal before the Court reviews the legality of detention could defeat meaningful habeas relief.

52. For these reasons, the Court may preserve its jurisdiction by temporarily preventing transfer or removal while it considers the habeas petition

FACTUAL BACKGROUND

a. Ms. Chirinos is a Venezuelan national in pending removal proceedings.

53. Petitioner Celimar Yormali Chirinos de Hernandez is a native and citizen of Venezuela. Her Alien Registration Number is 

54. On March 17, 2024, DHS issued Ms. Chirinos a Notice to Appear and placed her in removal proceedings under section 240 of the Immigration and Nationality Act.

55. The Notice to Appear identifies Ms. Chirinos as an arriving alien.

56. DHS alleged that, on or about March 17, 2024, Ms. Chirinos applied for admission to the United States at the Brownsville, Texas Port of Entry.

57. DHS further alleged that Ms. Chirinos was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

58. DHS charged Ms. Chirinos as removable under INA § 212(a)(7)(A)(i)(I).

59. The Notice to Appear states that it was issued after an asylum officer found that Ms. Chirinos demonstrated a credible fear of persecution or torture.

B. Ms. Chirinos sought protection, and her removal proceedings remain pending.

60. DHS states that Ms. Chirinos and the other respondents filed Form I-589 applications for asylum and withholding of removal with the Immigration Court on March 19, 2025.

61. Ms. Chirinos's removal proceedings remain pending before EOIR. EOIR's Automated Case Information system identifies Petitioner as CHIRINOS DE HERNANDEZ, CELIMAR, 


62. EOIR's Automated Case Information system lists Ms. Chirinos's next hearing as an in-person Master hearing scheduled for July 30, 2027, at 9:00 AM, before Immigration Judge Lettricea

1 L. Jefferson-Webb. ICE Form I-830 with the change of venue to the Otay Mesa Immigration
2 Court was recently filed and is still pending.

3 63. The listed court address is 601 W. Broadway, Basement Room 3, Louisville, Kentucky 40202.

4 64. The existence of a future Master hearing confirms that Ms. Chirinos's immigration
5 proceedings remain unresolved.

6 65. This Petition does not ask this Court to decide the merits of Ms. Chirinos's protection
7 applications. It challenges only her current civil immigration detention and the process
8 supporting that detention.
9

10 **C. DHS moved to pretermitt Ms. Chirinos's protection applications.**

11 66. On February 18, 2026, DHS filed a Motion to Pretermitt the Respondents' Protection
12 Applications.

13 67. DHS asked the Immigration Judge to pretermitt the respondents' applications for asylum,
14 statutory withholding of removal, and protection under the Convention Against Torture.

15 68. DHS argued that the respondents are subject to the U.S.-Ecuador Asylum Cooperative
16 Agreement.
17

18 69. DHS also requested further master calendar proceedings to resolve outstanding issues,
19 including whether the respondents may seek any other forms of relief or modify or withdraw
20 their requests for protection.

21 70. The available record includes a proposed order on DHS's Motion to Pretermitt, but the order
22 does not show that the motion was granted or denied.
23

24 71. This Petition does not ask this Court to decide the merits of Ms. Chirinos's protection
25 applications, DHS's motion to pretermitt, or the proper country of removal.

26 72. This Petition challenges only Ms. Chirinos's current civil immigration detention and the
27 process supporting that detention.
28

D. ICE detained Ms. Chirinos while her immigration proceedings remained pending.

73. DHS's Motion to Pretermitt was filed in a matter identified as "*Non-Detained*."

74. A later Form I-830, Notice to EOIR: Alien Address, states that ICE detained Ms. Chirinos on or about April 10, 2026.

75. The Form I-830 identifies the ICE detention facility as Stewart Detention Center, located at 146 CCA Road, Lumpkin, Georgia 31815.

76. The Form I-830 does not show that Ms. Chirinos was released on an order of supervision, own recognizance, or bond.

77. The available record therefore shows that Ms. Chirinos was placed into ICE physical custody while her removal proceedings and protection-related issues remained pending.

78. Ms. Chirinos is not being held as punishment for a criminal sentence. She is being held in civil immigration custody.

E. Ms. Chirinos is represented by counsel.

79. On June 15, 2026, attorney Mario G. Portugal of Global Law Group, P.C. filed an EOIR-28, entering an appearance for Ms. Chirinos before the Immigration Court.

80. The EOIR-28 lists counsel's office address in San Diego, California.

81. The San Diego address in the EOIR-28 reflects counsel's office and listed contact information; it does not establish that Ms. Chirinos is detained in San Diego.

82. The available detention record identifies Otay Mesa Detention Center in San Diego, CA, as the ICE detention facility.

F. The available record does not show a final removal order or a custody decision with reasons.

83. The documents presently available to Petitioner do not show that a final order of removal has been entered against Ms. Chirinos.

1 84. The available record does not show that the Immigration Judge has granted DHS's Motion to
2 Preterm.

3 85. The available record does not show that the Immigration Judge has ordered Ms. Chirinos
4 removed to Ecuador or Venezuela.

5 86. The available record does not include a written custody determination explaining why Ms.
6 Chirinos must remain physically detained.

7 87. The available record does not include a parole decision, bond decision, or other individualized
8 custody decision with reasons.

9 88. The available record does not identify a scheduled removal flight, travel document, or
10 acceptance by any receiving country.

11 89. Respondents should be required to certify the true cause of Ms. Chirinos's detention and
12 produce the legal and factual basis for continuing to hold her in civil immigration custody.

13 90. Until the Court can review the legality of custody, emergency relief is necessary to prevent
14 transfer or removal that would frustrate counsel's access, this Court's jurisdiction, and
15 meaningful habeas review.

16 ARGUMENT

17 **The Court should require Respondents to justify Ms. Chirinos's detention.**

18 91. Ms. Chirinos is physically detained by federal immigration officials while her removal
19 proceedings remain pending.

20 92. Habeas relief is available when a person is in custody in violation of the Constitution or laws
21 of the United States. 28 U.S.C. § 2241(c)(3).

22 93. Section 2243 requires prompt judicial action and requires the custodian to certify the true
23 cause of detention. 28 U.S.C. § 2243.

1 94. Respondents should therefore be ordered to identify the legal authority for Ms. Chirinos's
2 custody, the basis for her detention, and any custody, parole, or detention decision relied upon
3 to keep her detained.

4 95. This is necessary because the available record does not show a material change of
5 circumstances that warrants re-detention, does not show that her immigration case is complete,
6 and does not show a reasoned custody decision explaining why she must remain detained.

7 **II. Continued detention without a meaningful custody process violates due process.**

8
9 96. Civil immigration detention is not criminal punishment. Because it restrains physical liberty,
10 Respondents must provide lawful authority and a constitutionally adequate process.

11 97. Ms. Chirinos does not ask this Court to decide whether she is removable, whether she qualifies
12 for asylum or withholding, whether DHS's motion to pretermitt should be granted, or what
13 country of removal is proper.

14 98. The question here is narrower: whether Respondents may continue to physically detain Ms.
15 Chirinos without a lawful and constitutionally adequate custody process.

16
17 99. Due process requires a meaningful process before the Government continues to restrain a
18 person's liberty. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

19 100. The available record does not show that Respondents gave Ms. Chirinos a reasoned
20 custody decision, disclosed the basis for continued detention, or considered less restrictive
21 alternatives.

22 101. The problem is especially serious because Ms. Chirinos's removal proceedings remain
23 pending and her next Master hearing is scheduled for July 30, 2027.

24
25 102. Detention cannot become the default simply because immigration proceedings are
26 pending. Respondents must explain why detention is necessary now.

III. Respondents must consider release, parole, or less restrictive alternatives.

103. If Respondents rely on Ms. Chirinos's status as an arriving alien, they must still identify the authority for detention and the process provided.

104. DHS has parole authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

105. Respondents should be required to explain whether Ms. Chirinos was considered for parole or release, and whether less restrictive conditions could address any legitimate concern.

106. Such conditions may include supervision, reporting requirements, address updates, electronic monitoring, or other reasonable measures short of physical detention.

107. If Respondents cannot justify continued physical detention with current, individualized reasons, Ms. Chirinos should be released under reasonable conditions.

IV. Emergency relief is necessary to preserve habeas review.

108. Temporary restraining relief is appropriate where the movant shows likelihood of success on the merits, irreparable harm, a favorable balance of equities, and consistency with the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

109. A stay of removal is governed by the traditional stay factors. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

110. Ms. Chirinos faces irreparable harm from continued physical detention. Each day she remains detained without a meaningful custody process is a continuing deprivation of liberty.

111. Transfer would also cause serious harm because it could impair counsel's access, interrupt communication, delay preparation of the habeas case, and complicate this Court's ability to review the legality of her custody.

112. Removal before this Court reviews the legality of detention would defeat meaningful habeas relief and prevent this Court from deciding whether Ms. Chirinos's custody is lawful before the consequences become irreversible.

113. Respondents suffer no cognizable harm from preserving the status quo while the Court decides whether Ms. Chirinos's detention is lawful.

114. The public interest favors lawful immigration enforcement, meaningful habeas review, and release under reasonable conditions when physical detention has not been justified.

V. The Court should order release or a constitutionally adequate custody process.

115. If Respondents cannot justify Ms. Chirinos's detention with lawful authority and current individualized reasons, the Court should order her release under reasonable conditions.

116. At a minimum, the Court should order Respondents to provide a constitutionally adequate custody process.

117. That process should include notice of the reasons for detention, disclosure of the evidence relied upon, an opportunity to respond, consideration of parole or release, consideration of less restrictive alternatives, and a written decision explaining the result.

118. The Court should issue an Order to Show Cause, require Respondents to justify detention, prevent transfer or removal while habeas review is pending, and order release or a constitutionally adequate custody process.

CAUSES OF ACTION

COUNT ONE

Violation of the Fifth Amendment — Detention Without Due Process

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

1 120. The Fifth Amendment prohibits the Government from depriving any person of liberty
2 without due process of law.

3 121. Ms. Chirinos is physically detained in civil immigration custody while her removal
4 proceedings remain pending.

5 122. The available record does not show a final order of removal, a completed immigration
6 case, or a reasoned custody decision explaining why Ms. Chirinos must remain detained.

7 123. Respondents have not shown a current individualized finding that Ms. Chirinos
8 presents a danger or flight risk that cannot be addressed through reasonable conditions.

9 124. Respondents have not shown that they considered parole, release, supervision,
10 reporting requirements, electronic monitoring, or other less restrictive alternatives to physical
11 detention.

12 125. Continuing to detain Ms. Chirinos without a meaningful custody process is arbitrary
13 and violates due process.

14 126. The Court should declare Ms. Chirinos's detention unconstitutional and order her
15 release or, at a minimum, a constitutionally adequate custody process.

16 **COUNT TWO**

17 **Unlawful Detention Under 28 U.S.C. § 2241**

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

20 128. Habeas relief is available when a person is in custody in violation of the Constitution,
21 laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3).

22 129. Ms. Chirinos is in the Respondents' physical and legal custody because ICE is
23 detaining her in civil immigration custody.

130. The available record shows that Ms. Chirinos's immigration proceedings remain pending and that her next Master hearing is scheduled for July 30, 2027.

131. The available record does not explain why physical detention is necessary while Ms. Chirinos awaits the pending proceedings.

132. Respondents must identify the legal authority for Ms. Chirinos's custody and certify the true cause of detention. 28 U.S.C. § 2243.

133. If Respondents cannot justify continued detention with lawful authority and current individualized reasons, the Court should grant habeas relief.

134. The Court should issue the writ, order Ms. Chirinos released under reasonable conditions, or order Respondents to provide a constitutionally adequate custody process.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

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

136. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

137. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make “an informed adjudication . . . based on an

1 evaluation of the factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec.
2 281, 284 (BIA 1998).

3 138. It is a well-established administrative principle that “agency action taken without
4 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F.
5 Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir.
6 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir.
7 2016) (invalidating agency action because it was taken by unauthorized official).

8
9 139. Under the APA, an agency must provide “reasoned explanation for its action” and
10 “may not depart from a prior policy sub silentio or simply disregard rules that are still on the
11 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). At the time of his
12 detention, Ms. Chirinos had just entered the United States. On information and belief,
13 Respondents’ intent was to eliminate the due process rights available to Petitioner in
14 removal proceedings under the INA, deprive him of his liberty interest despite no evidence
15 of a material change in circumstances, or for some other purposes not supported by law. *See*
16 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
17 2025) (“Detention for its own sake, to meet an administrative quota, or because the
18 government has not yet established constitutionally required pre-detention procedures is not
19 a legitimate government interest.”).

20
21 140. In deciding to detain Ms. Chirinos, Respondents further violated the APA by
22 “entirely fail[ing] to consider an important aspect of the problem” – namely, the important
23 procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See*
24 *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
25 (1983); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1,
26
27

1 24-33 (2020) (holding that rescission of immigration policy without considering “particular
2 reliance interests” is arbitrary and capricious in violation of the APA).

3 141. The arbitrary and capricious detention of Ms. Chirinos was not made in furtherance
4 of an enumerated reason set forth in the regulations, and causes Ms. Chirinos irreparable
5 harm. For these reasons, the Court should find that the decision to detain Ms. Chirinos is
6 arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A),
7 (E).
8

9 **COUNT FOURTH**

10 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
11 **Accordance with Law and in Excess of Statutory Authority, Unlawful Detention**

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

14 143. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
15 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
16 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-
17 (B).
18

19 144. An action is an abuse of discretion if the agency “entirely failed to consider an
20 important aspect of the problem, offered an explanation for its decision that runs counter to
21 the evidence before the agency, or is so implausible that it could not be ascribed to a
22 difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v.*
23 *Def’s. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*
24 *v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
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1 145. To survive an APA challenge, the agency must articulate “a satisfactory explanation”
2 for its action, “including a rational connection between the facts found and the choice
3 made.” *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

4 146. The INA provides that Respondents may release an individual from apprehension or
5 custody based on an individualized determination of their danger and flight risk. *See* 8
6 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA
7 2006). After such a release decision is made, a revocation of the custody determination may
8 be made only when warranted by an individual’s specific facts and circumstances. 8 U.S.C.
9 § 1226(b); 8 C.F.R. § 1236.1(c)(9).

10 147. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
11 explained the process of discretionary release from custody in immigration cases and noted
12 that before revoking the release, the non-citizen must be given written notice of the
13 impending revocation, which must include a cogent description of the reasons. Under the
14 APA, non-citizens are entitled to determinations related to their release revocations that are
15 not arbitrary, capricious, or an abuse of discretion. *See id.* at *10.

16 148. By categorically revoking Ms. Chirinos’s release from DHS custody and detaining
17 him without notice or consideration of his individualized facts and circumstances,
18 Respondents have violated the INA, implementing regulations, and the APA.

19 149. Respondents have made no finding that Petitioner is a danger to the community.

20 150. Respondents have made no finding that Petitioner is a flight risk.

21 151. On information and belief, by detaining Ms. Chirinos categorically and without
22 notice, Respondents have further abused their discretion because, since the agency made its
23 initial custody determination, on information and belief, there have been no changes to Ms.
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1 Chirino's specific facts or circumstances that support his detention or the revocation of his
2 release from custody on his own recognizance.

3 152. Respondents have already considered Ms. Chirino's facts and circumstances and
4 determined that he was not a flight risk or danger to the community. On information and
5 belief, there have been no changes to the facts of Ms. Chirino's proceedings that justify this
6 revocation of her release under parole from DHS custody.
7

8 COUNT FIFTH

9 **Violation of the Fourth Amendment of the Constitution**

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

12 154. The Fourth Amendment protects "[t]he right of the people to be secure in their
13 persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The
14 Supreme Court has recognized that immigration arrests and detentions are "seizures" within
15 the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984)
16 (acknowledging that deportation proceedings are civil, but the Fourth Amendment still
17 applies to the "seizure" of the person).
18

19 155. The Fourth Amendment requires that arrests entail a neutral, judicial determination
20 of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
21 determination can occur either before the arrest, in the form of a warrant, or promptly
22 afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and
23 detention of a person, including of a noncitizen, absent a neutral judicial determination of
24 probable cause violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of*
25 *Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48
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1 hours of detention, which includes weekends, unless there is a bona fide emergency or other
2 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

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

8
9 157. Ms. Chirinos, at the moment of his arrest and detention by Respondents, did not
10 receive any judicial determination of probable cause for his arrest or continued detention by
11 Respondents.

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

17
18 159. Respondents’ warrantless arrest of Ms. Chirinos constitutes an unreasonable and
19 unlawful seizure in violation of the Fourth Amendment.

20 **COUNT SIXTH**

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

23
24 160. Petitioner restates, realleges, and incorporates by reference each and every allegation
25 in the paragraphs above as if fully set forth herein.

26 161. The government may not deprive a person of life, liberty, or property without due
27 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government

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

3 162. Ms. Chirinos has a fundamental interest in liberty and being free from official
4 restraint.

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

7 164. 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
9 her right to due process.
10

11 PRAYER FOR RELIEF

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

15 (1) Assume jurisdiction over this matter;

16 (2) Issue an Order to Show Cause requiring Respondents to show cause within three days
17 why the writ should not be granted;

18 (3) Declare that Ms. Chirinos’s continued civil immigration detention, without a meaningful
19 and reasoned custody process, violates the Fifth Amendment;

20 (4) Declare that Respondents must identify the legal authority for Ms. Chirinos’s detention
21 and certify the true cause of her custody;

22 (5) Declare that Respondents may not continue detaining Ms. Chirinos by default while her
23 removal proceedings remain pending, absent a lawful custody basis and current
24 individualized reasons for detention;
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1 (6) Issue a writ of habeas corpus ordering Respondents to release immediately Ms. Chirinos
2 from custody under reasonable conditions of supervision;

3 (7) In the alternative, order Respondents to provide a prompt and constitutionally adequate
4 custody process, including notice of the reasons for detention, disclosure of the evidence
5 relied upon, an opportunity to respond, consideration of parole or release, consideration of
6 less restrictive alternatives, and a written decision explaining the result;

7 (8) Order Respondents to produce the full custody file, any custody determination, parole
8 review, detention memorandum, risk assessment, transfer notice, removal-related record,
9 and all evidence relied upon to justify Ms. Chirinos's continued detention;

10 (9) Order Respondents to produce any evidence relied upon to assert a material change of
11 circumstances that warrants re-detention;

12 (10) Issue a Temporary Restraining Order staying Ms. Chirinos's removal from the United
13 States pending further order of this Court;

14 (11) Prohibit Respondents from transferring Ms. Chirinos outside this District, or to any
15 location that would frustrate counsel's access or this Court's jurisdiction, without advance
16 notice to counsel and leave of Court;

17 (12) Require Respondents to preserve all custody, removal, travel-document, release,
18 transfer, and communications records concerning Ms. Chirinos.

19 Dated: June 18, 2026

20 Respectfully submitted,

21 //s// Mario Portugal

22 Mario Portugal

23 Attorney for Petitioner Celimar Chirinos