

Sergio Garcia, (Utah 15843)
Jake Jensen, (Utah 16479)
GARCIA LAW, PLLC
10931 Beckstead Lane
South Jordan, Utah 84095
sergio@antorchalaw.com
jake@antorchalaw.com
Telephone: (801) 900-3227
Facsimile: (801) 931-2163
Attorneys for Petitioner, Pro Hac Vice

Mariana L. Hanna, (California 230127)
Law Offices of Mariana L. Hanna
402 West Broadway, Suite 1730
San Diego, CA 92101
Attorney for Petitioner

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JORGE GEOVANNI MERCADO
ROSALES

Petitioner,

v.

Christopher CHESTNUT, Warden of
California City ICE Processing Center; Todd
BLANCHE, Acting Attorney General of the
United States; Markwayne MULLIN,
Secretary, United States Department of
Homeland Security; Daren K. MARGOLIN,
Director, Executive Office for Immigration
Review (EOIR); Moises BECERRA, Acting
Field Office Director, U.S. Immigration and
Customs Enforcement (ICE) San Francisco
Field Office;

Respondents.

PETITION FOR WRIT OF HABEAS
CORPUS

Case No.

Agency Case Number:



I. INTRODUCTION

1. Utah Counsel is licensed to practice law in Utah and resides there. Counsel is applying to appear pro hac vice in this matter.
2. Petitioner, Jorge Geovanni Mercado Rosales (hereinafter, "Petitioner"), by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the legality of his continued detention.
3. Petitioner is in custody at the California City ICE Processing Center, in California City, California. (Exhibit A.) He was detained by ICE when he was released from state custody in Utah on June 11, 2026.
4. Petitioner was born in Uruapan, Mexico  (Exhibit B.)
5. Petitioner entered the United States alone on June 24, 2021 without inspection. This was his first and sole entry into the United States. (Exhibit C).
6. Petitioner married a U.S. Citizen, Hilaria Magdalena Delgado, on May 20, 2025. (Exhibits D & E.) Their daughter was born on  in Sandy, Utah. (Exhibit F.)
7. Petitioner filed an I-130 Form on February 25, 2026 and a Form I-797C was issued. (Exhibit G).
8. Petitioner was charged with four felonies in the Salt Lake County District Court on April 16, 2026. (Exhibit H.) All charges were dismissed on June 16, 2026 at 4:50 pm. (Exhibit I.) Upon his release from state custody in Utah, he was detained by ICE and transported first to the Uinta County Jail in Wyoming, then to the California City Detention Center.
9. When the Government detained Petitioner, it violated the Constitution and laws of the United States because they lacked valid statutory authority to do so. The detention was

imposed without due process of law, constitutes an unreasonable seizure under the Fourth Amendment, and was arbitrary, excessive, and punitive.

10. Immigration detention should not be used as punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk if they are unlikely to appear in court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
11. Petitioner thus seeks a writ of habeas corpus requiring that he be released immediately.

II. JURISDICTION

12. Petitioner is detained in the physical custody of Respondents at the California City Immigration Processing Center in California City, California.
13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

15. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner is currently detained. Thus, a resident of Utah and an attorney who resides in Utah must file this action in California because ICE moved the Petitioner from Utah to California.

16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in California.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondent must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
18. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative relief in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

19. Petitioner is a citizen and national of Mexico who entered the United States on November 24, 2021.
20. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review (EOIR) and the immigration court system operate as a component agency. He is sued in his official capacity.
21. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner’s detention.

Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

22. Respondent Daren K. Margolin is the Director of the Executive Office for Immigration Review (EOIR), the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings and appeals thereof. Mr. Margolin is sued in his official capacity.
23. Respondent Moises Becerra is the Acting Director of the San Francisco Field Office of Immigration and Customs Enforcement (ICE). As such, Mr. Becerra is responsible for Petitioner's detention and removal. He is named in his official capacity.
24. On information and belief, Respondent Christopher Chestnut is the Warden of the California City Detention Facility in California City, where Petitioner is detained. Mr. Chestnut has immediate physical custody of Petitioner. He is sued in his official capacity.

VI. LEGAL FRAMEWORK

COUNT I

Violation of the INA

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.
26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. § 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

27. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens seeking admission as noted in 8 U.S.C. § 1225(b)(2).
28. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)-(b).
29. The detention provisions of § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. The mandatory detention provisions of section 1226(a) were most recently amended last year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
30. Section 1225(b)(2), by its plain terms, applies to individuals who are actively seeking admission into the United States. Federal courts have held that the phrase "seeking admission" requires that the individual be "presently and actively seeking lawful entry into the United States." *Loa Caballero v. Baltazar*, No. 25-cv NYW, 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025); see also *Hernandez v. Baltazar*, No. 25-cv CNS, 2025 WL 2996643, at *5 (D. Colo. Oct. 24, 2025) (holding that § 1225 does not extend to individuals who were already living in the United States); *Garcia Abanil v. Baltazar*, No. 26-cv WJM, 2026 WL 100587, at *4-5 (D. Colo. Jan. 14, 2026) (holding that noncitizens already present in the United States are not "seeking admission," but are instead "seeking to remain.").
31. Section 1226(c) applies only to noncitizens who have been arrested, charged with, or convicted of certain enumerated crimes.

32. Section 1226(a), the residual detention provision, permits release from detention and requires an individualized custody determination. *Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018).
33. Immigration detention should not be used as punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk if they are unlikely to appear in court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
34. Petitioner remains in removal proceedings pursuant to 8 U.S.C. § 1229a, pending the adjudication of his I-130 application.
35. Section 1225(b)(2) does not apply to Petitioner. Petitioner has lived in the United States since November 24, 2021. In this case, Petitioner clearly does not fit the statutory definition of one "seeking admission." He is not presently and actively seeking lawful entry into the United States; he has been continuously present in the United States for nearly five years and is seeking to remain with his family.
36. Section 1226(c) does not apply to Petitioner because he has no criminal convictions. All criminal charges filed against Petitioner in the Salt Lake County District Court were dismissed on June 16, 2026.
37. The only applicable statutory framework is § 1226(a), which permits release from detention and requires an individualized custody determination. ICE detained Petitioner without any individualized determination of flight risk or danger to the community, rendering his detention unconstitutional.
38. There exists no authority in the INA or any other statute allowing DHS to arbitrarily detain Petitioner, without any change in Petitioner's circumstances.

COUNT II

Violation of Fifth Amendment Right to Procedural Due Process

39. Petitioner repeats, realleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
40. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Fifth Amendment’s Due Process Clause applies to “all persons” in the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent. *Id.*
41. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
42. Petitioner has a cognizable liberty interest in the adjudication of his pending I-130 family-based immigrant visa petition. Under the Immigration and Nationality Act, a U.S. citizen or lawful permanent resident may file a petition on behalf of qualifying family members. 8 USCS § 1154. The statute mandates that after an investigation of the facts and consultation with the Secretary of Labor where required, the Attorney General shall approve the petition if the facts stated are true and the alien is eligible for the claimed preference status. *Id.*
43. Congress has expressed a clear policy that immigration benefit applications, including I-130 petitions, should be processed efficiently - generally within 180 days of initial filing. 8 USCS § 1571. This policy reflects the importance of efficiency in the adjudication to I-130 petitioners and beneficiaries.

44. The statutory framework of 8 USCS § 1571 contains detailed procedural protections, like the right to submit documentary evidence in support of eligibility, § 8 C.F.R.204.2; the requirement that the beneficiary be interviewed by a consular officer or immigration officer who determines eligibility, § 42.62, § 1245.6; and the right to appeal an adverse decision, § 103.3. These procedural safeguards show that the visa application process implicates significant legal interests protected by the Due Process Clause. Thus, Petitioner has a legally protected interest in having his I-130 adjudicated efficiently.
45. Due process requires notice and opportunity to be heard before deprivation of a legally protected interest. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Under *Mathews*, courts must consider (1) the private interests affected by the official action; (2) the risk of erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335; *Diouf v. Napolitano*, 634 F.3d 1081, 1090-91 (9th Cir. 2011).
46. Petitioner has a substantial private interest in his physical liberty and the adjudication of his I-130 Petition. "It is well established that the Fifth Amendment entitles aliens to due process of law" in the context of removal proceedings. *Trump v. J.G.G.* 604 U.S. 670, 673 (2025). Due Process requires notice that "is reasonably calculated, under all the circumstances, to apprise interested parties" and "afford[s] a reasonable time to make [an] appearance." *A.A.R.P. v. Trump*, 605 U.S. 91, 145 (2025). To seek relief and meaningfully participate in adjudication, a detainee must have sufficient time and information to contact counsel, gather evidence, and pursue appropriate relief. *Id.*

47. The Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is an Article III Injury.” *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014). Petitioner’s continued detention deprives him not only of his liberty, but of the ability to participate in the adjudication process for his I-130 Petition.
48. On average, I-130 petitions take three years to process. *Dada v. Mukasey*, 554 U.S. 1, 128 (2008). The interest in having an I-130 petition adjudicated is heightened when, as here, the I-130 is Petitioner’s primary pathway to lawful permanent residence with his family.
49. Petitioner’s release would allow him to compile any further necessary documentation required under 8 C.F.R. § 204.2(a), attend required interviews, and consult with counsel. His release would reduce the risk of an I-130 denial due to his inability to participate in the adjudication process, rather than on the merits.
50. Civil immigration detention is only permissible when it is reasonably related to the purpose for which the individual was committed. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zayvadas*, 533 U.S. at 690. The purpose of immigration detention is twofold: Ensuring the noncitizen’s appearance at future proceedings and preventing danger to the community. *Zayvadas*, 533 U.S. 678.
51. Here, the Government has not shown that Petitioner must be detained under either of these asserted interests. Petitioner may be safely released back into his community because he has no criminal convictions and no facts indicate he poses a flight risk.
52. The Supreme Court has clarified that Due Process is flexible and “calls for such procedural protections as the particular situation demands.” *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018). While the Government maintains discretionary authority to detain noncitizens in certain circumstances, that authority is limited and must yield to due

process violations where detention becomes prolonged and interferes with protected legal interests. *Id.* at 299 (quoting *Zayvadas*, 533 U.S. at 697).

53. Here, Petitioner's detention actively undermines his ability to pursue the adjudication of his I-130 petition, a statutorily protected interest.
54. Applying the *Mathews* test, Petitioner's due process rights are violated by his continued detention. Petitioner has a substantial private interest in both his liberty and in the fair adjudication of his I-130 petition. The risk of erroneous deprivation of that interest through continued detention is high, and the value of release as a procedural safeguard is significant. The Government's interest in ensuring appearance and preventing danger to the community can be served through conditions of release tailored to Petitioner's circumstances.
55. For the reasons stated above, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of Article I, Section 9, Clause 3 of the U.S. Constitution

56. Petitioner repeats, realleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
57. The Government may not pass or otherwise implement a law ex post facto, deprive a person of life, liberty, or property without due process of law. U.S. Const. Article 1, Section 9, Clause 3.
58. That constitutional provision has been applied to retroactive application of new policy. *See, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994); *INS v. St. Cyr*, 533 U.S. 289, 315-316 (2001).

59. The Government's detention of Petitioner despite his lack of qualifying criminal convictions violates his constitutional right to be free of ex post facto application of changed government policy.

COUNT IV

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

60. Petitioner repeats, realleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
61. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
62. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
63. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
64. Respondents have not articulated that Petitioner is a danger to the community or a flight risk. He is married to a United States Citizen, has a child born in the United States, has an active I-130 petition, and has been employed by  since June 26, 2021. Therefore, he is unlikely to be dangerous or attempt to leave the United States. (See Exhibit F.)

65. Thus, by detaining and transferring the Petitioner categorically, Respondents have abused their discretion.

COUNT V

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)

66. Petitioner repeats, realleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
67. Under the APA, a court must hold unlawful an 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).
68. Once a removal proceeding has been initiated, regulations allow for the proceedings to be dismissed for a reason set forth at 8 C.F.R. § 239.2(a).
69. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.
70. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).
71. On information and belief, Respondents have sought to dismiss Petitioner’s removal proceedings because of their intent to eliminate due process rights available to Petitioner in removal proceedings under section 8 U.S.C. § 1229a (INA § 240).

72. Because dismissal of Petitioner's INA § 240 proceedings was not made in furtherance of an enumerated reason set forth in the regulations, Respondents' use of the January 2025 expedited removal designation is unconstitutionally retroactive and unlawful.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter.
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Issue a writ of habeas corpus requiring Respondents to release Petitioner immediately.
- d. Declare that Petitioner's detention by ICE without any showing of changed circumstances or individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;
- e. Issue an Order prohibiting the Respondents from transferring Petitioner without court approval;
- f. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with the law;
- g. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Petitioner an individualized bond hearing before an impartial immigration judge within 14 days;
- h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified by law; and
- i. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED on this 7th day of July, 2026.

/s/ SERGIO GARCIA

Attorney for Petitioner, Pro Hac Vice
10931 Beckstead Ln.
South Jordan, UT 84095

/s/ MARIANA L. HANNA

Attorney for Petitioner
402 West Broadway, Suite 1730
San Diego, CA 92101

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under the penalty of perjury that the facts set forth in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Executed this 7th day of July 2026.

GARCIA LAW PLLC

/s/ SERGIO GARCIA

Attorney for Petitioner, Pro Hac Vice
10931 Beckstead Ln.
South Jordan, UT 84095

LAW OFFICES OF MARIANA L. HANNA

/s/ MARIANA L. HANNA

Attorney for Petitioner
402 West Broadway, Suite 1730
San Diego, CA 92101