

Robert E Easton
Catholic Community Services of Lane County
1055 Charnelton St.
Eugene, OR 97401
541-543-7868
reaston@ccslc.org

Kurt David Hermansen
Oregon Federal Public Defender's Office
859 Willamette Street, Suite 200
Eugene, OR 97401
(541) 465-6937
Kurt_Hermansen@fd.org
Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

S-M-J,

Petitioners,

Case No. 6:25-cv-1425-MTK

v.

Agency No. A 

DREW BOSTOCK, et al, Respondents
include: (1) Drew Bostock, Seattle Field
Office Director, Immigration and
Customs Enforcement and Removal
Operations ("ICE/ERO"); (2) Todd Lyons,
Acting Director of Immigration Customs
Enforcement ("ICE"); (3) Kristi Noem
Secretary of the Department of
Homeland Security ("DHS"); (4) Pamela
Bondi, Attorney General of the United
States; (5) U.S. Immigration and
Customs Enforcement; and 6) U.S.
Department of Homeland Security.

Respondents.

**MEMORANDUM SUPPORTING
RELEASE FROM PUNITIVE
DETENTION TO
CONSTRUCTION DETENTION**

Petitioner, S-M-J, by and through their undersigned counsel, respectfully
files this memorandum in support of release.

Introduction

Petitioner is currently detained by Immigration and Customs Enforcement (ICE) and is seeking relief through habeas corpus petition under 28 U.S.C. § 2241.

The plain language of the habeas statutes empower the Court to grant the writ based solely on the petition itself.

The plain language of habeas statute 28 U.S.C. § 2243 provides the Court the choice of three actions:

- 1) to “forthwith award the writ,”
- 2) “issue an order directing the respondent to show cause why the writ should not be granted,” or
- 3) decide that the application for the writ itself does not entitle the petitioner to the writ.¹

¹ 28 U.S. C. §2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

Choices 1) and 3), above, are the choices based on the application (petition) itself, with no further information from the parties. Choice 1) clearly authorizes the Court to grant the writ on the application—right away.

The “petition and traverse are treated, as we think they should be, as together constituting the application for the writ[.]” *Walker v. Johnston*, 312 U.S. 275, 284 (1941). Here, Petitioner has filed their petition with the Court, and Respondents have not traversed it. Respondents have more information about the detention than the Petitioner—they were the detainers. Yet they offered no traverse (or reasoning at all) when given the opportunity at the first telephonic court appearance on August 13, 2025.

As 28 USC § 2243 states, the Court can grant the writ based solely on the petition.

Although simple, the habeas statutes are powerful.

The availability of equitable remedies is a significant reason that the habeas writ is also known as *The Great Writ*. “The Court has long recognized that habeas corpus is governed by equitable principles.” *Withrow v. Williams*, 507 U.S. 680, 699 (1993) (cleaned up). The *Withrow* Court quoted the last words of the habeas statute 28 U.S.C. § 2243 itself for its equitable principles, that a “court entertaining habeas petition shall ‘dispose of the matter as law and justice require’” *Id.*

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

The plain language of § 2243 allows the Court to grant the writ on the application itself. Therefore, it is proper for the Court to look to the application and grant release, especially where granting release from punitive (jail custody) would still result in continued constructive custody in the form of ongoing ICE supervision check-ins.

While the habeas statutes empower this Court to grant the writ as equity requires, 8 U.S.C. § 1231 is the legal guide this Court should use for determining that immediate release to constructive ICE custody is appropriate.

The petition provides 8 U.S.C. § 1231 as the statute that controlled their initial release at the border in 2019 (their “Border Release”). S-M-J’s Petition ¶ 26. Respondents did not traverse that authority at the August 13 Hearing.

Pursuant to 8 U.S.C. § 1231, when the Petitioner entered the U.S., they were detained and then *released* by immigration officials.² That statute provides that after a 90-day removal period, if they are not removed, noncitizens may be released subject to supervision—importantly here—if they agree to “appear before an immigration officer periodically for identification[.]” among other things. 8 U.S.C. § 1231(a)(3)(A).³

² S-M-J’s Pet. ¶ 35.

³ The other provisions in that paragraph are requirements to

- (B) submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

That's exactly what Petitioner was doing when they were detained on August 12, 2025, they were checking in with ICE at ICE's office. S-M-J's Pet. ¶ 37. Petitioner was low hanging fruit, he walked in ICE's front door, just as the Respondents had instructed.⁴

When ICE released Petitioner, ICE determined that Petitioner was not dangerous to the community and they is not a flight risk they are not flight risks; nothing has changed that.

Although this case resides within the immigration context, the issues are similar to what the Court often deals with, pre-trial release. *E.g.* 18 U.S.C. § 3142(b) (a person may be released “unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.”).

The decision regarding Petitioner's 2019 Border Release was controlled by 8 U.S.C. § 1231(a)(6), which required an individual determination whether Petitioner would “be a risk to the community or unlikely to comply with the order of removal.” For the Petitioner, that determination was made, and they were released in 2019, *over six years ago*. S-M-J's Pet. ¶ 35.

⁴ See “Under President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day,” Deputy Chief of Staff Stephen Miller said in an interview with Sean Hannity on Fox News in May.” Josh Gerstein and Kyle Cheney, *Judges Press Trump Administration of Deportation Quotas*, Politico (July 28, 2025), available at www.politico.com/news/2025/07/28/judges-trump-administration-deportation-quotas-00480899 (last accessed August 14, 2025).

Their release was under an order of supervision (“OSUP”). S-M-J’s Pet. ¶ 4; *see* 8 U.S.C. § 1231(a)(3). Respondents did not controvert this at the August 13, 2025 hearing.

Because circumstances have not materially changed, release from actual custody to construction ICE custody will restore the prior status quo and serve as an appropriate intermediate remedy in this habeas proceeding.

Therefore, the guiding star of whether this disabled young person and their parent disabled should currently be released from re-detention is whether they are dangerous to the community, or they are a flight risk. They were already determined not to be either of those at the time of their prior release. There is nothing to suggest any change of circumstances and that they have become dangerous or a flight risk. Quite the opposite; they were detained and rendered out of the district while they were complying with their obligations to ICE.

This court is authorized by 28 U.S.C. § 2243 and guided by 8 U.S.C. § 1231 to grant immediate intermediate relief in the form of release from actual custody into constructive ICE detention, which will restore the parties to the status quo that existed for years.

This Court should also grant the intermediate remedy of barring Respondents from re-detaining Petitioner again without notice to the court, unless based on new evidence that Petitioner has become a danger to the community or a flight risk.

Habeas corpus and the liberty interest it protects are fundamental to our country. Petitioner has been in our community for over six years; they have family

here, and the family continues to pursue their flight from persecution through their asylum case with U.S.C.I.S.

Conclusion

For the reasons stated above, Petitioner respectfully request that this Court grant immediate intermediate relief in the form of (1) ordering the release of Petitioner from actual custody into constructive ICE detention and (2) barring Respondents from re-detaining Petitioner again without notice to the court, unless based on new evidence that Petitioner has become a danger to the community or a flight risk.

Dated: August 15, 2025.

s/ Robert Easton

Robert Easton, OR SBN 203697

s/ Kurt Hermansen

Kurt David Hermansen, CA SBN 166349

Attorneys for Petitioner