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

10 **Adolfo FERNANDEZ HERNANDEZ**

11 Petitioner-Plaintiff,

12 vs.

13 CHRISTOPHER J. LAROSE, Senior
14 Warden of the Otay Mesa Detention
15 Center; PATRICK DIVVER, Field
16 Office Director, San Diego Office of
17 Detention and Removal, U.S.
18 Immigration and Customs
19 Enforcement; TODD M. LYONS,
20 Acting Director, U.S. Immigration and
21 Customs Enforcement, U.S.
22 Department of Homeland Security; and
23 MARKWAYNE MULLIN, Secretary,
24 U.S. Department of Homeland Security,

25 Respondents-Defendants.
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CASE NO.: '26CV3734 JO VET



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
IMMIGRATION DETENTION;
REQUEST FOR EMERGENCY
STAY
OF TRANSFER AND ADVANCE
NOTICE OF REMOVAL

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

Petitioner Adolfo Fernandez Hernandez ("Mr. Fernandez Hernandez"), 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 temporary restraining relief under Federal Rule of Civil Procedure 65.

Based on the information presently available to counsel, Mr. Fernandez Hernandez has been held in federal and immigration custody since May 4, 2026, yet counsel has not been able to confirm the statutory basis for his immigration detention, obtain the operative custody documents, or identify a scheduled immigration court proceeding or bond hearing.

Petitioner therefore asks the Court to require Respondents promptly to identify the authority for custody, produce the relevant records, and either release him or provide the custody process required by the governing statute and the Fifth Amendment. Petitioner also requests narrow interim relief preserving counsel access and this Court's ability to adjudicate the legality of detention.

INTRODUCTION

1. This case presents an urgent threshold challenge to civil immigration detention. The presently available record does not establish whether Respondents claim authority under 8 U.S.C. § 1226, § 1225, § 1231, a reinstated removal order, or another

1 provision. The absence of that basic information prevents meaningful review of
2 custody.

3 2. Mr. Fernandez Hernandez is a native and citizen of Mexico, 

4  Except for brief periods following prior immigration encounters, he has lived in
5 or near Escondido, California, for approximately three decades and has worked in
6 construction.
7

8 3. He first entered the United States in 1994. He reports that he was
9 apprehended and removed, returned approximately two weeks later, and later had
10 another ICE encounter in which he signed a voluntary departure agreement before
11 returning again. Counsel is obtaining the official immigration record and does not
12 assume the dates or legal effect of those events beyond the facts presently reported.
13

14 4. The available intake information reflects three cases for driving under the
15 influence ("DUI"). The first reportedly occurred in 1997; Mr. Fernandez Hernandez
16 does not recall the dates or dispositions of the other two. This Petition does not
17 minimize those convictions, but the official records have not yet been obtained and the
18 intake information alone does not identify a statutory ground for mandatory detention.
19

20 5. Mr. Fernandez Hernandez and his partner have been together for
21 approximately 30 years. They have five United States citizen children, currently
22 approximately ages 19, 17, 11, 6, and 5; one is an adult and four are minors. One minor
23 child has autism and requires ongoing medical care, prescribed medication, therapy,
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1 mental-health support, and special-education services. Mr. Fernandez Hernandez is the
2 household's reported sole wage earner, and his partner does not currently work outside
3 the home.

4
5 6. On May 4, 2026, agents identified to Mr. Fernandez Hernandez as ICE
6 agents detained him as he was leaving home for work. According to his account, the
7 agents approached as he entered his truck, pointed firearms at him, removed him from
8 the vehicle, and transported him to the Metropolitan Correctional Center in San Diego
9 ("MCC").

10
11 7. On May 5, 2026, Mr. Fernandez Hernandez appeared before a judge, who
12 ordered his release in the matter before that court. Counsel is still obtaining the order
13 and related records, and this Petition does not assume that the order resolved
14 immigration custody. Mr. Fernandez Hernandez nevertheless remained in federal
15 custody and was transferred to the Otay Mesa Detention Center on June 5, 2026.

16
17 8. As of the filing of this Petition, counsel has not confirmed a scheduled
18 immigration court date or obtained an operative Notice to Appear, immigration custody
19 determination, reinstatement decision, final removal order, or written explanation
20 identifying the legal basis for continued detention. Counsel also has not confirmed that
21 Mr. Fernandez Hernandez has received an immigration bond or custody hearing.

22
23 9. The statutory basis matters. A person detained under § 1226(a) may seek
24 custody redetermination before an immigration judge. Section 1226(c), § 1225(b), and
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1 § 1231 apply only when their respective requirements are satisfied. Respondents should
2 not be permitted to rely on an undisclosed label while withholding the documents
3 necessary to test whether the label is correct.
4

5 10. Immediate relief is warranted because physical custody continues every
6 day, the family has lost its primary income, one child faces disruption of specialized
7 care, and the two youngest children reportedly need therapy and have experienced
8 marked changes in eating and behavior since their father's detention. His partner states
9 that she and the children would remain in the United States rather than relocate to
10 Mexico because of safety concerns and the children's need for stability and services.
11 Transfer would impair counsel access, and the absence of a disclosed custody basis
12 creates an unacceptable risk that Mr. Fernandez Hernandez will remain detained
13 without the process required by law. The Court should issue an Order to Show Cause
14 within three days, require production of the custody record, and order release or prompt
15 lawful custody review.
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19 JURISDICTION

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21 11. This action arises under the Constitution of the United States, 28 U.S.C.
22 §§ 1331, 2241, 2242, and 2243; Article I, § 9, cl. 2 of the United States Constitution;
23 the Fifth Amendment; the Immigration and Nationality Act ("INA"), including 8
24 U.S.C. §§ 1225, 1226, and 1231 as applicable; the Declaratory Judgment Act, 28
25 U.S.C. §§ 2201 and 2202; and the All Writs Act, 28 U.S.C. § 1651.
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1 12. This Court has habeas jurisdiction because Mr. Fernandez Hernandez is
2 in Respondents' physical and legal custody at Otay Mesa, or at any current ICE
3 detention facility, and he challenges the legality and process of that custody. 28 U.S.C.
4 § 2241(c)(3); *Jones v. Cunningham*, 371 U.S. 236, 240 (1963).
5

6 13. The REAL ID Act does not eliminate district-court habeas jurisdiction
7 over a challenge to immigration detention that is independent of review of a removal
8 order. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006); *Flores-Torres*
9 *v. Mukasey*, 548 F.3d 708, 713 (9th Cir. 2008).
10

11 14. Federal courts retain jurisdiction over constitutional claims and questions
12 of law concerning detention. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Jennings*
13 *v. Rodriguez*, 583 U.S. 281, 295 (2018); *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir.
14 2011).
15
16

17 15. This Petition does not ask the Court to review the merits of any removal
18 order, reopen any immigration proceeding, or adjudicate eligibility for a T
19 nonimmigrant visa or other immigration benefit. If Respondents assert that a final or
20 reinstated removal order exists, Petitioner challenges only the legality of present
21 custody and the procedures used to impose or continue that custody.
22

23 16. Section 2243 requires expedited treatment. The Court must award the writ
24 or issue an order to show cause forthwith unless it appears from the Petition that the
25 detained person is not entitled to relief. If an order to show cause issues, Respondents
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1 must make a return within three days unless, for good cause, the Court allows additional
2 time not exceeding twenty days.

3 17. The Court may grant declaratory and injunctive relief ancillary to habeas
4 when necessary to preserve its jurisdiction and make habeas review meaningful. 28
5 U.S.C. § 1651(a).
6

7 VENUE

8
9 18. Venue is proper in the Southern District of California because Mr.
10 Fernandez Hernandez is detained at the Otay Mesa Detention Center in San Diego
11 County, and the San Diego Field Office of ICE exercises authority over custody,
12 transfer, release, and removal-related decisions affecting him. 28 U.S.C. § 1391(e).
13

14 19. Respondents exercise legal and practical custody over Mr. Fernandez
15 Hernandez through ICE and DHS. The Warden or Officer in Charge of Otay Mesa, or
16 of his current ICE detention facility, is his immediate physical custodian.
17

18 20. If Respondents contend that a transfer has changed the identity or location
19 of the immediate custodian, Petitioner requests preservation of this Court's jurisdiction
20 and transfer to the proper district rather than dismissal. 28 U.S.C. §§ 1404(a), 1406(a),
21 1631; *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).
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CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2242, AND 2243

21. Mr. Fernandez Hernandez is in custody for purposes of § 2241 because Respondents physically confine him and exercise legal control over his release, transfer, and continued detention.

22. Section 2242 requires a petition to allege facts concerning detention, the custodian, and the claimed basis for relief. This Petition identifies the custodial officials and alleges that continued detention is unlawful unless Respondents identify valid statutory authority and provide the custody process required by that authority and the Fifth Amendment.

23. Section 2243 requires Respondents to certify the true cause of detention. The return should identify the statute relied upon, the date custody began under that statute, the existence and status of any immigration proceeding or prior order, all custody determinations, and the forum available for review.

24. Emergency relief is necessary because detention is ongoing, counsel lacks the operative custody documents, transfer would impair access, and any removal attempt without adequate notice could prevent meaningful review of detention and access to the proper reviewing court.

PARTIES

25. Petitioner Adolfo Fernandez Hernandez is a native and citizen of Mexico. His Alien Registration Number is  He has lived and worked in the

1 Escondido area for approximately three decades, subject to the prior immigration
2 events described below.

3 26. Mr. Fernandez Hernandez is the person whose liberty is restrained. He
4 brings this action to challenge present civil immigration custody and to obtain release
5 or the custody process required by law.
6

7 27. Respondent Officer in Charge of Otay Mesa Detention Center, or the
8 Officer in Charge of Petitioner's current ICE detention facility, is Petitioner's
9 immediate physical custodian and is named in an official capacity.
10

11 28. Respondent San Diego Field Office Director, U.S. Immigration and
12 Customs Enforcement, exercises authority over local ICE custody, transfer, release,
13 and removal-related decisions affecting Petitioner and is named in an official capacity.
14

15 29. Respondent Senior Official Performing the Duties of Director of U.S.
16 Immigration and Customs Enforcement exercises authority over ICE detention policy
17 and the actions of subordinate ICE officials and is named in an official capacity.
18

19 30. Respondent Secretary of the U.S. Department of Homeland Security
20 exercises authority over DHS components, including ICE, and is named in an official
21 capacity.
22

23 31. Respondent U.S. Immigration and Customs Enforcement is the federal
24 agency responsible for the arrest, detention, custody classification, transfer, and release
25 decisions challenged here.
26
27

1 32. Respondent U.S. Department of Homeland Security is the federal
2 department with authority over ICE and the enforcement actions challenged here.
3 Respondents collectively hold Petitioner in custody and can provide the relief ordered
4 by this Court.
5

6 LEGAL FRAMEWORK

7 A. A Petition for Habeas Corpus Permits Review of the Legal Authority and 8 Process for Immigration Detention. 9

10 33. The traditional function of habeas corpus is to test the legality of physical
11 custody and secure release from unlawful detention. *Preiser v. Rodriguez*, 411 U.S.
12 475, 484 (1973). The writ is available to persons detained within the United States,
13 including immigration detainees. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004).
14

15 34. District courts may review whether immigration detention complies with
16 federal statutes and the Constitution. *Nadarajah*, 443 F.3d at 1075-76; *Flores-Torres*,
17 548 F.3d at 713.
18

19 35. Section 2243 directs the Court to award the writ or issue an order to show
20 cause forthwith and to require a prompt return stating the true cause of detention.
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B. If Detention is Governed by 8 U.S.C. § 1226(a), Petitioner May Seek Prompt Custody Redetermination.

36. Section 1226(a) authorizes arrest and detention pending a decision whether a noncitizen is to be removed, but also permits release on bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

37. Under the implementing regulations, an ICE officer makes the initial custody determination. A person detained under § 1226(a) may request review by an immigration judge. 8 C.F.R. §§ 1236.1(c)(8), 1236.1(d)(1), 1003.19(a)-(b).

38. The Supreme Court and Ninth Circuit have described the initial § 1226(a) bond process as available at the outset of detention. *Jennings*, 583 U.S. at 306; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022). This Petition seeks, at minimum, that initial process if § 1226(a) governs.

39. Section 1226(c) requires detention only for the categories specified by Congress. *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019). If Respondents invoke § 1226(c), they must identify the precise statutory subsection and the qualifying conviction or conduct on which they rely.

40. The presently available intake information identifies three DUI convictions but does not include certified conviction records, statutory citations, or dispositions establishing that any conviction falls within a § 1226(c) category. The Court should require the records rather than accept an unsupported label.

1 41. Although § 1226(e) limits review of discretionary custody judgments, it
2 does not bar habeas review of constitutional claims or questions of law, including
3 whether the correct detention statute and procedures were applied. *Jennings*, 583 U.S.
4 at 295; *Singh*, 638 F.3d at 1202.
5

6 **C. If Respondents Rely on Another Detention Statute, They Must Identify and**
7 **Satisfy That Statute.**
8

9 42. Sections 1225(b)(1) and 1225(b)(2) govern detention of certain applicants
10 for admission. *Jennings*, 583 U.S. at 287-89. If Respondents rely on § 1225(b), they
11 should identify the specific subsection, explain its application to Petitioner's
12 circumstances, and produce the charging and custody documents supporting that
13 position.
14

15 43. Section 1231 generally governs detention after an administratively final
16 removal order, including in some cases following reinstatement of a prior order. 8
17 U.S.C. § 1231(a). If Respondents rely on § 1231, they should produce the final or
18 reinstated order, any Form I-871 or comparable notice, proof of service, and the
19 custody-review record.
20
21

22 44. At this early stage, Petitioner does not allege that detention has exceeded
23 the presumptively reasonable six-month period discussed in *Zadvydas v. Davis*, 533
24 U.S. 678, 701 (2001). The present claim is narrower: Respondents have not disclosed
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1 the governing authority or demonstrated that they supplied the process required at the
2 outset of custody.

3 45. Because the available record does not disclose which statute Respondents
4 invoke, an expedited return and production order are necessary before the Court can
5 determine the full scope of relief.
6

7 **D. The Fifth Amendment Requires Fair Procedures Before Restriction of**
8 **Liberty is Continued Without Meaningful Review.**
9

10 46. The Fifth Amendment protects every person within the United States from
11 arbitrary deprivation of liberty. Freedom from physical restraint lies at the heart of the
12 liberty protected by due process. *Zadvydas*, 533 U.S. at 690; *United States v. Salerno*,
13 481 U.S. 739, 746 (1987).
14

15 47. Procedural due process is evaluated by balancing the private interest, the
16 risk of erroneous deprivation and value of additional safeguards, and the Government's
17 interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
18

19 48. At minimum, a person held in civil immigration custody must receive
20 notice of the legal and factual basis for custody and a meaningful opportunity to use
21 the review procedure supplied by the governing statute and regulations.
22

23 49. A lawful custody decision should consider current, individualized facts
24 and available alternatives to detention, including family sponsorship, reporting, address
25 requirements, and other conditions reasonably tailored to appearance and safety.
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1 50. The May 5, 2026 release order in the separate proceeding may not control
2 immigration custody, but it is relevant evidence that a judicial officer considered
3 release appropriate in the matter before that court. Respondents should produce and
4 consider the order rather than characterize it beyond the present record.
5

6 **E. A Temporary Restraining Order is Appropriate to Preserve Access, Records,**
7 **and Meaningful Review.**
8

9 51. A temporary restraining order is appropriate where the movant shows
10 likelihood of success, likely irreparable harm, a favorable balance of equities, and
11 consistency with the public interest. *Winter v. Natural Resources Defense Council,*
12 *Inc.*, 555 U.S. 7, 20 (2008).
13

14 52. Serious questions going to the merits may support relief when the balance
15 of hardships tips sharply in the movant's favor. *Alliance for the Wild Rockies v. Cottrell*,
16 632 F.3d 1127, 1131-35 (9th Cir. 2011).
17

18 53. Continued loss of liberty, disruption of family support, interruption of a
19 child's specialized care, and impairment of confidential access to counsel are
20 irreparable harms. Transfer outside this District would make it materially harder to
21 obtain records, declarations, and timely legal review.
22

23 54. Petitioner seeks narrow status-quo relief: no transfer outside this District
24 without advance notice and leave of Court, preservation of records, and reasonable
25 advance notice of any removal attempt so counsel may seek relief in the proper forum.
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1 55. No security should be required under Rule 65(c), or only nominal security
2 should be required, because the requested relief protects constitutional rights and
3 habeas jurisdiction and causes no monetary injury to Respondents.
4

5 **FACTUAL BACKGROUND**

6 **A. Mr. Fernandez Hernandez Has Significant Community Ties in the United** 7 **States.**

8 56. Mr. Fernandez Hernandez is a native and citizen of Mexico. He was born
9 in 1977. Consistent with federal privacy rules, this Petition states only the year of birth.
10

11 57. In or about 1994, Mr. Fernandez Hernandez first entered the United States.

12 58. Mr. Fernandez Hernandez reports that immigration authorities
13 apprehended and removed him after that first entry. He returned approximately two
14 weeks later.
15

16 59. At an unknown later date, ICE detained him again and he signed a
17 voluntary departure agreement. He reports that he returned to the United States a few
18 weeks later by crossing through the mountains.
19

20 60. Except for the brief periods associated with those prior immigration
21 events, Mr. Fernandez Hernandez has lived in the Escondido area for approximately
22 three decades and has worked in construction.
23

24 61. Counsel is working to obtain the official immigration file. This Petition
25 does not assume that the reported removal, voluntary departure, or later entries created
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27

1 or did not create a currently enforceable order; Respondents should identify the
2 operative documents.

3 **B. Mr. Fernandez Hernandez Has Substantial Family, Caregiving, and**
4 **Community Ties.**

5 62. Mr. Fernandez Hernandez and his partner have maintained a relationship
6 for approximately 30 years.

8 63. They have five United States citizen children, currently approximately
9 ages 19, 17, 11, 6, and 5. The two youngest were born in Escondido in 2020 and 2021.
10 One child is an adult and four are minors.

12 64. Mr. Fernandez Hernandez is the household's reported sole wage earner.
13 His partner does not currently work outside the home, and the family has depended on
14 his construction income for housing and daily expenses.

16 65. His partner, Maria Guadalupe, and his adult daughter, Giselle Fernandez,
17 are available to serve as sponsors and outside contacts. His partner states that she and
18 the children would remain in the United States rather than relocate to Mexico because
19 of safety concerns, Mr. Fernandez Hernandez's reported prior experience with danger
20 in Mexico City, and the children's need for stability and access to care.

22 66. One minor child has autism and, according to Mr. Fernandez Hernandez,
23 requires ongoing medical care, prescribed medication, therapy, mental-health support,
24 and special-education services. Mr. Fernandez Hernandez reports that the child has
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1 experienced a serious prior mental-health crisis and fears that relocation to Mexico
2 would disrupt treatment.

3 **C. The Presently Known Criminal History Consists of Three DUI Cases, But the**
4 **Official Records Are Not Yet Available.**
5

6 67. Upon information and belief, Mr. Fernandez Hernandez has three DUI
7 cases. The first, reportedly a misdemeanor, occurred in 1997. He does not recall the
8 dates or dispositions of the other two.
9

10 68. DUI offenses are serious, and Petitioner does not ask the Court or
11 Respondents to disregard them.
12

13 69. The certified records have not yet been obtained, and the foregoing details
14 are based on Mr. Fernandez Hernandez's present recollection. Petitioner therefore does
15 not make unsupported assertions about the statutory classification or precise
16 dispositions of the convictions. The official records should be produced and evaluated
17 through the custody process that applies.
18

19 **D. Mr. Fernandez Hernandez Was Detained on May 4, 2026, Remained in**
20 **Federal Custody After a Release Order in a Separate Matter, and Was**
21 **Transferred to Otay Mesa on June 5, 2026.**
22

23 70. On May 4, 2026, Mr. Fernandez Hernandez left his home to go to work.
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1 71. According to his account, agents identified as ICE agents approached as
2 he entered his truck, pointed firearms at him, removed him from the vehicle, and took
3 him into custody.
4

5 72. The agents transported him to the Metropolitan Correctional Center in San
6 Diego.
7

8 73. On May 5, 2026, Mr. Fernandez Hernandez appeared before a judge. He
9 reports that the judge ordered his release in the matter before that court. Counsel is
10 obtaining the docket, minute order, and any written release conditions.
11

12 74. The present record does not establish whether the May 5 Order addressed
13 only the separate proceeding or also affected immigration custody. Mr. Fernandez
14 Hernandez nevertheless remained continuously confined.
15

16 75. On June 5, 2026, he was transferred to the Otay Mesa Detention Center,
17 where he remains detained.
18

19 76. As of filing, no immigration court date has been scheduled according to
20 the information available to counsel, and counsel has not confirmed that DHS has filed
21 a new Notice to Appear with the immigration court.
22

23 77. Counsel has not yet obtained an ICE custody determination, a bond
24 decision, a reinstatement order, an operative final removal order, a notice of revocation,
25 or any other document explaining the statutory basis for detention.
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1 78. Counsel also has not confirmed that Mr. Fernandez Hernandez has
2 received a bond or custody hearing before an immigration judge or another neutral
3 decisionmaker.

4
5 **E. Family Sponsorship, Specialized-Care Needs, and Less Restrictive Conditions**
6 **Support Release.**

7 79. Mr. Fernandez Hernandez has a stable family residence in Escondido, a
8 partner of approximately 30 years, five U.S. citizen children, two identified family
9 sponsors, and compelling caregiving responsibilities involving a child with autism and
10 ongoing treatment needs.
11

12
13 80. Reasonable conditions are available to address appearance and safety
14 concerns, including regular reporting, address verification, travel restrictions,
15 telephonic or in-person check-ins, and other conditions tailored to any documented
16 risk.
17

18 81. His detention has deprived the household of its reported sole wage earner
19 and has caused immediate financial and emotional hardship to his partner and children.
20 The family reports that the two youngest children now need therapy, have not been
21 eating regularly, have shown marked behavioral changes, and frequently cry and ask
22 for their father.
23
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25 82. One minor child depends on specialized medical care, prescribed
26 medication, therapy, mental-health support, and special-education services, and the
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1 family fears that separation or relocation would disrupt that care. Mr. Fernandez
2 Hernandez's detention and transfer also impair counsel's ability to obtain his
3 immigration and criminal records, investigate potential relief, prepare sponsor
4 evidence, and communicate confidentially with him.

6 **F. Respondents Control the Records Necessary to Determine Whether Detention**
7 **is Lawful.**

9 83. Respondents possess or control the arrest records, immigration file,
10 custody determinations, charging documents, prior-order records, transfer records,
11 criminal-history records relied upon, and communications identifying the asserted
12 detention authority.

14 84. The uncertainty in the present record should be resolved through an
15 expedited return and production of the underlying documents, not through continued
16 detention under an undisclosed theory.

18 85. Because physical custody continues and transfer or removal-related action
19 may occur without adequate notice, judicial review is urgent.

21 **ARGUMENT**

22 **I. The Court Should Issue the Writ or an Order to Show Cause Forthwith and**
23 **Require Respondents to Identify the True Cause of Detention.**

25 86. The Petition states a substantial habeas claim. Mr. Fernandez Hernandez
26 is physically detained by federal immigration officials, yet the presently available
27

1 record does not disclose the statute authorizing custody or the review process he has
2 received.

3 87. Section 2243 requires prompt action. Respondents should be ordered
4 within three days to identify the precise statutory authority for custody, the date custody
5 began under that authority, the status of any immigration proceeding, and the forum
6 available for custody review.
7

8 88. Respondents should produce the Notice to Appear, warrant of arrest, Form
9 I-286 or other custody determination, bond records, any Form I-871 or reinstatement
10 decision, any final removal order, the May 5 release order in their possession, risk
11 assessments, transfer records, and all documents relied upon to continue detention.
12

13 89. Without those materials, Petitioner cannot test whether Respondents
14 selected the correct statute, whether a mandatory-detention provision applies, or
15 whether the procedures required by the governing statute were provided.
16

17 90. An expedited return will permit the parties and Court to narrow the
18 dispute. Continued custody without disclosure, however, cannot substitute for a legally
19 sufficient return.
20

21
22 **II. If § 1226(a) Governs, Respondents Must Make Prompt Custody**
23 **Redetermination Available.**
24

25 91. Section 1226(a) permits detention pending a removal decision but also
26 authorizes release on bond or conditional parole.
27

1 92. The regulations permit a detained person to request an initial bond
2 redetermination before an immigration judge. 8 C.F.R. §§ 1236.1(d)(1), 1003.19(a)-
3 (b). The absence of a scheduled merits hearing does not justify withholding the custody
4 forum supplied by those regulations.
5

6 93. Based on information presently available, Mr. Fernandez Hernandez has
7 not received an immigration bond or custody hearing and has not received written
8 notice identifying a tribunal with jurisdiction to conduct one.
9

10 94. A prompt hearing would allow consideration of the complete DUI records
11 and reported completion of court-imposed requirements, the circumstances of the May
12 5 release order, his three decades of residence, construction employment, family
13 sponsorship, five U.S. citizen children, the specialized needs of one minor child, the
14 distress reported among the two youngest children, and available conditions of release.
15
16

17 95. That individualized process is the proper mechanism to assess danger and
18 flight risk. The Petition does not ask the Court to make those discretionary findings on
19 an incomplete record.
20

21 96. If Respondents rely on § 1226(a), the Court should order them to facilitate
22 an immediate custody redetermination and release Petitioner unless the detention
23 decision is lawfully sustained through that process.
24

25 //

26 //

III. The Present Record Does Not Establish Mandatory Detention Under § 1226(c).

97. Section 1226(c) applies only to specified categories. A conclusory assertion of mandatory detention is not enough; Respondents must identify the statutory predicate and the conviction records on which they rely.

98. The intake reflects three DUI convictions but does not identify the criminal statutes, dates, dispositions, or immigration classifications. On this record, the Court cannot determine that § 1226(c) applies.

99. Respondents may not avoid a § 1226(a) custody hearing merely by applying a mandatory-detention label without producing the facts and law supporting that label.

100. Whether the correct statutory category was selected is a legal question reviewable in habeas notwithstanding § 1226(e). *Jennings*, 583 U.S. at 295; *Singh*, 638 F.3d at 1202.

IV. If Respondents Rely on § 1225(b), § 1231, or Reinstatement, They Must Produce the Operative Documents and Provide the Process Required.

101. If Respondents claim § 1225(b) authority, they should identify the subsection and explain why that provision governs a person apprehended in the interior after approximately three decades of residence, rather than relying on a generalized reference to inadmissibility.

1 102. If Respondents claim § 1231 authority, they should produce the
2 administratively final or reinstated removal order, proof of service, the date the removal
3 period began, the custody determination, and any review available under the applicable
4 regulations.
5

6 103. Petitioner does not presently assert a six-month Zadvydas claim.
7 Production is nonetheless essential because the existence and status of a prior order
8 determine the governing statute and available procedures.
9

10 104. Regardless of the statute selected, due process requires Respondents to
11 disclose the basis for custody and permit Petitioner to use the review mechanism that
12 law provides.
13

14 **V. Detention Without Notice of the Governing Authority or a Meaningful Custody**
15 **Process Violates Procedural Due Process.**
16

17 105. The private interest is exceptionally weighty: freedom from physical
18 confinement, continued family life, the ability to support four minor U.S. citizen
19 children, and the ability to help maintain specialized medical, therapeutic, mental-
20 health, and educational care for a child with autism.
21

22 106. The risk of error is high because counsel does not have the charging
23 document, custody decision, conviction records, prior-order record, or written
24 explanation identifying the detention statute.
25
26
27

1 107. The value of additional safeguards is substantial. Disclosure and a prompt
2 neutral custody review would determine whether Respondents selected the proper
3 statute and whether release conditions can address any current risk.
4

5 108. The Government has a legitimate interest in enforcing immigration law
6 and ensuring appearance and public safety. That interest is served, not impaired, by
7 using the statutory custody procedures and making decisions on a complete,
8 individualized record.
9

10 109. The present record does not justify categorical conclusions that Petitioner
11 is either dangerous or risk-free. It does, however, show substantial family ties, reported
12 completion of court-imposed DUI requirements, a child with specialized care needs,
13 and significant distress among the two youngest children. Those facts justify a prompt,
14 lawful process in which current evidence and alternatives can be evaluated.
15
16

17 110. If Respondents have detained Mr. Fernandez Hernandez without notice of
18 the governing authority and without access to the review procedure required by that
19 authority, the detention violates the Fifth Amendment under the *Mathews* framework.
20

21 **VI. Custody is Unlawful to the Extent Respondents Cannot Identify Valid**
22 **Statutory Authority or Compliance with Required Procedure.**
23

24 111. Habeas relief is appropriate when a person is held in custody in violation
25 of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).
26
27

1 112. Civil immigration detention cannot rest on an undisclosed administrative
2 label. Respondents must connect the facts, the governing statute, and the procedures
3 actually provided.
4

5 113. Past immigration events and DUI convictions are relevant to custody, but
6 they do not excuse Respondents from identifying the source of detention authority and
7 providing the review required by that source.
8

9 114. If Respondents cannot make that showing, the Court should order release
10 under reasonable conditions tailored to appearance and safety.
11

12 **VII. A Temporary Restraining Order is Necessary to Preserve Meaningful Review**
13 **and Counsel Access.**

14 115. Petitioner is likely to succeed, or at minimum raises serious questions,
15 because Respondents have not disclosed the legal basis for custody or the process
16 supplied under that basis.
17

18 116. Irreparable harm is immediate. Each day of physical confinement is a loss
19 of liberty, the family continues to experience the loss of its reported sole wage earner,
20 one child faces disruption of specialized care, and the two youngest children reportedly
21 are experiencing significant emotional and behavioral distress.
22

23 117. Transfer outside this District would impair attorney access, family
24 communication, record gathering, and the efficient adjudication of this Petition.
25
26
27

1 118. The balance of equities and public interest favor a narrow order preserving
2 the status quo while Respondents make an expedited return. The public has no interest
3 in detention under an undisclosed or incorrectly applied statute.
4

5 119. The Court should prohibit transfer outside this District without advance
6 notice and leave of Court, require preservation of records, and require reasonable
7 advance notice of any removal attempt so Petitioner may seek relief in the proper
8 forum.
9

10 120. No Rule 65(c) bond should be required, or only nominal security should
11 be imposed.
12

13 CAUSES OF ACTION

14 COUNT ONE

15 Habeas Corpus Under 28 U.S.C. § 2241 - Custody Without Disclosed Lawful 16 Authority or Required Process

17 121. Petitioner repeats and incorporates each preceding paragraph as if fully
18 set forth herein.
19

20 122. Petitioner is in federal immigration custody within the meaning of 28
21 U.S.C. § 2241.
22

23 123. Respondents must identify valid statutory authority for that custody and
24 comply with the procedures required by the governing statute, regulations, and
25 Constitution.
26
27

1 124. The presently available record does not identify the statutory basis,
2 operative custody documents, or meaningful review provided to Petitioner.

3 125. The Court should issue the writ, order release if Respondents cannot
4 establish lawful custody, or issue an expedited Order to Show Cause and production
5 order.
6

7 **COUNT TWO**

8
9 **Violation of 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 1236.1 and 1003.19, If Applicable**

10 **- Failure to Provide Custody Redetermination**

11 126. Petitioner repeats and incorporates each preceding paragraph as if fully
12 set forth herein.
13

14 127. If Respondents detain Petitioner under § 1226(a), he may seek review of
15 the initial custody determination before an immigration judge.
16

17 128. Based on the information presently available, Petitioner has not received
18 that review and has not been given the documents necessary to invoke it effectively.
19

20 129. The Court should order Respondents to provide or facilitate a prompt
21 custody redetermination and release Petitioner unless detention is lawfully sustained
22 through the applicable process.
23

24 //

25 //

26 //
27

COUNT THREE

**Violation of the Fifth Amendment - Detention Without Adequate Notice or
Meaningful Custody Review, U.S. Const. Amend. V.**

130. Petitioner repeats and incorporates each preceding paragraph as if fully set forth herein.

131. The Fifth Amendment prohibits deprivation of physical liberty without due process of law.

132. Detaining Petitioner without notice of the statutory and factual basis for custody, access to the operative records, or a meaningful opportunity to obtain review creates an unacceptably high risk of erroneous deprivation.

133. The *Mathews* factors favor prompt disclosure and a neutral custody process tailored to the statute Respondents invoke.

134. The Court should declare the detention unconstitutional unless Respondents promptly provide lawful process and should order release or other appropriate habeas and equitable relief.

COUNT FOUR

**All Writs Act, Rule 65, and Habeas Authority - Preservation of Jurisdiction,
Counsel Access, and Records**

135. Petitioner repeats and incorporates each preceding paragraph as if fully set forth herein.

1 136. The *All Writs Act* authorizes this Court to issue orders 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.

4
5 137. Transfer outside this District before the legality of custody is reviewed
6 would impair counsel access and unnecessarily complicate habeas adjudication.

7
8 138. Destruction or non-preservation of custody and prior-order records would
9 impair meaningful review, and removal-related action without reasonable notice could
10 prevent Petitioner from seeking relief in the proper forum.

11
12 139. The Court should preserve the status quo, require advance notice, and
13 order preservation of the relevant records pending further order.

14 **PETITION FOR A TEMPORARY RESTRAINING ORDER**

15
16 140. Petitioner repeats and incorporates each preceding paragraph as if fully
17 set forth herein.

18
19 141. Petitioner respectfully moves this Court for a temporary restraining order
20 pending its adjudication of this Petition. Specifically, Petitioner requests the Court to
21 order Respondents-Defendants to cease any ongoing actions and refrain from taking
22 any additional actions toward effectuating Petitioner-Plaintiff's removal from the
23 United States until the Court has adjudicated this petition and complaint.

24
25 142. Petitioner does not challenge the order of removal that was entered against
26 him or U.S. Immigration and Customs Enforcement's authority to remove him. Instead,
27

1 he challenges the processes ICE has employed and continues to employ in its
2 effectuation of the removal order and removal from the United States while Petitioner
3 has a pending credible fear interview review before an Immigration Judge, and a
4 potential reconsideration request before USCIS. *See Vasquez v. Wolf*, 830 F. App'x 556
5 (9th Cir. 2020) (finding, as cognizable, a challenge to the manner of removal employed
6 by the government).
7

8
9 143. On June 18, 2026, an Officer found Petitioner to not have established
10 credible fear of persecution on account of a protected ground. Petitioner believes that
11 this is an error and requested an Immigration Judge review of the credible fear
12 interview. This request was filed on June 25, 2026.
13

14 144. The standards for granting a TRO and a preliminary injunction pursuant
15 to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests
16 a TRO that enjoins governmental action, the party must demonstrate that “he is likely
17 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
18 the preliminary relief, that the balance of equities tip in his favor, and that an injunction
19 is in the public interest.” *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7,
20 20 (2008). Here, because Petitioner meets both the irreparable harm and likelihood of
21 success prongs, and because the requested relief is not overly burdensome on
22 Respondents-Defendants, he merits such relief.
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1 145. When the government has promulgated “[r]egulations with the force and
2 effect of law,” those regulations “supplement the bare bones” of federal statutes, such
3 that the agencies are bound to follow their own “existing valid regulations.” *United*
4 *States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954)¹; *see also Montilla*
5 *v. I.N.S.*, 926 F.2d 162, 166-167 (2d Cir. 1991). Pursuant to the *Accardi* doctrine,
6 Respondents-Defendants are bound to apply and uphold the rules and regulations
7 contained in the Immigration Regulations regarding Credible Fear Determinations. *See*
8 8 CFR § 208.30(g)(i). They are further restricted from taking any actions that are
9 arbitrary, capricious, an abuse of discretion, or not in accordance with law.
10 Respondents-Defendants’ failure to abide by the Credible Fear Interview
11 Reconsideration Rules to allow Petitioner to stay in the United States while the decision
12 is being made reflects an abuse of discretion by Respondent-Defendants. *See* 8 CFR §
13 208.30(g)(i).

14 146. Petitioner's removal would cause irreparable harm by precluding him from
15 pursuing hi asylum claim, a harm that cannot be remedied by monetary damages or
16 other post-removal relief. USCS Fed. Rules Civ. Proc. R. 65. Courts have consistently
17 held that the loss of the opportunity to seek asylum constitutes irreparable harm. *E. Bay*
18 *Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 864 (N.D. Cal. 2018) (declaring
19 harms that asylum seekers face such as “high rates of violence and harassment while
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1 waiting to enter, as well as the threat of deportation to the countries from which they
2 have escaped” as both irreparable and likely to occur).

3 147. Petitioner is likely to win on the merits of his claim that the government’s
4 detention of him and their revocation of his order of supervision is unlawful. *See*
5 *Abduraimov v. Andrews*, No. 1:25-cv-00843-EPG-HC, 2025 WL 2912307 (E.D. Cal.
6 Oct. 14, 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017)). Only
7
8 individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis*, 533
9 U.S. 678, 693 (2001). Petitioner is neither.

10
11 148. Petitioner merits a TRO because a TRO would not significantly impede
12 the government or public interest. In inquiries concerning the government’s efforts to
13 remove a noncitizen, the government and public interest factors merge as the
14 government is both the opposing litigant and public interest representative. *See Nken*
15 *v. Holder*, 556 U.S. 418, 435 (2009).

16
17 149. Here, temporarily restraining the Respondents-Defendants from
18 effectuating Petitioner’s removal would not be detrimental to the government’s
19 interests because the requested relief is temporary, narrowly tailored, and will only last
20 pending the instant motion. Rather, an order for the maintenance of the status quo may
21 simply enable Respondents-Defendants to fully brief the Petition without the time
22 pressure of a looming removal date.
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1 150. The balance of equities and public interest favor granting the TRO, as the
2 harm to Petitioner from removal outweighs any potential harm to Respondents from
3 maintaining the status quo during the pendency of the review and reconsideration
4 process. USCIS Fed. Rules Civ. Proc. R. 65. The requested TRO seeks to maintain the
5 status quo while and Immigration Judge and potentially USCIS consider Petitioner's
6 requests, ensuring that his legal rights are not rendered moot by premature removal.
7
8
9 USCS § 1252.

10 151. The Court should not require Petitioner to provide security prior to issuing
11 a temporary restraining order. Federal Rule of Civil Procedure 65(c) provides that
12 “[t]he court may issue a preliminary injunction or a temporary restraining order only if
13 the movant gives security in an amount that the court considers proper to pay the costs
14 and damages sustained by any party found to have been wrongfully enjoined or
15 restrained.” However, “Rule 65(c) invests the district court with discretion as to the
16 amount of security required, if any.” *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th
17 Cir. 2003) (internal quotation marks and citation omitted). District courts routinely
18 exercise this discretion to require no security in cases brought by indigent and/or
19 incarcerated people. See, e.g., *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal.
20 1983) (state prisoners); *Orantes– Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42
21 (C.D. Cal. 1982) (detained immigrants).

1 152. Here, due to Petitioner's detention, he respectfully requests the Court
2 exercise its discretion and issue a temporary restraining order without requiring him to
3 give security. In the alternative, he respectfully requests the Court set a low security
4 amount given his inability to work and lack of financial support here in the United
5 States.
6

7 153. Due to the expedited nature of removal proceedings, which substantially
8 limit the opportunity for meaningful judicial and administrative review, temporary
9 injunctive relief is necessary to preserve the status quo. Absent a temporary restraining
10 order, Respondent faces imminent removal before he can complete the administrative
11 review process, including judicial review of the negative Credible Fear Interview
12 determination and, if necessary, a request for reconsideration should that determination
13 be affirmed. Removal prior to exhaustion of these administrative remedies would
14 effectively deprive Respondent of the opportunity to obtain meaningful review and
15 would result in irreparable harm.
16
17
18

19 **PRAYER FOR RELIEF**
20

21 WHEREFORE, Petitioner respectfully requests that this Court grant the following
22 relief:
23

- 24 (1) Assume jurisdiction over this matter;
25 (2) Issue an Order to Show Cause requiring Respondents to show cause within three
26 days why the writ should not be granted;
27

- (3) Order Respondents to identify the precise statutory authority for custody and the date custody began under that authority;
- (4) Order Respondents to produce the charging documents, custody determinations, bond records, prior-order or reinstatement records, risk assessments, transfer records, and other evidence relied upon to continue detention;
- (5) Issue a writ of habeas corpus ordering Petitioner released under reasonable conditions if Respondents cannot establish lawful authority and compliance with required procedure;
- (6) If detention is governed by 8 U.S.C. § 1226(a), order Respondents to provide or facilitate a prompt custody redetermination before an immigration judge under the applicable regulations;
- (7) If Respondents invoke another detention statute, order them to provide the notice, records, and review required by that statute and the Fifth Amendment;
- (8) Declare that continued detention without disclosure of the governing authority and meaningful access to the required custody process violates 28 U.S.C. § 2241 and the Fifth Amendment;
- (9) Issue a Temporary Restraining Order prohibiting transfer of Petitioner outside this District, or to a location that would materially frustrate counsel access or this Court's jurisdiction, without advance notice to counsel and leave of Court;

- 1 (10) Require Respondents to provide reasonable advance notice, not less than 72
2 hours absent a genuine emergency, before any removal attempt so counsel may
3 seek relief in the proper forum;
4
5 (11) Require Respondents to preserve all custody, charging, removal, prior-order,
6 criminal-history, release, transfer, and communications records concerning
7 Petitioner;
8
9 (12) Set no bond under Rule 65(c), or only nominal bond, because the requested
10 relief protects constitutional rights and imposes no monetary harm on
11 Respondents;
12
13 (13) Grant Petitioner's request for a Temporary Restraining Order;
14 (14) Grant such other and further relief as the Court deems just, equitable, and proper.
15

16
17 Dated: June 25, 2026

Respectfully submitted,

18
19
20 //s// John Wells

John Wells

Attorney for Petitioner

Adolfo Fernandez Hernandez
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