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

SANTO FERNANDO NUNEZ-BARON,

Petitioner,

v.

Christopher LaROSE, Warden of Otay Mesa

Detention Center;

Markwayne MULLIN, Secretary, U.S.

Department of Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the

United States, U.S. Department of Justice.

Respondents

Case No.: '26CV3822 AGS JLB



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

1 1. Petitioner, Santo Fernando Nunez-Baron, petitions this Court for a writ of habeas
2 corpus pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration
3 detention and alleges as follows:

4 **INTRODUCTION**

5 2. Petitioner, Santo Fernando Nunez-Baron, is a native and citizen of Venezuela currently
6 detained at the Otay Mesa Detention Center in San Diego, California.

7 3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his
8 continued immigration detention following his re-arrest in the interior of the United States after
9 nearly two years of authorized liberty in the community.

10 4. Petitioner entered the United States without inspection on or about August 18, 2023,
11 and was subsequently released into the United States on or about August 26, 2023, pursuant to an
12 Order of Release on Recognizance (Form I-220A) under Section 236 of the Immigration and
13 Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations.
14 Following that grant, Petitioner was released into the United States and permitted to reside at
15 liberty in the community.

16 5. Petitioner remained at liberty for approximately twenty-two months following his
17 release. During that time, he complied with his immigration-related obligations, resided openly
18 in the community, and Respondents never alleged that he posed a danger to the community or a
19 risk of flight warranting detention.

20 6. On June 12, 2026, while working as a delivery driver and responding to a delivery
21 request at Camp Pendleton in Oceanside, California, Petitioner was taken into custody by
22 immigration authorities and subsequently transferred to the Otay Mesa Detention Center.

23 7. At no point before revoking Petitioner's previously granted liberty did Respondents
24 provide him with notice, an opportunity to be heard, or an individualized custody determination
25 before a neutral decisionmaker. Nor have Respondents otherwise provided Petitioner with
26 constitutionally adequate custody review following his re-detention.

1 8. Respondents' continued detention of Petitioner is unlawful. Once the Government
2 exercised its discretion to release Petitioner into the United States pursuant to Form I-220A and
3 permitted him to reside at liberty in the community for nearly two years, Petitioner acquired
4 substantial liberty interests protected by the Due Process Clause of the Fifth Amendment.

5 9. Although the Government may seek to detain Petitioner based upon subsequent events,
6 it may not summarily revoke previously granted liberty without constitutionally adequate
7 process. The Constitution does not permit the Government to detain first and justify later.

8 10. By continuing to detain Petitioner without first providing constitutionally adequate
9 process or an individualized custody determination, Respondents have deprived Petitioner of his
10 liberty in violation of the Due Process Clause of the Fifth Amendment.

11 11. Absent intervention by this Court, Petitioner will remain detained without any neutral
12 adjudicator reviewing whether the Government may constitutionally revoke the liberty it
13 previously granted. Petitioner therefore respectfully requests that this Court declare his detention
14 unlawful and order his immediate release or, in the alternative, require Respondents to provide a
15 constitutionally adequate custody hearing at which the Government bears the burden of proving
16 by clear and convincing evidence that continued detention is justified.

17 CUSTODY

18 12. Petitioner is currently in the legal and physical custody of Respondents and is
19 detained at the Otay Mesa Detention Center in San Diego, California, within the jurisdiction of
20 this Court.

21 JURISDICTION AND VENUE

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

26 14. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
27 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody

1 under the United States' color of authority, and such custody violates the Constitution, laws, or
2 treaties of the United States. This Court's jurisdiction is not limited by a petitioner's nationality,
3 status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747
4 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends.
5 V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), and 2241 (habeas corpus).

6 15. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's
7 detention. Federal district courts possess broad authority to issue writs of habeas corpus when a
8 person is held "in custody in violation of the Constitution or laws or treaties of the United States"
9 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that
10 survived the REAL ID Act's jurisdictional restrictions.

11 16. Because Petitioner seeks the traditional habeas remedy of release from allegedly
12 unlawful detention rather than additional administrative review of his underlying claims, his
13 petition presents precisely the type of threshold legality-of-detention question that § 2241 was
14 designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v.*
15 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12). A prior habeas
16 petition challenging Petitioner's detention was filed in another jurisdiction. This petition is filed
17 in a different district and challenges Petitioner's current detention under a materially different
18 factual and legal posture.

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

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

3
PARTIES

4 19. Petitioner, Santo Fernando Nunez-Baron, is a native and citizen of Venezuela
5 currently detained at the Otay Mesa Detention Center in San Diego, California.

6 20. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in
7 San Diego, California, is Petitioner's immediate custodian, and is responsible for Petitioner's
8 confinement.

9 21. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland
10 Security (DHS).

11 22. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
12 Enforcement (ICE).

13 23. Respondent Todd Blanche is the Acting Attorney General of the United States and
14 the head of the U.S. Department of Justice (DOJ).

15 24. All Respondents are named in their official capacities.

16
STATEMENT OF FACTS

17 25. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego,
18 California. Petitioner is a native and citizen of Venezuela who entered the United States without
19 inspection on or about August 18, 2023, and was subsequently released into the United States on
20 or about August 26, 2023.

21 26. On August 26, 2023, Respondents exercised their discretion to release Petitioner from
22 immigration custody pursuant to an Order of Release on Recognizance (Form I-220A) under
23 Section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of
24 the Code of Federal Regulations. (*Ex. 1.*) Following that release, Petitioner was permitted to
25 reside at liberty in the United States while his immigration proceedings remained pending.

26 27. Following his release, Petitioner resided openly in the community for approximately
27 twenty-two months. During that time, Petitioner complied with his immigration-related

1 obligations, Respondents never revoked his release, never alleged that he violated the conditions
2 of his release, and never alleged that he posed a danger to the community or a risk of flight
3 warranting detention.

4 28. On June 12, 2026, while working as a delivery driver and responding to a delivery
5 request at Camp Pendleton in Oceanside, California, Petitioner was taken into custody by
6 immigration authorities.

7 29. Following that arrest, Immigration and Customs Enforcement took Petitioner into
8 custody and transferred him to the Otay Mesa Detention Center. Respondents did not provide
9 Petitioner with any notice, opportunity to be heard, or individualized custody determination
10 before revoking the liberty previously granted to him under Form I-220A.

11 30. At no point following Petitioner's re-detention have Respondents provided Petitioner
12 with an individualized custody hearing or any constitutionally adequate custody review.

13 31. Despite having previously determined that Petitioner could safely be released into the
14 community and permitting him to remain at liberty for nearly two years, Respondents continue to
15 detain Petitioner without any individualized determination that he presently poses a danger to the
16 community, a risk of flight, or that continued detention is otherwise necessary.

17 32. Respondents have not identified any changed circumstances or made any
18 individualized findings justifying the summary revocation of Petitioner's previously granted
19 liberty.

20 33. By revoking Petitioner's liberty and continuing his detention without constitutionally
21 adequate process or an individualized custody determination, Respondents have deprived
22 Petitioner of his liberty in violation of the Due Process Clause of the Fifth Amendment.

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

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

2 (emphasis added).

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

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

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 37. In habeas corpus proceedings, exhaustion of administrative remedies is prudential,
17 not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
18 prudential exhaustion where “administrative remedies are inadequate or not efficacious, pursuit
19 of administrative remedies would be a futile gesture, irreparable injury will result, or the
20 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
21 (9th Cir. 2004)). Here, exhaustion should be excused because administrative remedies are (1)
22 futile and (2) Petitioner's continued detention results in irreparable harm.

23 38. Exhaustion would be futile because, to the extent DHS treats Petitioner as subject to
24 detention under 8 U.S.C. § 1225(b), Immigration Judges lack jurisdiction to conduct custody
25 redetermination hearings for individuals DHS classifies as subject to § 235(b) or otherwise treats
26 as applicants for admission under that provision. See 8 C.F.R. § 1003.19(h)(2)(i)(B). In this
27 District, Immigration Judges routinely state on the record that they lack authority to review
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1 custody where DHS invokes § 235(b). If Petitioner were to request a bond hearing, DHS would
 2 rely on that statutory classification to block review, and the Immigration Judge would be
 3 required to decline jurisdiction. Because no administrative mechanism exists to obtain custody
 4 review under DHS's asserted detention authority, any attempt to exhaust administrative remedies
 5 would be futile.

6 39. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his
 7 detention violates the Constitution and the INA. Constitutional claims and pure questions of law
 8 —such as whether DHS has statutory authority to detain Petitioner and whether detention under
 9 § 1225(b) is lawful in these circumstances—fall outside the agency's adjudicatory competence.
 10 See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
 11 (exhaustion excused where the agency “does not have jurisdiction to review” constitutional
 12 claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
 13 There is no administrative forum that can determine whether DHS may lawfully invoke §
 14 1225(b)(2) to detain Petitioner under these circumstances.

15 40. Petitioner suffers irreparable harm for each additional day he remains unlawfully
 16 detained. Even brief periods of unlawful civil detention inflict significant deprivation of liberty
 17 and emotional distress. Petitioner's continued detention following approximately twenty-two
 18 months of authorized liberty in the community further magnifies these ongoing harms. Courts
 19 routinely excuse exhaustion where unlawful detention results in irreparable injury. Petitioner's
 20 ongoing detention therefore warrants waiver of prudential exhaustion.

21 LEGAL FRAMEWORK

22 41. The Immigration and Nationality Act distinguishes between detention at the time of
 23 entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225,
 24 1226.

25 42. Section 235 governs inspection-stage detention of individuals encountered at or near
 26 the time of entry while their admissibility is being determined. By contrast, Section 236(a)
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1 governs the arrest and detention of noncitizens who have already entered the United States and
2 are later taken into custody pending removal proceedings.

3 43. Once the Department of Homeland Security releases a noncitizen into the United
4 States pursuant to its custody authority under 8 U.S.C. § 1226 and permits that individual to
5 reside at liberty in the community for a prolonged period of time, the inspection-stage detention
6 framework no longer applies in the same manner as it would to a noncitizen detained
7 immediately upon entry. Any subsequent detention following a later interior arrest must comply
8 with the constitutional requirements governing civil immigration detention, including
9 individualized custody review consistent with due process.

10 44. Federal courts have repeatedly recognized that individuals who were released from
11 custody and later re-detained in the interior of the United States are not subject to mandatory
12 detention under § 1225(b), but are instead entitled to custody review under § 1226(a).

13 45. The Due Process Clause protects all persons within the United States from arbitrary
14 detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Freedom from physical restraint lies
15 at the core of the liberty protected by the Constitution.

16 46. Immigration detention is civil in nature and is permissible only when justified by
17 legitimate governmental interests, such as ensuring appearance at proceedings or protecting the
18 community. *Id.* at 690–91.

19 47. Where the government has previously released a noncitizen from custody and
20 permitted him to reside at liberty in the community, that release reflects a determination that
21 detention was not necessary to serve the purposes of civil immigration detention. Once that
22 liberty has been granted, continued detention must comport with the requirements of due
23 process. The existence of any subsequent arrest does not relieve Respondents of their
24 constitutional obligation to provide constitutionally adequate process and an individualized
25 custody determination before a neutral decisionmaker. Continued detention without any
26 individualized determination and without constitutionally adequate process violates the Due
27 Process Clause.

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

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

7 **CLAIM FOR RELIEF**

8 **COUNT 1**

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

10 50. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, all
11 preceding paragraphs.

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

17 52. Petitioner entered the United States without inspection on or about August 18, 2023,
18 and was subsequently released into the United States on or about August 26, 2023, pursuant to an
19 Order of Release on Recognizance (Form I-220A). Petitioner thereafter resided at liberty in the
20 United States for approximately twenty-two months. Following his subsequent arrest on June 12,
21 2026, while working as a delivery driver at Camp Pendleton, Respondents took Petitioner into
22 immigration custody without providing any individualized custody determination or
23 constitutionally adequate custody review.

24 53. Having previously been released into the community and permitted to reside at liberty
25 in the United States for approximately twenty-two months, Petitioner acquired substantial liberty
26 interests protected by the Due Process Clause. Continued detention without an individualized
27 determination and without constitutionally adequate process constitutes an arbitrary deprivation

1 of liberty in violation of the Fifth Amendment. See *Mathews v. Eldridge*, 424 U.S. 319, 333
2 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 54. Although the government may seek to detain Petitioner based on subsequent events,
4 continued civil immigration detention must comply with the requirements of due process and
5 must be supported by an individualized custody determination consistent with the governing
6 statutory framework. The Constitution does not permit the government to detain first and justify
7 later.

8 55. By continuing to detain Petitioner without an individualized custody determination
9 and without constitutionally adequate custody review, Respondents have violated the Due
10 Process Clause of the Fifth Amendment.

11 **COUNT 2**

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

14 56. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
15 allegations in the paragraphs above.

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

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

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

25 60. Here, Respondents re-detained Petitioner after previously releasing him into the
26 United States pursuant to an Order of Release on Recognizance and permitting him to reside at
27 liberty in the community for a substantial period of time. Respondents have provided no
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1 reasoned explanation for Petitioner's continued detention and have failed to provide any
2 individualized custody determination or constitutionally adequate custody review.

3 61. Respondents have further failed to articulate any reasoned basis for subjecting
4 Petitioner to continued detention under an inspection-stage detention framework after nearly two
5 years of authorized liberty in the community.

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

9 63. Accordingly, Respondents' decision to detain Petitioner must be set aside under 5
10 U.S.C. § 706(2)(A).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests that this Court:

13 A) Assume jurisdiction over this matter;

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

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

21 D) Declare that Respondents' continued detention of Petitioner without individualized custody
22 review is unlawful under the Constitution and governing immigration detention framework;

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

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

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

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

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

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

14 K) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
15 2412, and any other basis authorized by law; and

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

17 Respectfully submitted,

18
19 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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25 Counsel for Petitioner

26 Dated: July 1, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in this Petition are based on information provided to me by Petitioner and Petitioner's relatives, as well as my review of available immigration records and supporting documents. Those records include documentation issued by the Department of Homeland Security, including Petitioner's Order of Release on Recognizance (Form I-220A), the Notice to Appear, and other records relating to Petitioner's detention and immigration proceedings. I have also communicated with Petitioner's relatives regarding the circumstances of his detention and personally visited Petitioner at the Otay Mesa Detention Center on June 29, 2026, during which I reviewed the relevant documentation with him.

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

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

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Counsel for Petitioner

Dated: July 1, 2026