KATHERINE SOLTIS
VA Bar No. 89590
Taylor Diaz & Soltis, PLLC
200 Little Falls St # 207
Falls Church, VA 22046
571-351-2227 (phone)
571-620-2221 (fax)
katie@tdsimmigrationlaw.com
Attorney for Petitioner
Appearing *Pro Hac Vice*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Junior Gomez, Petitioner-Plaintiff, v. John Doe, *in his official capacity* as Facility Administrator of the Florence Service Processing Center; John Cantu, *in his official capacity* as Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; Todd M. Lyons, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and Pamela Bondi, *in her official capacity* as Attorney General of the United States; Respondents-Defendants.	C/A No. PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case concerns the illegal detention of Petitioner-Plaintiff Junior Gomez ("Petitioner").
2. Petitioner fled Honduras due to death threats from the notorious 18th Street gang. Petitioner served in the Honduran army and refused to abuse his position in the army to provide benefits to the gang, leading to the gang's threats.
3. Petitioner came to the U.S. with the intention of seeking asylum.
4. The Department of Homeland Security ("DHS") apprehended and detained Petitioner after his entry to the U.S. on January 4, 2024. Exhibit A.
5. Based on the individualized facts of Petitioner's case, DHS released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a). Exhibit B.
6. DHS thereafter commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights afforded to him under the Refugee Act of 1980.
7. When Petitioner appeared *pro se* for a status hearing in the Dallas Immigration Court on July 22, 2025, he planned to submit his application for asylum and proceed with his asylum claim. Instead, Immigration and Customs Enforcement ("ICE") officers apprehended him, detained him, and are now attempting to summarily remove him without giving him the opportunity to present his asylum claim.
8. Respondents' re-detention of Petitioner is unjustified and unrelated to an individualized consideration of Petitioner's circumstances, thereby constituting a violation of his due process rights.
9. Petitioner is not a flight risk—as shown by his appearance at his scheduled immigration

court date – and he is not a danger to the community. On information and belief, he has never been arrested or convicted of any crime.

10. Petitioner respectfully asks this Court to hold that his arrest was unlawful, to hold that his continued detention is unlawful, and to order his release from detention at the Florence Service Processing Center. Petitioner also respectfully asks that this Court order Respondents-Defendants ("Respondents") not to transfer him outside of the District for the duration of this proceeding.

CUSTODY

11. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Florence Service Processing Center in Florence, Arizona. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

12. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

14. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless 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.*

15. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

VENUE

16. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona. Petitioner is under the jurisdiction of the Phoenix ICE Field Office, and he is currently detained in Florence, Arizona, at the Florence Service Processing Center. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

18. Prudential exhaustion may be required if:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007) (citations omitted).

19. 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." *Hernandez v. Sessions*, 872 F.3d at 988 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000

(9th Cir. 2004) (citation and quotation marks omitted)).

20. Petitioner asserts that exhaustion should be waived because administrative remedies would be both inadequate and futile, and his continued detention without the opportunity to present his asylum claim will result in irreparable harm.

21. The agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

22. Moreover, because the immigration judge presiding over Petitioner's removal proceedings dismissed his case on July 22, 2025, it is not possible for Petitioner to request a custody redetermination hearing before the immigration judge.

23. Finally, a custody redetermination performed by an immigration judge under 8 C.F.R. § 236.1(d) occurs only after ICE has already made its initial decision to detain. It cannot substitute for the constitutional requirement that ICE conduct a meaningful, deliberative assessment of dangerousness and flight risk before or at the time of detention.

PARTIES

24. Petitioner Junior Gomez is an asylum-seeker from Honduras.

25. Respondent John Doe, whose real name is unknown, is sued in his/her official capacity as the Facility Administrator of the Florence Service Processing Center. In his/her official capacity, the Facility Administrator is Petitioner's immediate custodian.

26. Respondent John Cantu is sued in his official capacity as Field Office Director, Phoenix Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs

Enforcement ("ICE"). In his official capacity, Respondent Cantu is the legal custodian of Petitioner.

27. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

28. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

29. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND

The Right to Apply for Asylum

30. Congress passed the Refugee Act of 1980 to "respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

31. The Refugee Act established the right to apply for asylum in the United States and applies broadly to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

32. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").

33. Additionally, asylum applicants are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a.

34. In proceedings before the immigration court, which are also referred to as Section 240 proceedings, asylum applicants receive important procedures and rights. These rights include "the privilege of being represented . . . by counsel of the alien's choosing who is authorized to practice in such proceedings," 8 U.S.C. § 1229(b)(4)(A), and "a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229(b)(4)(B).

35. Decisions made by "Immigration Judges may be appealed to the Board of Immigration Appeals." 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the Federal Court of Appeals for the judicial circuit in which the immigration judge ruled. *See* 8 U.S.C. § 1252(b)(2).

Expansion of Expedited Removal Proceedings

36. In stark contrast to the procedures afforded to asylum applicants in Section 240 proceedings, expedited removal permits the rapid deportation of noncitizens with only minimal procedural protections. *See* 8 U.S.C. § 1225(b)(1); *Immigrant Defenders Law Center v. Mayorkas*, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) ("Individuals in regular removal proceedings enjoy far more robust due process protections [than those in expedited removal] because Congress has conferred additional statutory rights on them.").

37. Under the expedited removal process, an immigration officer—not a neutral judge—may order removal "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). *See also Make the Road New York v. Noem*, No. 25-cv-190, at *7 (D.D.C. Aug. 29, 2025) ("Key to the speed of expedited removal is the lack of almost any judicial review.").

38. The only limited safeguard in expedited removal applies to individuals who express fear of return. In such cases, the noncitizen is referred for a credible fear interview ("CFI") before an asylum officer. 8 U.S.C. §§ 1225(b)(1)(A)(i)–(ii). If the officer finds no credible fear, the individual is summarily ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). Only if a noncitizen passes this threshold interview is (s)he permitted to pursue asylum in Section 240 proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

39. Although Congress authorized expedited removal in 1996, its use was historically confined to border enforcement. *See Make the Road New York*, No. 25-cv-190, at *1–2, 10 (noting that, aside from a brief expansion in 2019, expedited removal "has always been limited to (at the most) those arriving by sea, or those within 100 miles of the border who had not been in the country for more than 14 days").

40. On January 21, 2025, however, DHS announced a sweeping expansion of expedited removal, extending its use nationwide to noncitizens apprehended anywhere in the U.S. who cannot show two years of continuous presence. *See Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (the "2025 Designation").

41. Following the 2025 Designation, DHS launched an enforcement initiative to transfer asylum-seekers already in Section 240 proceedings into expedited removal, with the goal of rapidly deporting them before they could present their asylum claims. *See Make the Road New York*, No. 25-cv-190, at *11–12 (summarizing incidents of courthouse arrests conducted by ICE nationwide).

42. To effectuate this scheme, ICE attorneys have moved to dismiss ongoing removal proceedings without advance notice, claiming that such dismissals serve the interests of the

government. Once the immigration judge grants dismissal, ICE officers, who are often stationed just outside the courtroom, immediately arrest the individuals, detain them, and reinitiate their cases in expedited removal. *Id.* at *12 ("Using this method, the Government has deported people within days of dismissing their section 240 proceedings.").

43. On August 29, 2025, the U.S. District Court for the District of Columbia stayed DHS's 2025 expansion, holding that Plaintiffs were "substantially likely to prevail on [their] claim that the current procedures [of expedited removal] do not satisfy the minimal requirements of due process." *Id.* at *27.

Right to a Hearing Before Detention

44. Immigration detention is constitutionally permissible only when, after an individualized determination, the government establishes that a noncitizen is either a flight risk or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

45. While ICE has statutory authority to revoke a bond and re-arrest a noncitizen at any time, 8 U.S.C. § 1226(b), that authority is not unlimited. Both the Board of Immigration Appeals ("BIA") and federal courts have made clear that re-detention requires a showing of changed circumstances after the person's release. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

46. Additionally, the Constitution imposes independent limits: ICE's discretion to re-arrest or continue detaining a noncitizen is always bound by the requirements of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process").

47. Due process requires a meaningful opportunity to be heard before the deprivation of liberty

occurs. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts have consistently applied the *Mathews* framework when evaluating due process challenges to civil immigration detention. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases).

48. Under *Mathews*, courts consider (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

STATEMENT OF FACTS

49. Petitioner is a citizen of Honduras.

50. Petitioner previously served in the Honduran army. While in service, members of the violent 18th Street gang demanded that he provide military equipment to them. When Petitioner refused, they threatened to kill him.

51. As a result, Petitioner spent several years in hiding before fleeing to the United States.

52. On or about January 3, 2024, Petitioner entered the United States and presented himself to immigration authorities with the intention of seeking asylum. Exhibit A.

53. DHS released Petitioner from custody on January 4, 2024, pursuant to an Order of Release on Recognizance under 8 U.S.C. § 1226(a). Exhibit B.

54. DHS thereafter initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a in Dallas, Texas. Exhibit A.

55. DHS alleged that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and commanded that he appear for a hearing on July 22, 2025, in the Dallas Immigration Court. *Id.*

56. On information and belief, Petitioner fully complied with all ICE check-ins and other requirements after his release from custody.

57. On July 22, 2025, Petitioner appeared *pro se* at his scheduled hearing in Dallas, intending to submit his asylum application. Instead of allowing him to proceed, Respondents moved to dismiss the case, and the immigration court dismissed Petitioner's proceedings. Exhibit C.

58. On information and belief, Petitioner was not informed that the dismissal was sought to place him into expedited removal proceedings.

59. Following the hearing, ICE agents arrested Petitioner. On information and belief, Petitioner was detained without any process or opportunity to be heard prior to his arrest.

60. On July 24, 2025, Petitioner appealed the immigration judge's dismissal to the BIA, and that appeal remains pending. Exhibit D.

61. On information and belief, Petitioner has never been arrested or charged with any criminal offense.

62. On information and belief, Respondents intended to initiate expedited removal proceedings against Petitioner. Petitioner's counsel has repeatedly requested a Credible Fear Interview ("CFI"); however, on information and belief, Petitioner has not yet had a CFI, over six weeks after he was detained by Respondents.

63. Petitioner is now in the unprecedented and unlawful position of being caught between overlapping removal processes: he remains subject to Section 240 proceedings, because his appeal is pending with the BIA, as well as the looming threat of expedited removal.

CAUSES OF ACTION

COUNT ONE

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); 5 U.S.C. §§ 702, 706

64. Petitioner restates and realleges all paragraphs as if fully set forth here.

65. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

66. Although the government has statutory discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), that discretion must comply with constitutional due process protections, which guarantee Petitioner a meaningful opportunity to be heard before any deprivation of liberty.

67. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

68. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. Petitioner's arrest and detention were unlawful, and Respondents should be required to release him from custody. Furthermore, Respondents must provide Petitioner with notice and a hearing before a neutral decisionmaker prior to any potential re-detention.

69. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

70. The risk of erroneous deprivation is exceptionally high. Petitioner has complied fully with ICE requirements, appeared at his scheduled hearing, and has never been charged with any criminal offense. Moreover, in light of Respondents' campaign of widespread and arbitrary arrests at immigration courts, individuals like Petitioner face a heightened risk of detention despite posing no flight risk or danger to the community.

71. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Petitioner has no criminal history and has appeared at prior hearings, demonstrating that the government has little justification for his continued detention.

72. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with immediate release and a pre-detention hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35. Petitioner seeks a neutral hearing to determine whether circumstances have changed sufficiently to justify any re-arrest.

73. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody and prohibit Respondents from re-arresting him without first providing a hearing before a neutral adjudicator. At such a hearing, the adjudicator

would evaluate whether Petitioner poses a danger to the community or a flight risk, such that re-detention would be justified.

COUNT TWO

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Substantive Due Process); 5 U.S.C. §§ 702, 706

74. Petitioner restates and realleges all paragraphs as if fully set forth here.

75. Petitioner is not a flight risk nor is he a danger to the community, and his detention is therefore unjustified and unlawful.

76. Rather than basing their decision on an individualized consideration of Petitioner's circumstances, as required, Respondents re-detained Petitioner as part of their rapid expansion of expedited removal and national campaign of courthouse arrests.

77. Petitioner therefore requests this Court order that his arrest and detention are unlawful and that he be released from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(6) Enjoin Respondents from re-arresting Petitioner unless a hearing is held before a neutral adjudicator to determine whether his re-detention is justified;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Date: September 5, 2025

Respectfully Submitted,

/s/ Katherine Soltis
KATHERINE SOLTIS
VA Bar No. 89590
Taylor Diaz & Soltis, PLLC
200 Little Falls St # 207
Falls Church, VA 22046
571-351-2227 (phone)
571-620-2221 (fax)
katie@tdsimmigrationlaw.com
Appearing *Pro Hac Vice*