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FEB 28 2025

LEOBARDO CHAVEZ BARRIENTOS
A-FILE# [REDACTED]
MESA VERDE PROCESSING CENTER
425 GOLDEN STATE AVE
BAKERSFIELD, CA 93301

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [REDACTED] DEPUTY CLERK

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

LEOBARDO CHAVEZ BARRIENTOS
A-FILE # [REDACTED]
Pro Se, Petitioner,
v.

MERRICK GARLAND,
Unites States Attorney General,
Current or Acting Field Office Director,
San Francisco Field Office;
Immigration and Customs Enforcement,
Current or Acting Director;
Department of Homeland Security,
Current or Acting Director;
Minga Wofford, Warden
Mesa Verde Ice Processing Center,
Respondents

Case No: 1:25-cv-00258-SKO-CH
Petition for Writ of Habeas Corpus
Prolong Detention
Due Process Violation

RECEIVED

FEB 28 2025

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [REDACTED] DEPUTY CLERK

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner Acting Pro Se respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondent's as follows:

INTRODUCTION

Petitioner is currently incarcerated by Immigration and Customs Enforcement(ICE) at the Mesa Verde Ice Processing Center, pending the Ninth Circuit Court of Appeals judicial review of his Citizenship claim from a denial from United States Citizenship Immigration Services (USCIS) Agency.

Petitioner has been detained in immigration custody for over six months without being placed in removal proceedings or referred to a neutral decision maker, whether a federal judge or immigration judge (IJ) has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk or the possibility of not being an alien.

Petitioner's prolonged incarceration without a hearing on dangerousness or flight risk and the thought of not being an alien, violates the Due Process Clause of the Fifth Amendment.

Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, determining that Petitioner's incarceration is not justified because the government has not established by clear and convincing evidence that petitioner is an alien or presents a risk of flight or danger in light of available alternatives to detention, and order petitioner's release, with appropriate conditions of supervision if necessary, taking into account Petitioner's ability to pay bond.

Alternatively, Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release within 30 days unless Respondent schedules a hearing before an IJ where (1) to continue detention, the government must establish by clear and

1. convincing evidence that Petitioner is in removal proceedings and presents a risk of
2. flight or danger, even after consideration of alternatives to incarceration that could
3. mitigate any risk that Petitioner's release would present; and (2) if the government can't
4. meet its burden, this court shall order Petitioner release on appropriate conditions of
5. supervision, and also taking into account Petitioner's ability to pay bond.

6. JURISDICTION

7. Petitioner is detained in the custody of Respondent at the Mesa Verde Ice
8. Processing Center. This action arises under the Due Process Clause of the Fifth
9. Amendment of the U.S. Const. Art.1,§ 2; (Suspension Clause): and 5 U.S.C. § 702
10. (Administrative Procedure Act), Non-Detention Act, 18 USCS 4001(a). This Court may
11. grant relief under the habeas corpus statutes. 28 U.S.C. § 2241 et seq., the Declaratory
12. Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writ Act, 28 U.S.C. § 1651.

13. Congress has presented judicial review of challenges to prolonged immigration
14. detention. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8
15. U.S.C. § 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration
16. detention); see also *id.* at 876 (Breyer, J., dissenting). (8 U.S.C. § 1252(b)(9)... by its
17. terms applies only with respect to review of an order of removal) (internal quotation
18. marks and brackets omitted).

19. VENUE

20. Venue is proper in this District under 28 U.S.C. § 1391 (b)(1) petitioner is
21. incarcerated in this District and a least one Respondent is in this District and because
22. petitioner is presently detained under the authority of the Director of the San Francisco
23. ICE Field Office, a respondent in this action.

24. Mesa Verde Ice Processing Center is operated by a private contractor and
25. controlled by the San Francisco Field Office of ICE Enforcement and Removal
26.
27.
28.

1. Operations (ERO). The San Francisco Field Office of ICE ERO is responsible for
2. carrying out ICE's detentions operations, at this Processing center and for adjudicating
3. request for release from those incarcerated there.

4. Respondent Acting or Current Director of the San Francisco ICE Field Office
5. exercise his authority in this district for venue purposes because their official duties are
6. performed in this district. See Lopez-Marroquin v. Barr, 955 F.3d 759, 760 (9th Cir.
7. 2020) (holding in context of challenge to immigration detention that "[t]he plain
8. language of the habeas statute confirms the general rule that for core habeas petitions
9. challenging present physical confinement, jurisdiction lies in only one district: the
10. district of confinement").

11. Petitioner is detained at the, Mesa Verde Ice Processing Center, in the County of
12. Kern, which lies within the venue of the Eastern District of California. See 28 U.S.C. §
13. 84(b). Under the rationale of Lopez-Marroquin, jurisdiction/venue for this habeas
14. challenge to Petitioner's immigration detention lies only in the Eastern District of
15. California. See 955 F.3d at 760.

16. REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court may grant the petition for a writ of habeas corpus or issue and Order to
18. Show Cause (OSC) to Respondent forthwith unless Petitioner is not entitled to relief. 28
19. U.S.C. § 2243. If the Court issues an OSC, it must require Respondent to file a return
20. with three days unless for good cause additional time is needed, not exceeding twenty,
21. allowed days.

22. Courts have long recognized the significance of the habeas statute in protecting
23. individuals from unlawful incarceration. The Great Writ affords a swift and imperative
24. remedy in all cases of illegal restraint or confinement. Fay v. Noia, 372 U.S. 391, 400
25. (1963) (emphasis added); see also Yong v. INS, 208 F.3d 116,1120 (9th Cir.2000)
26. (explaining that habeas statute requires expeditious determination of petitions).
27.
28.

PARTIES

Petitioner is a Citizen of the U.S. by derivative Citizenship 8 U.S.C. § 1432, (1996) currently detained by Respondent pending a Judicial Review of his N-600 Application of Citizenship denied by the U.S.C.I.S.,. Respondent Secretary of the U.S. Department of Homeland Security, an agency of the United States, is responsible for the administration of the immigration laws. 8 U.S.C. § 1103(a). they are a legal custodian of petitioner. They are named in their official capacity. Respondent Acting or Current Attorney General of the United States is the most senior official in the U.S. Department of Justice (DOJ). They have the authority to interpret the immigration laws and adjudicate removals cases. They delegate this responsibility to the Executive office for Immigration Review (EOIR), which administers the immigration proceedings. They are name in their official capacity. Respondent Acting or Current Field Office Director of the San Francisco ICE Field office is responsible for the San Francisco Field office of ICE with administrative jurisdiction over Petitioner's case. They are a legal custodian of Petitioner and are named in their official capacity. Respondent Acting or Current Director of ICE is responsible for ICE policies, practices, and procedures, including those relating to the incarceration of immigrants, but not of Citizens. They are a legal custodian of petitioner and are name in their official capacity.

STATEMENT OF FACTS

Petitioner is a foreign born U.S. National currently detained by Respondent pending a nationality claim with the Ninth Circuit Court of Appeals Case # 24-4238 petitioner is pursuing the following claim at the judicial level, Petitioner claims that he derive citizenship from his father before he turn eighteen years of age.

Petitioner has been detained in DHS custody since August 09, 2024. Petitioner has not been provided a bond hearing before a neutral decision maker to determine whether his prolong detention is justified based on danger or flight risk and that if he is an alien.

1. Pursuant to the INA Non-Citizens can be detained under § 1226 (a) or (c) during
2. the removal proceedings or after Respondent have obtain a Removal order Petitioner
3. must be detained under § 1231 (a) (Removal Period) and this period is limited. It is
4. unclear how Petitioner is being detained under what authority. There is no statutory or
5. regulatory pathway for Petitioner to seek a bond hearing before a neutral decision maker.

6. Absent intervention by this Court, Petitioner cannot and will not be provided with
7. a bond hearing by a neutral decision maker to assess the propriety of Petitioner's
8. continued incarceration.

9. LEGAL BACKGROUND

10. Numerous courts in this District have determined that a violation of the Due
11. Process Clause occurs when the Government detains a person suspected of being
12. removable from the United States without demonstrating a bond hearing that he or she
13. does not pose a risk of flight or a danger to the community. Many Courts agrees that the
14. Government bears the burden of making such showing by clear and convincing
15. evidence. Every court to have considered the constitutional issue, has agreed that under
16. the Due Process Clause of the Fifth Amendment, it's the government's burden to justify
17. the detention of an immigrant at a bond hearing. The United States Court of Appeals for
18. the Ninth Circuit has reached the same conclusion. See Singh v. Holder, 638 F.3d 1196,
19. 1205 (9th Cir. 2011). This is especially so when the Ninth Circuit has expressed "grave
20. doubts that any statute that allows for arbitrary prolonged detention without any process
21. is constitutional or that those who founded our democracy precisely to protect against
22. the government's arbitrary deprivation of liberty would have thought so" Rodriguez v.
23. Marin, 909 F.3d 252,256 (9th Cir. 2018).

24. The Courts where persuaded by the reasoning underlying that precedent. Under
25. the Due Process Clause of the Fifth Amendment, "no person shall, be deprived of,
26. liberty, without due process of law." U.S. Const. amend. V. The liberty guaranteed by
27. that clause does not extend to United States citizens alone. Both the language of the
28.

1. Constitution and the case law under it establish that the protection extends to all persons,
2. including persons whom the Government alleges to be non-citizens and to be removable.
3. It is also established that the protection afforded by the Due Process Clause includes the
4. right to receive a full and fair hearing that provides a meaningful opportunity to be heard
5. before one's liberty is taken away. *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439,
6. 123 L. Ed. 2d 1 (1993)); see *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150
7. L. Ed. 2d 653 (2001) ("The Due Process clause applies to all 'persons' within the United
8. States, including aliens, whether their presence here is lawful, unlawful, temporary, or
9. permanent."). Indeed, the Supreme Court has repeatedly reaffirmed that freedom from
10. civil detention is a core tenet of constitutional due process. See *Addington v. Texas*, 441
11. U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) Many Courts have repeatedly
12. recognized that civil commitment for any purpose constitutes a significant deprivation of
13. liberty that requires due process protection. see also *Zadvydas*, 533 U.S. at 690
14. ("Freedom from imprisonment from government custody, detention, or other forms of
15. physical restraint lies at the heart of the liberty [the Due Process Clause] protects.");
16. *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992)
17. ("Freedom from bodily restraint has always been at the core of the liberty protected by
18. the Due Process Clause from arbitrary governmental action.").

19. Thus, courts have concluded that balancing the Government's recognized interest
20. in "ensuring the appearance of aliens at future immigration proceedings," *Zadvydas*, 533
21. U.S. at 690, against the weighty constitutional interest in freedom from civil detainment,
22. "supports imposing the greater risk of error on the Government specifically, by
23. allocating to it the burden of proof," *Martinez*, 2018 U.S. Dist. LEXIS 178577, 2018 WL
24. 5023946, at *3. The reasons supporting this consensus view are multiple, have been
25. persuasively articulated elsewhere, and need not be repeated here. See *id.* (discussing the
26. equities, the proper allocation of the risk of error to the Government, the proper burden
27. on the Government as the party seeking the Court's intervention, and the better position
28.

of the Government to gather and present evidence); see also *Darko v. Sessions*, 342 F. Supp. 3d 429, 434-35 (S.D.N.Y. 2018).

ARGUMENT

First

Respondent is depriving petitioner, from being place in removal proceedings by claiming that they have a valid reinstatement order that was issue on April 26, 2024; see **(Exhibit A)** Prior to this attempt to reinstate the prior order of removal. Petitioner had file a judicial review, (8 U.S.C.S. § 1252(b)(5)) with the Ninth Circuit Court of Appeals, Case # 24-4238.

The reinstatement regulations are clearly stated in 8 C.F.R. § 241.8 (a). Respondent does not dispute that petitioner was release from custody on September 4, 2015, see **(Exhibit B)**. Giving Petitioner a lawful entry, the regulations clearly states, only if the requirements of paragraph (a) of this section are met, may the alien be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act. 8 C.F.R. § 241.8(c).

Section INA§ 101 (a)(13)(A) of the Act, as amended by section 301 of the IIRIRA provides that the terms “admission” and “admitted” means the lawful entry of an alien into the U.S. after inspection and authorization by an immigration officer.

The Appellant court to this Circuit has order that when the requirements are not met petitioner should be place in regular removal proceedings before an IJ under § 1229a.see (*Tomczyk v. Wilkinson*, 987 F.3d 815, 826, 9th Cir., Feb. 3, 2021), also see *Mariscal-Sandoval v. Ashcroft*, 370 F.3d 851 at 855 (9th Cir 2004). Here petitioner has been held in detention since August 9, 2024, with no removal hearing.

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to “deprive” any “person” of liberty without due process of law.” Freedom from imprisonment from government custody, detention, or other forms of physical

1. restraint lies at the heart of the liberty that Clause protects. See *Foucha v. Louisiana*,
2. 504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992). The Supreme Court has said
3. that government detention violates that Clause unless the detention is ordered in a
4. criminal proceeding with adequate procedural protections, see *United States v. Salerno*,
5. 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987), or, in certain special and
6. "narrow" non-punitive "circumstances," *Foucha*, supra, at 80, where a special
7. justification, such as harm-threatening mental illness, outweighs the "individual's
8. constitutionally protected interest in avoiding physical restraint." *Kansas v. Hendricks*,
9. 521 U.S. 346, 356, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997).

10. The proceedings at issue here are civil, not criminal, and this court should assume
11. that they are non-punitive in purpose and effect. There is no sufficiently strong special
12. justification here for indefinite civil detention at least as administered under 8 U.S.C.S. §
13. 1231(a)(6) statute.

14. The statute, says the Government, has two regulatory goals: "ensuring the
15. appearance of the alien to comply with the order of removal" and "preventing danger to
16. the community." But by definition the first justification -- preventing flight -- is weak or
17. nonexistent where removal seems a remote possibility at best. As the Supreme Court
18. said in *Jackson v. Indiana*, 406 U.S. 715, 32 L. Ed. 2d 435, 92 S. Ct. 1845 (1972), where
19. detention's goal is no longer practically attainable, detention no longer "bears a
20. reasonable relation to the purpose for which the individual was committed." *Id.* At 738.

21. The Government will argue Petitioners Status and his petition with the Ninth
22. Circuit Court of Appeals gives them authority to denied Petitioner's Due Process by not
23. placing Petitioner in removal proceedings an, from a statutory perspective, alien
24. Criminal status itself can justify indefinite detention. Thus, it has long been held that an
25. alien is entitled to a fair hearing before deportation. *Fong Yue Ting v. United States*, 149
26. US 698, 37 L ed 905, 13 S Ct 1016; *Japanese Immigrant Case (Yamataya v. Fisher)* 189
27. US 86, 47 L ed 721, 23 S Ct 611; *Wong Yang Sun v. McGrath*, 339 US 33, 94 L ed 616,
28.

70 S Ct 445.

1. But once an alien enters the country, the legal circumstance changes, for the Due
2. Process Clause applies to all "persons" within the United States, including aliens,
3. whether their presence here is lawful, unlawful, temporary, or permanent; see *Plyler v.*
4. *Doe*, 457 U.S. 202, 210, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982); *Mathews v. Diaz*, 426
5. U.S. 67, 77, 48 L. Ed. 2d 478, 96 S. Ct. 1883 (1976); *Kwong Hai Chew v. Colding*, 344
6. U.S. 590, 596-598, 97 L. Ed. 576, 73 S. Ct. 472, and n. 5 (1953); *Yick Wo v. Hopkins*,
7. 118 U.S. 356, 369, 30 L. Ed. {121 S. Ct. 2501} 220, 6 S. Ct. 1064 (1886); cf. *Mezei*,
8. *supra*, at 212 ("Aliens who have once passed through our gates, even illegally, may be
9. expelled only after proceedings conforming to traditional standards of fairness
10. encompassed in due process of law"). Indeed, The Supreme Court has held that the Due
11. Process Clause protects an alien subject to a final order of deportation, see *Wong Wing*
12. *v. United States*, 163 U.S. 228, 238, 41 L. Ed. 140, 16 S. Ct. 977 (1896), though the
13. nature of that protection may vary depending upon status and circumstance, see *Landon*
14. *v. Plasencia*, 459 U.S. 21, 32-34, 74 L. Ed. 2d 21, 103 S. Ct. 321 (1982);

15. When an alien has been found to be unlawfully present in the United States and a
16. final order of removal has been entered, the Government ordinarily secures the alien's
17. removal during a subsequent 90-day statutory 'removal period,' during which time the
18. alien normally is held in custody." *Zadvydas*, 533 U.S. at 682. The removal period
19. begins on the latest of: (1) the date the removal order becomes administratively final; (2)
20. "if the removal order is judicially reviewed **and** if a court orders a stay of the removal of
21. the alien, the date of the court's final order"; or (3) the date the alien is released from
22. detention or confine.

23. Respondent will suggest that Petitioner has a pending judicial order with a motion
24. for stay of the removal, this is true. This current, judicial petition in the Ninth Circuit
25. Court of Appeals, was submitted prior to the reinstatement order date of April 26, 2024.
26. This reinstatement is invalid according to 8 C.F.R. § 241.8(c), see (Exhibit A).

1. This judicial review is for a constitutional claim to citizenship, petition is not
2. contesting the Final Order of Removal. see Chavez Barrientos v. United States
3. Citizenship and Immigration Services, Case# 24-4238 DKT#3. Respondent clearly
4. states in there opposition to the Motion for Stay DKT#20.1, the first paragraph clearly
5. states "Petitioner seeks review of a decision of the U.S.C.I.S., that denial is to Petitioners
6. Application for Certificate of Citizenship (Form N-600). also see Respondent Motion to
Dismiss DktEntry 35.1 page 1, 2, 7, see (**Exhibit C**).

7. Petitioner's removal period began, on August 09, 2024, 8 U.S.C § 1231 (a)(1)(A).
8. Petitioner on February 05, 2025, would be out of the removal period, see Diouf v.
9. Mukasey 542 F.3d 1222,1230 (9th Cir. 2008). Removal period only stops when petition
10. contest a Final Order of Removal.

11. Respondent can only extent an additional 90 days, if the alien fails or refuses to
12. make timely application in good faith for travel or prevents the government from
13. obtaining documents necessary for the alien's departure or conspires or acts to prevent
14. the alien's removal subject to an order of removal. 8 U.S.C.S § 1231(a)(1)(C). The Ninth
15. Circuit explained in Prieto-Romero, § 1231(a)(1)(C) pertains only to intentionally
16. obstructionist, bad faith tactics that are designed to frustrate the government's attempts
17. to effectuate a removal order, not to an alien's good faith attempt to make use of legally
18. available judicial review and remedies. Prieto-Romero v. Clark, 534 F.3d at 1060-61 (9th
19. Cir. 2008).

20. Petitioner is praying that The Ninth Circuit Court of Appeals will transfer the case
21. to this District Court ,8 U.S.C.S. § 1252(b)(5)(B). There is no prejudice that the
22. Government will suffer by placing Petitioner in regular removal proceedings its been
23. over 180 days in custody (Post-Removal-Period) and Respondent has not provided
24. Petitioner with any hearing, or a custody determination, bond hearing or place Petitioner
25. in removal proceedings. Petitioner has contacted his Removal Officer, Agent Sanchez at
26. Golden State Annex and also his Removal officer at Mesa Verde Agent Barnert, with no
27.

firm responds about petitioners status, their responds is "take it up to the court".

1. Petitioner has mail a Custody Determination request to the Bakersfield ICE, EOR
2. Office on November 12, 2024 with no responds to petitioner. Petitioner has also mail a
3. request to Headquarters Post-Order Detention Unit in Washington, DC explaining
4. Petitioner current situation, on January 07, 2025 with no responds.

5. This Court must review the progress of the underlying removal proceedings
6. themselves to determine whether the detention has served to reasonably facilitate
7. deportation as opposed to some other purpose, such as, for example, punishment of a
8. criminal alien who has already completed his sentence or to discourage detainees from
9. challenging their Status. If the record demonstrates lengthy periods of detention without
10. any apparent effort by the Government, including immigration courts to move
11. proceedings along, a fair question could be raised as to whether the detention truly
12. serves the permissible purpose for such detention. See *Mohamed v. Sec'y of the Dep't of*
13. *Homeland Sec.*, 376 F. Supp. 3d 950, 957 (D. Minn. 2018) ("If the process is
14. unreasonably delayed, it could be necessary to inquire whether continued detention is in
15. fact serving the valid purpose of protecting against the risk of flight or dangerousness.");
16. *I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 U.S. Dist. LEXIS 173280, 2023 WL
17. 6317617, at *6 (N.D. Cal. Sept. 27, 2023) ("Detention that is excessively or
18. unreasonably prolonged may be punitive." (citing *United States v. Salerno*, 481 U.S.
19. 739, 748, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987))).
20.

21. SECOND

22. Petitioner needs to show that there is good reason to believe there is no significant
23. likelihood of removal in the reasonably foreseeable future and that he is more likely to
24. succeed with his petition in the Ninth Circuit Court of Appeals. Petitioner's pending
25. claim in the Ninth Circuit Court of Appeals, is for a Derivative Citizenship claim. If
26. there is an issue of fact and such claim survives pass the Ninth Circuit Court, a new
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1. hearing in this District Court, would be mandate by the Courts of Appeals on the
2. nationality claim and a decision on that claim, will begin as if an action had been
3. brought in this district court under section 2201 of title 28, United States Code. When
4. will this proceedings end, only the court knows. see Singh v. Garland, 2023 U.S. Dist.
5. LEXIS 159808, FN°5 (E.D. Cal., Sept 08, 2023).

6. Petitioners claim depends on the interpretation of “Legally Separated” many
7. courts have determine that “Legally Separated” under 8 U.S.C. § 1432(a) involves a
8. limited inquiry. It's limited to whether the defendant has established that there was a
9. valid divorce or legal separation under the law of a state or foreign nation having
10. authority over the marriage. A court should not inquire into whether the action (or
11. inaction if the relevant jurisdiction recognizes separation without any formal
12. governmental action) taken to effectuate the divorce would be sufficient to result in a
13. legal separation in any U.S. jurisdiction. Nor should a court impose any requirements in
14. addition to those require under the state or foreign nation's law.

15. Congress has clearly stated that, as long as a § 1432(a) petitioner establishes that a
16. valid, legal separation was effectuated under the relevant state or foreign nation's law he
17. has met the burden of establishing a legal separation under § 1432(a). When the term
18. “Legal Separation” was adopted by congress as part of the derivative citizenship
19. provision, first in 1940 and then again in 1952, it clearly referred to a separation by
20. virtue of law, rather than the narrower statutory procedure titled “legal separation”.

21. The Supreme Court has long held that while the “scope of a federal right is, of
22. course, a federal question, that does not mean that its content is not to be determined by
23. state, rather than federal law.” De Sylv v. Ballentine, 351 U.S. 570, 580, 100 L. Ed.
24. 1415, 76 S. Ct. 974 (1956). Although uniformity is an important concern in federal
25. statutory interpretation, see, e.g., Kahn v. INS, 36 F.3d 1412, 1414 (9th Cir. 1994), where
26. the term in question involves a legal relationship that is created by state or foreign law,
27. the court must begin its analysis by looking to that law. See De Sylva, 351 U.S. at 580.

1. “This is especially true where a statute deals with a familiar relationship.” *id.* (noting that
2. there is no federal law of domestic relations).

3. Petitioner allege legal relationship or separation between Petitioner's parents
4. accrued in Tamaulipas, Mexico the governing law would be under the Civil Code of
5. Tamaulipas, Mexico, (1) whether petitioner's parents had the requisite marital
6. relationship and (2) whether there was a legal separation that severed that relationship.
7. As the appeals court explain in *Minasyan* 401 F.3d 1069 (9th Cir.2005) a “legal
8. separation” within the meaning of § 1432(a)(3) is not limited “to orders expressly so
9. title” but “en compasses other forms of Court ordered recognition of the final break up
10. of a marriage” 401 F.3d at 1078. The appeals Court has reserved however, the question
11. of whether the term could also include a termination of marital relationship by operation
12. of law “in the absence of a judicial order” *Id* at 1079 n19.

13. Under the Civil Code of Tamaulipas, Mexico (CCT). The state where Petitioner
14. was born, a common law relationship in that state constitutes a marriage for all legal
15. purposes. See *Matter of Hernandez* 14 I. & N Dec 608 (BIA,1973), also within the CCT
16. there are recognition of the separation of a common law marriage in Article 393 and
17. Article 1528. Article 1528 specifically recognize that the parties remain unmarried
18. throughout the common law marriage, Petitioner has establish that there is a legal
19. separation under the law from a foreign nation having authority over the common law
20. marriage. See.(*Rosales v. Battles* 113 Cal.App.4th 1178,1183-84)

21. Petitioner's parents further married other individuals in the State of California thus
22. marriages terminated there common law marriage, see Cal.Fam.Code § 70 “Date of
23. Separation”. In *Minaysan* the court said “separation by virtue of law constitutes a legal
24. separation” 401 F.3d 1069,1078 (9th Cir.2005) see also Cal.Fam.Code § 2310

25. The appeals court has conclude that the term in question “legal separation” means
26. a separation recognized by law; because there is no federal law of domestic relations,
27. that necessarily means a separation recognized by state law. As the Supreme Court
28.

1. emphasized, " 'the whole subject of the domestic relations of husband and wife, parent
2. and child, belongs to the laws of the States and not to the laws of the United States.' " *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 159 L. Ed. 2D 98, 124 S. Ct. 2301,
3. 2309 (2004) (alteration in original) (quoting *In re Burrus*, 136 U.S. 586, 593-594, 34 L.
4. Ed. 500, 10 S. Ct. 850 (1890)). "So strong is our deference to state law in this area that
5. we have recognized a 'domestic relations exception' that 'divests the federal courts of
6. power to issue divorce, alimony, and child custody decrees.' " *Id.* (quoting *Ankenbrandt*
7. *v. Richards*, 504 U.S. 689, 703, 119 L. Ed. 2d 468, 112 S. Ct. 2206 (1992)).

8. Petitioner makes a genuine issue of material fact, the facts are there is a law that
9. would consider petitioners parents Legally Separated either foreign or domestic.
10. Petitioner paints a colorful constitutional claims. For the Ninth Circuit to transfer the
11. petition, to this honorable court.

12. The United States Supreme Court has made clear that government detention
13. violates the Due Process Clause unless detention is ordered in criminal proceeding with
14. adequate procedural protections, or there is special justification, such as harm-
15. threatening mental illness, which outweighs the individuals constitutionally protected
16. interest in avoiding physical restraint.

17. In response, the regulations governing post-removal-order detention of aliens
18. were amended to comply with these Due Process concerns. The amended regulations, 8
19. C.F.R. § 241.3 and 8 C.F.R. § 241.13, were drafted to provide necessary procedural
20. safeguards to ensure the detention of an alien beyond the removal period comports with
21. due process requirements.

22. Because these regulations confer important rights upon aliens ordered removed,
23. the Department of Homeland Security is bound by these regulations. The immigration
24. regulations do not merely facilitate internal agency housekeeping, but rather afford
25. important and imperative procedural safeguards to detainees. The United States Supreme
26. Court has consistently demanded governmental compliance with regulations designed to
27.

1. safeguard individual interests even when the rules were not mandated by the
2. Constitution or federal statute; see U.S. v. Caceres, 440 U.S. 741 at 759

3. How long the Appeals Court, will take to transfer the case to the District Court
4. and how long will the District Court take to make a judgment on the Declaratory
5. Judgment only the Court knows. Meanwhile petitioner will be sitting in detention with
6. no apparent hearing in any removal proceedings provided by Respondent.

7. **Due Process Requires Consideration of Alternatives to Detention**

8. Due process also requires consideration of alternatives to detention. The primary
9. purpose of immigration detention is to ensure a non-citizens appearance during civil
10. removal proceedings. Zadvydas, 533 U.S. at 697. Here Petitioner is not being place in
11. removal proceedings. Detention is not reasonable related to this purpose if there are
12. alternative condition of release that could mitigate risk of flight. See Bell v. Wolfish 411
13. U.S. 520, 538-39 (1979) (civil pretrial detention may be unconstitutional punitive if it is
14. excessive in relation to its legitimate purposes). ICE's alternatives to detention to
15. program the Intensive Supervision Appearance Program (ISAP) has achieved
16. extraordinary success in ensuring appearance at removal proceedings, reaching
17. compliance rate close to 100 percent. Hernandez v. Sessions, 872 F.3d 976, 991 (9th Cir.
18. 2017) (observing that ISAP resulted in a 99% attendance rate at all EOIR hearings and a
19. 95% attendance rate at final hearings). Thus alternatives to detention must be considered
20. in determining whether prolonged incarceration is warranted.

21. Due process likewise requires consideration of a non-citizens ability to pay a
22. bond. Detention of an indigent for inability to post money bail is impermissible if the
23. individuals appearance at trial could reasonably be assured by one of the alternate forms
24. of release, Hernandez 872 F.3d at 990 (quoting Pugh v. Rainwater, 572 F.2d 1053, 1058
25. (5th Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions
26. release for people detained for immigration purposes, due process requires consideration
27. of financial circumstances and alternative conditions of release. Id.; see also Martinez v.
28.

Clark, 36 F.4th 1219, 1231 (9th Cir 2022) (While the government had a legitimate interest in protecting the public and ensuring the appearance of a non-citizens in immigration proceedings, we held in Hernandez that detaining an indigent alien without consideration of financial circumstances and alternative release conditions was unlikely to result in a bond determination reasonably related to the government's legitimate interests.)(citation omitted)

CLAIMS FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

Petitioner re-alleges and incorporates by reference the paragraphs above. The Due Process of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V. To justify petitioners ongoing prolonged incarceration, due process requires that the government establish, at an individualized hearing before a neutral decision maker, that Petitioner's detention is justified by clear and convincing evidence of alien-age, flight risk or danger, taking into account whether alternatives to detention could sufficiently mitigate that risk.

For these reasons, Petitioners ongoing prolonged incarceration without being place in removal proceedings violates Due Process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this court:

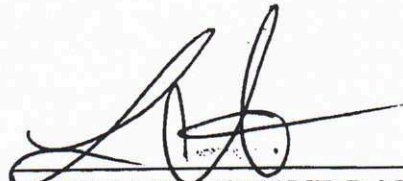

- 1) Assume jurisdiction over the matter;
- 2) Issue a Writ of Habeas Corpus, hold a hearing before this court if warranted, determine that Petitioners detention is not justified because the government has not establish by clear and convincing evidence that Petitioner is an alien, presents a risk of flight or danger in light of available alternatives to incarceration, and order Petitioner release

(with appropriate conditions of supervision if necessary), taking into account Petitioners ability to pay a bond.

- 3) In the alternative, issue a Writ of Habeas Corpus and order the Petitioner release within 30 days unless Respondent schedule a hearing before an immigration judge where:(1) to continue detention, the government must establish by clear and convincing evidence that petitioner presents a risk of flight or danger, and that petitioner is an alien, even after consideration of alternatives to detention that could mitigate any risk that petitioner release would present; and (2) if the government cannot meet its burden, the immigration judge order Petitioners release on appropriate conditions of supervision, taking into account Petitioners ability to pay a bond;
- 4) Issue a declaration that Petitioners ongoing prolonged detention violates the Due process Clause of the Fifth Amendment.
- 5) Grant such further relief as the Court deems just and proper.

Dated; February 7th, 2025

Respectfully Submitted,


LEOBARDO CHAVE BARRIENTOS
A-FILE# 
Mesa Verde ICE Processing Center
425 Golden Ave
Bakersfield, CA 93301

CERTIFICATE OF SERVICE

I here certify that a true copy of this Certificate of service and the, Writ of Habeas Corpus was place in a prepaid postage envelope and deposited at the Mesa Verde ICE Processing Center, mail system authorize for use by the Detainees on February 7th 2025 in Bakersfield, CA.


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
5000 U.S. Courthouse
1130 "O" st
Fresno, CA 93721

Headquarters Post-Order Detention Unit
INS Enforcement
801 I Street, NW- suite 800
Washington, DC 20536

Enforcement and Removal Operations
630 Sansome St, Ste 590
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Executed on February 7th, 2025 at Bakersfield, CA




Leobardo Chavez Barrientos
A-File # 
425 Golden State Ave
Bakersfield, CA 93301

EXHIBIT A

U.S. Department of Homeland Security

Notice of Intent/Decision to Reinstate Prior Order

File No. XXXXXXXXXX

Event No: LOM2410000013

Date: April 24, 2024

LEOBARDO UZZIEL CHAVEZ-BARRIENTOS

Name: _____

In accordance with section 241(a)(5) of the Immigration and Nationality Act (Act) and 8 CFR 241.8, you are hereby notified that the Secretary of Homeland Security intends to reinstate the order of Removal entered against you. This intent is based on the following determinations:

(Deportation / exclusion / removal)

1. You are an alien subject to a prior order of deportation / exclusion / removal entered on April 10, 1998 at _____
(Date)

ELOY, AZ
(Location)

2. You have been identified as an alien who:

☒ was removed on April 10, 1998 pursuant to an order of deportation / exclusion / removal.
(Date)

☐ departed voluntarily on _____ pursuant to an order of deportation / exclusion / removal on or after the date on which such order took effect (i.e., who self-deported).
(Date)

3. You illegally reentered the United States on or about Unknown Date at or near UNKNOWN
(Date) (Location)

In accordance with Section 241(a)(5) of the Act, you are removable as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and are therefore subject to removal by reinstatement of the prior order. You may contest this determination by making a written or oral statement to an immigration officer. You do not have a right to a hearing before an immigration judge.

The facts that formed the basis of this determination, and the existence of a right to make a written or oral statement contesting this determination, were communicated to the alien in the English language.

covartubias

(Printed or typed name of official)

CVTJ1

(Signature of officer)

Deportation Officer

(Title of officer)

Acknowledgment and Response

I ☐ do ☐ do not wish to make a statement contesting this determination.

APR 26 2024
(Date)

Refused

(Signature of Alien)

Decision, Order, and Officer's Certification

Having reviewed all available evidence, the administrative file and any statements made or submitted in rebuttal, I have determined that the above-named alien is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act.

APR 26 2024

(Date)

SANTA MARIA, CA

(Location)

(Signature of authorized deciding official)

R 7171 OCEGUERA

(Printed or typed name of official)

SDDO

(Title)

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: XXXXXXXXXX
Event #: LON2410000013

File No: 091 611 405
Date: October 5, 2023

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
LOMPOC USP
3901 KLEIN BLVD.
LOMPOC, CA 93436

FROM: (Department of Homeland Security Office Address)
ERO - Lompoc, CA IHP Sub-Office
U.S. IMMIGRATION & CUSTOMS ENFORCEMENT
ICE ERO SANTA MARIA
740 West Century Street, Ste A
Santa Maria, CA 93455

Name of Alien: CHAVEZ-BARRIENTOS, LEOBARDO UZZIEL

Date of Birth: 01/18/1979 Citizenship: MEXICO Sex: M

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2). BOF #: 66656-063

- ☒ A final order of removal against the alien;
☐ The pendency of ongoing removal proceedings against the alien;
☐ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
☒ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- ☐ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☒ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at 805-346-1867. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- Maintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

- ☐ If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

D 3504 CHEADLE - Deportation Officer

DENNIS R CHEADLE

Digitally signed by DENNIS R CHEADLE
Date: 2023.10.05 10:36:40 -0700

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

- ☐ in person ☐ by inmate mail delivery ☐ other (please specify): _____

(Name and title of Officer)

(Signature of Officer) (Sign in ink)


EXHIBIT B



Department of Homeland Security
Immigration and Customs Enforcement
880 Front St., Room 2242
San Diego, CA 92101
619-557-6117

Leobardo Uzziel CHAVEZ-Barrientos

September 4, 2015

File Number 

Please come to the office shown below at the time and place indicated in connection with an official matter.

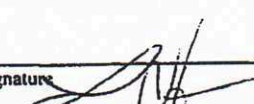
OFFICE LOCATION	880 FRONT STREET, SUITE 2242. 2 ND FLOOR SAN DIEGO, CA 92101 PHONE NUMBER 619-557-6117
DATE AND HOUR	November 4, 2015
ASK FOR	<i>Deportation Officer</i>
REASON FOR APPOINTMENT	Reference your immigration case Follow-up on your immigration case Your claim to U.S. Citizenship
BRING WITH YOU	<i>Proof of filing N-600 or a for U.S. Passport</i>

IT IS IMPORTANT THAT YOU KEEP THIS APPOINTMENT AND BRING THIS LETTER WITH YOU.

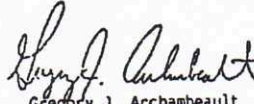
You are obligated to keep this appointment unless an officer from the Deportation Office directs you otherwise.

Failure to keep this appointment may result in: 1) revocation of your current release conditions, 2) the breach of an ICE bond if one has been posted on your behalf, and 3) issuance of a warrant of arrest.

If you are unable to do so, state your reason, sign below, and return this letter to this office at once.

	
Signature	Date 09-04-15

Form G-56


Gregory J. Archambeault
Field Director

1 E. MARTIN ESTRADA
United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
JOANNE S. OSINOFF
4 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
5 RAHUL R.A. HARI (Cal. Bar No. 313528)
Assistant United States Attorneys
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-2420
8 E-mail: Rahul.Hari@usdoj.gov

9 Attorneys for Respondents
U.S. Department of Homeland Security and
10 U.S. Citizenship and Immigration Services

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 LEOBARDO CHAVEZ
15 BARRIENTOS,

16 Petitioner,

17 v.

18 U.S. DEPARTMENT OF HOMELAND
19 SECURITY, ET AL.,

20 Respondents.
21
22
23
24
25
26
27
28

No. 2:23-CV-01589-JWH-PD

**RESPONDENTS' NOTICE OF
MOTION AND MOTION TO DISMISS:
MEMORANDUM OF POINTS AND
AUTHORITIES; AND PROPOSED
ORDER**

Hearing Date: July 31, 2023
Hearing Time: 1:30 p.m.
Ctmm: Roybal Federal Building
and United States
Courthouse

Hon. Patricia Donahue
United States Magistrate Judge

1 through the U.S. / Mexico border and was apprehended by U.S. Customs and Border
2 Protection ("CBP"). He received an expedited removal order, pursuant to 8 U.S.C.
3 1225(b)(1) and was removed to Mexico on the same date. *See id.* at ¶ 8, Att. L, (Notice
4 and Order of Expedited Removal, dated April 9, 2015); Att. M, (Notice to Alien Ordered
5 Removed/Departure Verification), dated April 9, 2015.

6 Most recently, on April 12, 2015, Petitioner was apprehended by CBP at the U.S. /
7 Mexico border and processed for reinstatement of his removal order. *See id.* at ¶ 9, Att.
8 N, (Record of Deportable/Inadmissible Alien, dated April 12, 2015). While in custody,
9 Petitioner provided a sworn statement and renewed his claim of U.S. citizenship. *See id.*
10 To allow Petitioner an opportunity to present his claim of citizenship to USCIS or the
11 Department of State, he was released on September 4, 2015. *See id.* at ¶ 10, Att. O,
12 (Check-in Notice, dated Sept. 4, 2015).

13 B. Petitioner's N-600 Application

14 On July 13, 2018, Petitioner mailed his Form N-600, Application for Certificate of
15 Citizenship, to USCIS. *Petition* at 1, Att. A. The section of law governing his application
16 is former section 321 of the Immigration and Nationality Act. *Id.* at 1; 8 U.S.C. § 1432
17 (1952). USCIS denied the application on March 30, 2020 with information on how to file
18 an administrative appeal. *Id.* at 1, Attachment B. Petitioner did not file an appeal.

19 III. LEGAL STANDARD

20 Respondents seek dismissal under Fed. R. Civ. P. 12(b)(1) for lack of subject matter
21 jurisdiction. Plaintiff/Petitioner bears the burden of establishing the jurisdiction of this
22 Court. *See Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989)
23 (noting that a federal court is presumed to lack subject matter jurisdiction until the contrary
24 affirmatively appears). A motion to dismiss for lack of subject matter jurisdiction can be
25 either a facial or factual attack. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th
26 Cir. 2004). A factual attack disputes the truth of allegations that would otherwise invoke
27 federal jurisdiction. *Id.* When addressing a factual attack on jurisdiction, the court does
28 not presume the truth of the allegations in the complaint and may review evidence beyond

EXHIBIT C

No. 24-4238

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LEOBARDO CHAVEZ BARRIENTOS,

Petitioner,

v.

**MERRICK B. GARLAND,
UNITED STATES ATTORNEY GENERAL,**

Respondent.

**RESPONDENT'S OPPOSITION TO PETITIONER'S
MOTION FOR A STAY OF REMOVAL
Agency No. A091-611-405**

PETITIONER DETAINED

INTRODUCTION

Respondent, United States Attorney General Merrick B. Garland, through undersigned counsel, hereby opposes Petitioner Leobardo Chavez Barrientos' ("Petitioner") request for a stay of removal that he filed attendant to his petition for review. *See* ECF No. 1 ("Petition"), ECF No. 2 ("Stay"). Petitioner seeks review of a decision of the United States Citizenship and

Immigration Services (“USCIS”) that denied his Application for Certificate of Citizenship (Form N-600).

The Court docketed this matter under its current case number on July 11, 2024, after it was transferred from the United States District Court for the Central District of California. *See* ECF No. 5.¹ With his initial filing, Petitioner requests a stay of removal, pending a decision on his citizenship claim. *See generally* Stay.

For the reasons discussed, *infra*, the Court should deny the stay motion because it fails to satisfy the legal prerequisites for a stay of removal under *Nken v. Holder*, 556 U.S. 418 (2009), or *Leiva-Perez v. Holder*, 640 F.3d 962 (9th Cir. 2011) (*per curiam*). Specifically, the motion fails to make a strong showing that Petitioner will likely succeed on the merits of his claim at full briefing, nor does it demonstrate that issuing a stay would serve the public interest. *Nken*, 556 U.S. at 426.

¹ On March 12, 2024, Petitioner initially filed with the Court what he styled a “Motion for Stay of Removal . . . [and] Writ of Habeas Corpus . . .,” which was docketed under Case No. 24-1439. The Court then transferred that case to the United States District Court for the Central District of California and closed Case No. 24-1439. *See* ECF No. 5. The Central District of California thereafter determined that it lacked jurisdiction over the matter and transferred it back to this Court where it was docketed on July 11, 2024 under the current case number, 24-4238. *See* ECF No. 1, 5.

**No. 24-4238
DETAINED**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**LEOBARDO CHAVEZ BARRIENTOS,
Agency No. A091-611-405,**

Petitioner,

v.

**MERRICK B. GARLAND,
United States Attorney General,
Respondent.**

PETITIONER IS DETAINED

**RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION
AND FOR SUMMARY DISPOSITION OR, ALTERNATIVELY, MOTION
TO TRANSFER TO DISTRICT COURT**

INTRODUCTION

Pro se Petitioner Leobardo Chavez Barrientos ("Petitioner"), a native and citizen of Mexico, contends that he is a United States citizen, but his claim fails on its face, and it is unclear on what basis he invokes this Court's jurisdiction.

If Petitioner seeks review of the U.S. Department of Homeland Security's April 26, 2024 decision reinstating his April 10, 1998 removal order, DHS Record

of Proceedings (“ROP”) 1, his March 11, 2024 petition—predating that order by 46 days—was unripe and could not, logically, have successfully invoked this Court’s jurisdiction to review a reinstatement order that did not yet exist. *See* Fed. R. App. P. 15(a)(2)(C) (petition for review must “specify the order or part thereof to be reviewed”). This is especially true where Petitioner did not express a fear of returning to Mexico, ROP 10, and the government did not conduct reasonable-fear proceedings.

If, however, the Court nevertheless construes this case as a ripened petition for review of the April 26, 2024 reinstatement decision under 8 U.S.C. § 1252(a), *see Martinez v. Barr*, 941 F.3d 907, 919 (9th Cir. 2019) (allowing ripening under some circumstances when there is no prejudice to the government), Petitioner faces additional challenges. Because he is an aggravated felon, the Court’s jurisdiction is limited to reviewing all but any colorable legal or constitutional claims. 8 U.S.C. §§ 1252(a)(2)(C)-(D). And to the extent Petitioner claims that he derived U.S. citizenship exclusively through his father who he says was separated from his mother, Petitioner’s Brief (“Pet. Br.”) 9—a claim that fails on its face because his parents married after his eighteenth birthday, and so could not have been separated before then—he fails to raise a genuine issue of material fact concerning nationality, so the Court is empowered, and obligated, to reject the citizenship

On or about October 25, 2021, the United States District Court for the District of Oregon convicted Petitioner for the offense of Conspiracy to Distribute and Possession with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii), (b)(1)(C), 843(b), and 846. ROP 9. The court sentenced Petitioner to a term of sixty (60) months imprisonment. *Id.* On December 5, 2023, ICE officers encountered Petitioner while he was serving his sentence. *Id.* Petitioner claimed that he was a U.S. citizen through derivation.⁴ *Id.*

On March 2, 2023, Petitioner sought review of the USCIS denial of his Form N-600 in the United States District Court for the Central District of California. *See Chavez Barrientos v. U.S. Dep't of Homeland Security, et al.*, No. 2:23-cv-01589-KK (PD) (C.D. Cal). On March 6, 2024, the District Court granted the government's motion to dismiss for lack of jurisdiction under 8 U.S.C. § 1503 (the district court lacks subject matter jurisdiction where Petitioner's claim arose from removal proceedings).

On March 11, 2024, Petitioner filed the document that initiated this case, challenging the denial of his citizenship claim and citing 8 U.S.C. § 1252(b)(5), tendering the same filing in both this Court and the Central District of California.

⁴ It appears that the Bureau of Prisons released Petitioner from custody and transferred him to immigration detention where he is now detained under the authority of DHS-ICE.