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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**Jorge Estuardo Marin,**

Petitioner-Plaintiff,

v.

Warden, Golden State Annex, John Cantu, Field  
Office Director, ICE Los Angeles Field Office,  
Kristi Noem, Secretary,  
U.S. Department of Homeland Security,  
Todd M. Lyons, Acting Director, U.S. Immigration  
and Customs Enforcement, Pamela Bondi, U.S.  
Department of Justice, in their official capacities,

Respondents-Defendants.

Case No. \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Challenge to Unlawful Removal Under  
Color of Immigration Statutes; Request  
for Declaratory and Injunctive Relief,  
Request for Return of Unlawfully  
Removed Noncitizen to the United States

### INTRODUCTION

1. Petitioner-Plaintiff, Jorge Estuardo Marin, (hereinafter “Petitioner” or “Mr. Marin”), by and through undersigned Counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief challenging his unlawful removal by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and seeking his immediate return to the United States. Mr. Marin was unlawfully removed from the United States to Guatemala without due process on or about July 14, 2025.

2. On or about August 15, 2012, DHS ordered Mr. Marin arrested pursuant to section 236 of the Immigration and Nationality Act (hereinafter “INA” or “the Act”) (8 U.S.C. § 1226). On August 16, 2012, was authorized to be released on a bond of \$2,500 USD. On the same date, Petitioner requested a hearing before the immigration court to determine whether he should remain in the United States. Concurrently, Petitioner was served a putative Notice to Appear ordering him to appear before an immigration judge “on a date to be set” and “at a time to be set” at “TO BE DETERMINED.” See Exhibit “A.” The notice to appear had “in Custody” as Petitioner’s address.

3. On or about August 16, 2013, Petitioner’s mother posted a bond in the amount of \$2500 USD and Petitioner provided an address as 2221 West 136<sup>th</sup>, San Leandro, CA 94577 to be contacted. Petitioner was released and awaited to hear about his case. However, Petitioner did not receive a notice of hearing. Petitioner did not know of the existence of a pending hearing. Petitioner’s mother also states that she did not receive a notice of hearing.

4. At the hearing, the immigration judge ordered Mr. Marin removed from the United States through an *in absentia* order of removal under section 240(b)(5) of the INA (hereinafter “INA” or “the Act”) (8 U.S.C. § 1229a) for his failure to appear at his immigration court hearing



on or about August 22, 2013. Petitioner did not receive a copy of the order of removal at the address he provided when he was released from detention.

5. Petitioner learned of the order of removal only after he was detained once more on July 8, 2025, by immigration officers. On that day, at around 9:14 a.m., a black vehicle with a long antenna entered his property on reverse, stayed briefly, and then drove off. The next day, on July 9, 2025, on his way to work, at around 7:14 a.m., Jorge called his fiancée and informed her that he had been followed and pulled over into a Chase Bank parking lot on 11<sup>th</sup> Street in Tracy, California. He indicated that two undercover vehicles had pulled him over and took him under custody. The officers did not identify themselves and it was unclear who they were.

6. Marin's fiancée, a United States citizen, and mother of his child, Elvedina Bilic (hereinafter Miss Bilic) then called 911 in panic given that there was no information as to who they were. Later, the 911 operator called Miss Bilic to inform her that it had been the DHS who had apprehended Mr. Marin and that he had been taken to Stockton, California.

7. Mr. Marin then called Miss Bilic and informed her that he had been detained because he had an order of deportation from 2013, which he did not know about. He was told that he was going to be deported.

8. On the same date, July 9, 2025, Miss Bilic contacted undersigned counsel for legal representation of Mr. Marin who was then transferred to the Golden State Annex located at 611 Frontage Rd, McFarland, California.

9. On the same date, undersigned counsel attempted to contact Mr. Marin, but he was largely unsuccessful. Undersigned counsel was only able to make an appointment to meet via video with Mr. Marin. However, the earliest appointment was for July 15, 2025.

10. On information and belief, this pattern of detention appears to be driven by the current administration's directive for ICE to significantly increase arrest quotas rather than provide due process.<sup>1</sup>

11. On July 10, 2025, Mr. Marin, by and through undersigned counsel, emailed the DHS notifying it of an impending motion to reopen and rescind the *in absentia* order of removal for lack of notice under section 240(b)(5)(C) of the INA (8 U.S.C. § 1229a(b)(5)(C)) and 8 C.F.R. § 1003.23(b)(4)(ii), ("the motion to reopen"). The DHS was alerted of the automatic stay that applies when such motions are filed.

12. On July 11, 2025, Mr. Marin, by and through counsel, filed the motion to reopen. Again, Mr. Marin, by and through counsel, informed the DHS that the motion had been filed and provided them with a copy of the cover page of the filed motion, which had been duly served.

13. On July 11, 2025, Mr. Marin spoke to undersigned counsel and indicated that he was being removed. Mr. Marin was advised to inform the immigration officials that a motion to reopen had been filed and an automatic stay was in place. Immigration officers ignored Mr. Marin and transferred him from the Golden State Annex to an unknown location for his removal.

14. Mr. Marin remained incommunicado from July 11, 2025, and his whereabouts were unknown by undersigned counsel, and Mr. Marin's family for the duration of his detention.

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<sup>1</sup> See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025), <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").



15. On July 14, 2025, Mr. Marin called his fiancée Ms. Bilic to inform her that he was in Guatemala.

16. Mr. Marin's statutory and constitutional rights have been violated. His unlawful removal constitutes an egregious and clear disregard for his United States Constituting, and Congress' duly passed laws. Everyday outside of the United States irrevocably prejudices Mr. Marin depriving him of the ability to pursue lawful relief or challenges to his order of removal in the United States and such unlawful removal constitutes an emergency for this Court's intervention.

### **CUSTODY**

17. Mr. Marin was detained at the Golden State Annex located at 611 Frontage Rd, McFarland, California.

18. Prior to his re-detention and unlawful removal, Mr. Marin had been released from custody on a \$2,500.00 bond set by an ICE officer.

### **JURISDICTION**

19. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

20. Federal district courts have jurisdiction over noncitizens who have already been removed unlawfully from the United States. *See Singh v. Waters*, 87 F3d 346, 3419 (9th Cir. 1996).

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

21. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

22. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

#### VENUE

23. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California; because Mr. Marin is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California; and because there is no real property involved in this action.

#### INTRADISTRICT ASSIGNMENT

24. The arrest, re-incarcerate, and remove Mr. Marin were made by the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco Division of this Court is proper under N.D. Local Rule 3-2(d).

#### EXHAUSTION OF ADMINISTRATIVE REMEDIES

25. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the



prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Mr. Marin asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued unlawful removal results in irreparable harm.

26. No statutory exhaustion requirements apply to Mr. Marin’s claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

### **PARTIES**

27. Mr. Marin is a native and citizen of Guatemala. He entered the United States on

28. or about November 1, 1989, when he was about two months old. He entered without having been admitted or paroled with his mother Mrs. Nora Marin. He has never left the United States since his first and only entry.

29. Mr. Marin is currently thirty-five (35) years old and the father of a United States citizen child by the name of Giovanni Jorge Marin, who is four (4) years old. Mr. Marin is the sole provider for his son and household. He has built a life together with the mother of her child and fiancée Elvedina Bilic, who is a United States citizen. Mr. Marin’s mother, and three siblings are United States citizens.

30. Respondent-Defendant, Warden, Golden State Annex, was the immediate

custodian of Petitioner. The Warden is responsible for the day-to-day oversight of immigration detainees held at this facility and has physical custody over Petitioner.

31. Respondent-Defendant John Cantu is the Field Office Director for the Los Angeles Field Office of U.S. Immigration and Customs Enforcement. In his official capacity, he has supervisory authority over immigration detention and enforcement operations in the region where Petitioner is detained.

32. Respondent-Defendant Kristi Noem is the Secretary of the Department of Homeland Security and is responsible for the overall administration and enforcement of the immigration laws of the United States, including detention and removal operations. She is sued in her official capacity.

33. Respondent-Defendant Todd M. Lyons is the Acting Director of ICE, the agency within DHS responsible for immigration enforcement and detention. He exercises authority over Petitioner's detention and custody. He is sued in his official capacity.

34. Respondent-Defendant Pamela Bondi is a senior official within the U.S. Department of Justice. To the extent she exercises authority or oversight related to immigration adjudication or habeas litigation, she is named in her official capacity.

#### **STATEMENT RELEVANT OF FACTS**

35. Mr. Marin is a 35 year old Guatemalan citizen who arrived to the United States on or about November 1, 1989.

36. Mr. Marin has been in the United States physically and continuously for at least 35 years in the State of California.

37. Mr. Marin has a United States citizen child by the name of Giovanni Jorge Marin, who born on February 3, 2021, in Antioch, California.



38. Mr. Marin is a single father and supports his child since birth.

39. The mother of Mr. Marin's child, Miss Bilic, is a United States citizen who planned to marry Mr. marin.

40. Ms. Bilic planned to marry Mr. Marin on July 12, 2025.

41. Mr. Marin's mother is a United States Citizen.

42. Mr. Marin's mother was the beneficiary of a family petition with a date of July 27, 1993.

43. At the time the family petition was filed, Mr. Marin was under the age of 21 and qualified for immigration benefits as a derivative.

44. Mr. Marin's siblings, Hilda Dominguez Mancia, Mario R. Dominguez, Merida Evelyn Denise, and Josue Abraham Marin are United States citizens.

45. Mr. Marin applied for adjustment of status in in 2001 on Form I-485; however, the application was denied because the Mr. Marin failed to provide additional evidence.

46. Mr. Marin is statutorily eligible for adjustment of status under section 245(i) of the INA.

47. Mr. Marin then requested information about the nonreceipt of his legal permanent residence card.

48. Mr. Marin was then informed that his application to adjust status was denied.

49. Mr. Marin was not informed about the ability to appeal or seek a review of such decision.

50. On or about August 15, 2012, DSH ordered Mr. Marin arrested pursuant to section 236 of the INA.

51. On August 16, 2012, the Mr. Marin was authorized to be released on a bond of \$2,500 USD.

52. On the same date, Mr. Marin requested a hearing before the immigration court to determine whether he should remain in the United States.

53. Concurrently, Mr. Marin was served a putative Notice to Appear ordering him to appear before an immigration judge “on a date to bet set” and “at a time to be set” at “TO BE DETERMINED.”

54. On or about August 16, 2013, Mr. Marin’s mother posted a bond in the amount of \$2500 USD and Mr. Marin provided an address as 2221 West 136<sup>th</sup>, San Leandro, CA 94577.

55. Mr. Marin was released and awaited to hear about his case.

56. Mr. Marin did not receive a notice of hearing and did not know of the existence of a pending hearing.

57. Mr. Marin’s mother also states that she did not receive a notice of hearing.

58. Mr. Marin was ordered removed on or August 22, 2013.

59. Mr. Marin did not receive a copy of the order of the *in absentia* order of removal.

60. Subsequently, on July 9, 2025, Mr. Marin was detained by immigration officers.

61. On July 10, 2025, Mr. Marin, by and through undersigned counsel, notified the DHS of an impending motion to reopen and rescind an *in absentia* order of removal via the email provided by the DHS and of the application of the automatic stay of removal.

62. On July 11, 2025, Mr. Marin, by and through undersigned counsel, notified the DHS that Mr. Marin had filed a motion to reopen and rescind an *in absentia* order of removal via the email provided by the DHS and of the application of the automatic stay of removal.



63. On or about July 11, 2025, Mr. Marin notified the immigration officer that had him in custody that there was an automatic stay.

64. On or about July 12, 2025, Mr. Marin was transferred from the Golden State Annex to an unknown location for removal.

65. On or about July 14, 2025, Mr. Marin called his fiancée from Guatemala informing her that he was been removed.

### **CLAIMS FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

##### **Due Process Violations**

##### **U.S. Const. amend. V**

66. Mr. Marin re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

67. Mr. Marin unlawful removal from the United States constitutes a violation of his constitutional rights under the Fifth Amendment. Specifically, the government's actions in removing the Petitioner while an automatic stay was in effect, and while their claims for relief were pending, deprived the Petitioner of their right to a fair and meaningful opportunity to be heard before an impartial tribunal. This denial of procedural protections constitutes a direct violation of the Petitioner's right to due process of law.

68. Under the Fifth Amendment, individuals are entitled to due process protections, which include the right to remain in the United States while a claim for relief is pending, including claims for asylum, cancellation of removal, or adjustment of status. By proceeding with the Petitioner's removal in disregard of the automatic stay and pending legal remedies, the government has effectively denied the Petitioner the opportunity to fully pursue their claims, resulting in an unconstitutional deprivation of liberty.

69. Accordingly, the Petitioner seeks immediate relief from detention or reinstatement of their status pending resolution of their immigration claims, as the actions of the government violated fundamental due process rights.

**COUNT TWO**  
**SECOND CAUSE OF ACTION**  
**Violation of Statutory Provisions and Implementing Regulations**

70. Petitioner respectfully asserts that the unlawful removal of the Petitioner constitutes a violation of applicable statutes governing immigration procedures, including but not limited to 8 U.S.C. § 1229a and the regulations related to automatic stays of removal. Specifically, the removal of the Petitioner during the pendency of an automatic stay, and while claims for relief were pending, directly contravenes statutory provisions designed to protect individuals' rights to remain in the United States until such claims are adjudicated.

71. Under 8 U.S.C. § 1229a, the immigration court has the authority to grant stays of removal while certain legal proceedings are ongoing. The Petitioner's removal occurred in direct violation of the automatic stay provision, which was put in place to ensure that the Petitioner could pursue relief from deportation before being forcibly removed. Additionally, 8 U.S.C. § 1229b(a) (Cancellation of Removal) and other statutes governing procedural protections during immigration proceedings (adjustment of status, asylum, voluntary departure) were disregarded by the government's actions, depriving the Petitioner of the statutory rights to contest removal.

72. As a result of the unlawful removal, the Petitioner seeks an order from this Court to reinstate their status or immediate return to the United states, as the actions of the government violated clear statutory requirements intended to protect the Petitioner's ability to fully pursue available legal remedies.



**PRAYER FOR RELIEF**

WHEREFORE, Mr. Marin prays that this Court grant the following relief:

- a) Assume jurisdiction over this matter;
- b) Issue a writ of habeas corpus ordering DHS for the Mr. Marin's immediate return to the United States;
- c) Enjoin DHS from removing Mr. Marin's while the motion is pending.
- d) Declare that Mr. Marin cannot be removed unless an order of removal is final.
- e) Award reasonable costs and attorney fees; and
- f) Grant such further relief as the Court deems just and proper.

Dated: July 16, 2025,

Respectfully submitted,  
/s/ Jose Z. Marin  
Jose Z. Marin  
Jose Marin Law, Inc.  
44 Page Street, Ste. 600  
San Francisco, CA 94103  
Attorney for Mr. Marin

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Jorge Estuardo Marin, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

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Jose Z. Marin  
Attorney for Petitioner

Dated: July 16, 2025