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

ALEJANDRO GARCIA-GONZALEZ,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa
Detention Center;

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security;

David J. VENTURELLA, Senior Official
Performing the Duties of the Director, U.S.

Immigration and Customs Enforcement;

Todd BLANCHE, Acting Attorney General of the
United States, U.S. Department of Justice.

Respondents

Case No.: '26CV4248 RBM DDL

A 

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

1 1. Petitioner, Alejandro Garcia-Gonzalez, petitions this Court for a writ of habeas corpus
2 pursuant to 28 U.S.C. § 2241 challenging the legality of his continued immigration detention
3 following Respondents' revocation of his previously granted liberty without constitutionally
4 adequate process, and alleges as follows:

5 **INTRODUCTION**

6 2. Petitioner, Alejandro Garcia-Gonzalez, is a native and citizen of Cuba currently
7 detained at the Otay Mesa Detention Center in San Diego County, California.

8 3. Petitioner brings this action under 28 U.S.C. § 2241 to challenge the legality of his re-
9 detention by the Department of Homeland Security after Respondents previously released him
10 from immigration custody, permitted him to reside at liberty in the United States for
11 approximately five years while his removal proceedings remained pending, and then abruptly
12 returned him to detention without constitutionally adequate process.

13 4. Petitioner entered the United States without inspection on or about June 2021 and was
14 subsequently apprehended by immigration authorities. On or about June 28, 2021, Respondents
15 released Petitioner from immigration custody pursuant to an Order of Release on Recognizance
16 (Form I-220A).

17 5. Following his release, Respondents commenced removal proceedings by serving
18 Petitioner with a Notice to Appear. Petitioner remained at liberty in the community while
19 Respondents continued to permit him to reside outside of immigration custody.

20 6. On or about June 29, 2026, following Petitioner's release from state custody in Florida
21 after his arrest for an alleged driving-under-the-influence offense, ICE officers arrested Petitioner
22 and placed him in immigration custody. Before revoking Petitioner's previously granted liberty,
23 Respondents provided no prior notice and afforded him no meaningful opportunity to challenge
24 that decision before a neutral decisionmaker.

25 7. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he
26 presently remains detained.

1 8. Respondents' actions violate the Due Process Clause of the Fifth Amendment. By
2 affirmatively releasing Petitioner from immigration custody and permitting him to remain at
3 liberty in the community for approximately five years, Respondents created a substantial liberty
4 interest in Petitioner's continued freedom from physical restraint.

5 9. The Constitution does not permit the government to revoke that liberty interest without
6 constitutionally adequate process. Before re-detaining Petitioner, Respondents provided no prior
7 notice and no meaningful opportunity to be heard before a neutral decisionmaker.

8 10. Petitioner therefore respectfully requests that this Court declare his continued
9 detention unlawful and order his immediate release. In the alternative, and only if the Court
10 declines to order immediate release, Petitioner respectfully requests that the Court order
11 Respondents to provide a prompt constitutionally adequate custody hearing before a neutral
12 decisionmaker at which Respondents bear the burden of establishing, by clear and convincing
13 evidence, that Petitioner's continued detention is necessary because he presents a danger to the
14 community or a risk of flight, and at which less restrictive alternatives to detention are
15 considered.

16 CUSTODY

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

20 JURISDICTION AND VENUE

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

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

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

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

10 15. Because Petitioner seeks the traditional habeas remedy of release from allegedly
11 unlawful detention rather than additional administrative review of his underlying claims, his
12 petition presents precisely the type of threshold legality-of-detention question that § 2241 was
13 designed to address. See *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v.*
14 *Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211–12).

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

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

PARTIES

18. Petitioner, Alejandro Garcia-Gonzalez, is a native and citizen of Cuba currently detained at the Otay Mesa Detention Center in San Diego County, California.

19. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center in San Diego County, California, and is Petitioner's immediate custodian.

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

21. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (ICE).

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

23. All Respondents are named in their official capacities.

STATEMENT OF FACTS

24. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego County, California. Petitioner is a native and citizen of Cuba who entered the United States without inspection in or about June 2021.

25. Shortly after his entry, Petitioner was encountered by immigration authorities and taken into immigration custody.

26. On or about June 28, 2021, Respondents released Petitioner from immigration custody pursuant to an Order of Release on Recognizance (Form I-220A). (*Ex. 1.*)

27. On or about June 28, 2021, Respondents served Petitioner with a Notice to Appear commencing removal proceedings under section 240 of the Immigration and Nationality Act. Respondents thereafter permitted Petitioner to remain at liberty while his removal proceedings remained pending. (*Ex. 2.*)

28. Following his release, Petitioner remained at liberty in the United States for approximately five years. During that period, Respondents did not revoke Petitioner's release or otherwise seek to return him to immigration custody.

1 29. On or about June 29, 2026, following Petitioner's release from state custody in
2 Florida after his arrest for an alleged driving-under-the-influence offense, ICE officers arrested
3 Petitioner and placed him in immigration custody.

4 30. Before re-detaining Petitioner, Respondents provided no prior notice that they
5 intended to revoke his previously granted liberty and afforded him no opportunity to challenge
6 that decision before a neutral decisionmaker.

7 31. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he
8 remains detained.

9 32. Before re-detaining Petitioner, Respondents provided no constitutionally adequate
10 process before revoking the liberty they had previously granted.

11 33. As a result, Respondents revoked Petitioner's previously granted liberty without prior
12 notice or a meaningful opportunity to be heard before a neutral decisionmaker.

13 34. Petitioner's re-detention occurred only after Respondents had affirmatively released
14 him from immigration custody, permitted him to remain at liberty in the community for
15 approximately five years, and then abruptly revoked that previously granted liberty without
16 providing prior notice or an opportunity to be heard before a neutral decisionmaker.

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

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

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

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

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 38. In habeas corpus proceedings, exhaustion of administrative remedies is prudential,
10 not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
11 prudential exhaustion where “administrative remedies are inadequate or not efficacious, pursuit
12 of administrative remedies would be a futile gesture, irreparable injury will result, or the
13 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
14 (9th Cir. 2004)). Here, exhaustion should be excused because administrative remedies are (1)
15 futile and (2) Petitioner's continued detention results in irreparable harm.

16 39. Exhaustion would be futile because, to the extent DHS treats Petitioner as subject to
17 detention under 8 U.S.C. § 1225(b), Immigration Judges lack jurisdiction to conduct custody
18 redetermination hearings for individuals DHS classifies as subject to § 235(b) or designates as
19 Arriving Aliens. See 8 C.F.R. § 1003.19(h)(2)(i)(B). In this District, Immigration Judges
20 routinely state on the record that they lack authority to review custody where DHS invokes §
21 235(b). If Petitioner were to request a bond hearing, DHS would rely on that statutory
22 classification to block review, and the Immigration Judge would be required to decline
23 jurisdiction. Because no administrative mechanism exists to obtain custody review under DHS's
24 asserted detention authority, any attempt to exhaust administrative remedies would be futile.

25 40. Moreover, no statutory exhaustion requirement applies to Petitioner's claim that his
26 detention violates the Constitution and the INA. Constitutional claims and pure questions of law
27 —such as whether DHS has statutory authority to detain Petitioner and whether detention under
28

1 § 1225(b) is lawful in these circumstances—fall outside the agency’s adjudicatory competence.
2 See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
3 (exhaustion excused where the agency “does not have jurisdiction to review” constitutional
4 claims); *In re Indefinite Detention Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
5 There is no administrative forum that can determine whether DHS may lawfully invoke §
6 1225(b)(2) to detain Petitioner under these circumstances.

7 41. Petitioner suffers irreparable harm for each additional day he remains unlawfully
8 detained. The loss of physical liberty constitutes an injury that cannot be adequately remedied
9 after the fact. Continued incarceration following Petitioner’s prior release from federal custody
10 magnifies that ongoing harm. Courts routinely excuse exhaustion where prolonged or unlawful
11 detention inflicts irreparable injury. Petitioner’s ongoing detention therefore further warrants
12 waiver of prudential exhaustion.

13 **LEGAL FRAMEWORK**

14 42. The Immigration and Nationality Act distinguishes between detention at the time of
15 entry and detention following arrest in the interior of the United States. See 8 U.S.C. §§ 1225,
16 1226.

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

21 44. Where the federal government has previously released a noncitizen from immigration
22 custody, permitted him to reside at liberty in the United States for an extended period, and later
23 re-detains him in the interior while removal proceedings are pending, serious statutory and
24 constitutional questions arise regarding the legal authority for that renewed detention and the
25 process required before liberty may be revoked.

26 45. Federal courts have recognized that when the government affirmatively releases a
27 noncitizen from immigration custody, permits that individual to remain at liberty in the

1 community for an extended period, and later re-detains the individual in the interior of the United
2 States, the renewed detention presents substantial constitutional questions regarding the
3 deprivation of liberty without constitutionally adequate process.

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

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

10 48. By previously releasing Petitioner from immigration custody and permitting him to
11 remain at liberty in the United States for approximately five years while his removal proceedings
12 remained pending, Respondents created a substantial liberty interest in Petitioner's continued
13 freedom from physical restraint. Abruptly revoking that liberty without prior notice or a
14 meaningful opportunity to be heard violates the Due Process Clause.

15 49. Where the government has previously released a noncitizen from custody and
16 permitted him to reside at liberty in the community, that release reflects a determination that
17 detention was not necessary to serve those purposes. Once that liberty has been granted, it cannot
18 be revoked without constitutionally adequate process. Re-detention without constitutionally
19 adequate process therefore raises serious due process concerns.

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

23 51. Re-detaining a noncitizen after a prolonged period of liberty without providing
24 constitutionally adequate process, without an individualized justification, or without explaining
25 the legal basis for that re-detention constitutes arbitrary agency action.

CLAIM FOR RELIEF

COUNT 1

Violation of Due Process U.S. Constitution Amendment V

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

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

54. Petitioner was previously released from immigration custody by Respondents pursuant to an Order of Release on Recognizance (Form I-220A). Respondents thereafter permitted Petitioner to remain at liberty in the United States for approximately five years while his removal proceedings remained pending. On or about June 29, 2026, following Petitioner's release from state custody in Florida after his arrest for an alleged driving-under-the-influence offense, ICE officers arrested Petitioner and placed him in immigration custody without prior notice and without affording him a meaningful opportunity to challenge the revocation of his previously granted liberty before a neutral decisionmaker.

55. By previously releasing Petitioner from immigration custody and permitting him to remain at liberty in the United States for approximately five years while his removal proceedings remained pending, Respondents created a substantial liberty interest in Petitioner's continued freedom from physical restraint. Abruptly revoking that liberty without prior notice and without affording Petitioner a meaningful opportunity to be heard constitutes a deprivation of liberty without due process of law. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

COUNT 2

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

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

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

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

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

60. Here, Respondents re-detained Petitioner after previously releasing him from immigration custody and permitting him to remain at liberty in the United States for approximately five years while his removal proceedings remained pending. Respondents have provided no reasoned explanation for revoking Petitioner’s previously granted liberty and have failed to provide constitutionally adequate process before doing so.

61. Respondents have further failed to provide Petitioner with an individualized custody determination before a neutral decisionmaker regarding whether his continued detention is necessary.

62. By re-detaining Petitioner after previously releasing him from immigration custody and permitting him to remain at liberty in the United States for approximately five years while his removal proceedings remained pending, without providing constitutionally adequate process, without articulating a reasoned basis for revoking that liberty, and without conducting an

1 individualized custody determination, Respondents have acted arbitrarily, capriciously, and not
2 in accordance with law.

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

7 A) Assume jurisdiction over this matter;

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

12 C) Pending adjudication of this action, enjoin Respondents from transferring Petitioner outside
13 the Southern District of California or removing Petitioner from the United States absent prior
14 authorization from this Court, in order to preserve this Court's jurisdiction;

15 D) Declare that Petitioner's continued detention without prior notice, without constitutionally
16 adequate process, and without a meaningful opportunity to be heard violates the Due Process
17 Clause of the Fifth Amendment;

18 E) Declare that Respondents lack lawful authority to re-detain Petitioner without constitutionally
19 adequate process after previously releasing him into the United States and permitting him to
20 reside at liberty;

21 F) Declare that Respondents' actions re-detaining Petitioner without constitutionally adequate
22 process, without lawful authority, and without a reasoned explanation were arbitrary, capricious,
23 an abuse of discretion, and not in accordance with law, in violation of the Administrative
24 Procedure Act, 5 U.S.C. § 706(2);

25 G) Set aside Respondents' unlawful action under the Administrative Procedure Act, pursuant to
26 5 U.S.C. § 706(2)(A);

1 H) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from
2 custody;

3 I) Order Respondents to restore Petitioner to the status quo ante by releasing him under the same
4 conditions that existed immediately prior to his re-detention;

5 J) Enjoin Respondents from re-arresting or re-detaining Petitioner absent compliance with
6 constitutional requirements, including constitutionally adequate notice and a meaningful pre-
7 deprivation hearing before a neutral decisionmaker;

8 K) In the alternative, order Respondents to provide Petitioner with a constitutionally adequate
9 custody hearing, at which DHS bears the burden of establishing by clear and convincing
10 evidence that Petitioner's continued detention is necessary, and at which the neutral adjudicator
11 must consider alternatives to detention and Petitioner's ability to pay any bond or other
12 conditions of release;

13 L) Declare that Respondents may not continue to detain Petitioner without constitutionally
14 adequate process and, to the extent Respondents seek to continue Petitioner's detention, require
15 that any further custody determination comply with the requirements of the Due Process Clause;

16 M) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
17 2412, and any other basis authorized by law; and

18 N) Grant such other and further relief as the Court deems just and proper.

19 Respectfully submitted,

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

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24 Phone: (619) 777-6796

25 Counsel for Petitioner

26 Dated: July 24, 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's family members, as well as my review of available immigration records and supporting documents, including, but not limited to, Petitioner's Order of Release on Recognizance (Form I-220A), Notice to Appear, and records relating to Petitioner's current detention and pending removal proceedings.

Based on that information and my review of those records, and to the best of my knowledge, information, and belief, I declare that the factual allegations 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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Dated: July 24, 2026