

1 WILLIAM BAKER, SBN 157 906
Moreno & Associates Law Firm, APC
2 2082 Otay Lakes Road, Ste. 102
Chula Vista, CA 91913
3 619-422-4885
william.baker@morenoandassociates.com

4
5 Attorney for petitioner

6
7 UNITED STATES DISTRICT COURT
8 Southern District of California
9

10 SAMUEL DAVID GRANADILLO ARAUJO,) Case Number: 25-cv-02942-BTM-MMP
11 Petitioner,) **PETITIONER’S TRAVERSE AND**
12 v.) **MEMORANDUM IN SUPPORT OF**
13) **PETITION**

13 CHRISTOPHER J. LaROSE ; *et al.*,)
14 Respondents.)
15)
16)

17
18
19
20
21
22
23
24
25
26
27
28

1 Petitioner submits this Traverse and Memorandum to comply with the Court’s order and the
2 habeas corpus procedure and to expedite the process.

3 As a threshold matter, petitioner notes that none of the material facts are in dispute. Still, the
4 Respondent’s Return for some reason leapfrogs over and omits a few of the important facts. For
5 instance, it neglects to mention that after the DHS first detained petitioner in September 2024, it
6 released him on his own recognizance (OR). The Return also fails to mention petitioner’s marriage
7 to a United States citizen and pending adjustment of status. Finally, the Return also omits the
8 details surrounding petitioner’s re-detention by DHS. After the removal case was re-calendared, the
9 DHS instructed petitioner to appear at the downtown ERO office for a check in. The ERO officer
10 specifically lied to petitioner’s attorney and assured the attorney that petitioner was not going to be
11 detained. Petitioner checked in, but he did not check out. Of course, when he appeared at ERO for
12 his “check in”, the DHS officers summarily detained him without any warning or explanation and
13 sent him to the Otay Mesa immigration jail—where he remains today. The DHS officials generated
14 the July 2025 Warrant for Arrest as part of their ruse to re-detain petitioner without explanation at
15 the check in. It is unclear why the DHS needed a second Warrant for Arrest since petitioner had
16 already been in removal proceedings for over a year.

17 So, there do not appear to be any factual issues in dispute. Therefore, what is left is to
18 simply apply the legal principles to these undisputed facts and decide the petition. The court should
19 immediately grant the petition because none of the arguments in the Return have any merit.

20 Respondent’s Return urges the court to deny the petition and refuse any relief for a couple
21 of reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says
22 that petitioner is an arriving alien, but ignores the entire issue of the re-detention. Respondents
23 argue that the DHS may lawfully re-detain petitioner under 8 U.S.C. § 1225 for any or no reason.
24 None of these arguments have any merit. Let us briefly examine each one of them.

25 **Jurisdiction**

26 Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering
27 whether petitioner’s detention because it lacks jurisdiction. This argument is belied by both the text
28 of the applicable statutes and established case law.

1 8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney
2 General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis
3 added). Here, petitioner is not asking the court to review any actions related to the *commencement*
4 of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges
5 the purely legal question of whether he is subject to mandatory re-detention without any change in
6 circumstances or explanation after the DHS released him on his own recognizance. So, the statute
7 does not apply to this habeas corpus petition by its own words.

8 Moreover, the case law reached the same conclusion. Section 1252(g) should be ready
9 narrowly to apply “only to three discrete actions that the Attorney General may take: her ‘decision
10 or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’ ” *Reno v. Am.-*
11 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583
12 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-
13 hearing requirement is not barred by 8 U.S.C. § 1226(e)). “It is implausible that the mention of three
14 discrete events along the road to deportation was a shorthand way of referring to all claims arising
15 from deportation proceedings.” *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not “sweep in
16 any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney
17 General.” *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85
18 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro*
19 *Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26,
20 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824
21 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025) (same).

22 **Re-Detention**

23 Third, respondent’s argue that petitioner is subject to mandatory detention under 8 U.S.C. §
24 1225 and the re-detention after the OR release was lawful. Once again, respondents are wrong. The
25 legal issue here is whether the re-detention without a change in circumstances or any explanation
26 lawful. Given the somewhat new and drastic change in DHS policy, this is developing case law.

27 Still, multiple district courts have concluded that the DHS cannot just arbitrarily re-detain an
28 individual without any explanation or change in circumstances. For instance, in *Pinchi v. Noem*, No.

1 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), the
2 court reached this conclusion relying on the Due Process Clause:

3 ... **even when ICE has the initial discretion to detain or release a noncitizen pending removal**
4 **proceedings, after that individual is released from custody she has a protected liberty interest**
5 **in remaining out of custody.** *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
6 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the
7 present case and finds Petitioner raised serious questions going to the merits of his claim that due
8 process requires a hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-
9 01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-
10 5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just as
11 people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen
12 released from immigration detention] have a liberty interest in remaining out of custody on bond.”).
13 *Id.* (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No.
14 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v.*
15 *U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme
16 Court has consistently held that non-punitive detention violates the Constitution unless it is strictly
17 limited, and, typically, accompanied by a prompt individualized hearing before a neutral
18 decisionmaker to ensure that the imprisonment serves the government’s legitimate goals.”).

19 Petitioner fled death threats in Venezuela and came to the USA seeking sanctuary in
20 September 29, 2024. He complied with the rules in place at the time and presented himself at the
21 port of entry after making an appointment with the CBP One App. The DHS initially detained
22 petitioner. After processing him, the DHS released petitioner on his own recognizance pending a
23 removal proceeding. Petitioner’s OR release was obviously a conclusion that he was not a danger to
24 the community or flight risk. Petitioner hired an attorney and attended his court hearings. He
25 applied for asylum. He was issued a work authorization. During this time petitioner had no
26 problems with the law and otherwise complied with the terms of his OR release. Petitioner was
27 stunned when the DHS officers detained him at his “check in” without any explanation and sent him
28 to the immigration jail. He was given no warning or reason for the re-detention. Petitioner simply

1 travelled downtown to attend his “check in” and never returned home.

2 Notably, the respondent’s Return also provides no explanation or justification for the re-
3 detention after his OR release. This is because there is none. There was no change in circumstances
4 or law to justify the re-detention. This occurred based upon the whim of the respondents, apparently
5 in a strenuous effort to boost the President’s deportation numbers. The re-detention was an unlawful
6 violation of both the APA and Due Process.

7 A District Court has found, once immigration authorities “elect to proceed with full removal
8 proceedings under § 1226, [they] cannot [] reverse course and institute § 1225 expedited removal
9 proceedings.” *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D.
10 Cal. Aug. 21, 2025).

11 Moreover, given the time spent at liberty following an initial release from detention upon a
12 determination that petitioner was not a flight risk or danger, as well as the government’s implicit
13 promise that any custody redetermination would be based on those same criteria, petitioner has a
14 protected “interest in remaining at liberty unless [he] no longer meets those criteria.” *Espinoza v.*
15 *Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *13 (E.D. Cal. Sept. 5, 2025) (quoting
16 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)).

17 Respondents had no good or lawful reason to re-detain petitioner after his OR release. The
18 only change in circumstances was his growing and continuous respect for the laws of the United
19 States. He began to live and work here. He hired an attorney. He filed his application for relief. He
20 is now marriage and has applied for adjustment of status. Why is the USA investing so much time
21 and resources to unlawfully detain the spouse of a United States citizen?

22 **Attorney Fees**

23 Petitioner has requested costs and attorney’s fees in this action pursuant to the Equal Access
24 to Justice Act (“EAJA”), 28 U.S.C. § 2412. The EAJA provides in part:

25 A party seeking an award of fees and other expenses shall, within thirty days of final
26 judgment in the action, submit to the court an application for fees and other expenses
27 which shows that the party is a prevailing party and is eligible to receive an award
28 under this subsection, and the amount sought, including an itemized statement from

1 any attorney ... representing or appearing in behalf of the party stating the actual time
2 expended and the rate at which fees and other expenses were computed. The party
3 shall also allege that the position of the United States was not substantially justified.
4 Whether or not the position of the United States was substantially justified shall be
5 determined on the basis of the record ... which is made in the civil action for which
6 fees and other expenses are sought.

7 28 U.S.C. § 2412(d)(1)(B).

8 In this case, it appears the unlawful re-detention of petitioner was arbitrary and unjustifiable,
9 if not intended to be punitive and malicious. A cynical or jaded mentality could conclude that the
10 recent mass re-detentions are a calculated plan to break the hope and spirit of persons in removal
11 proceedings leading them to give up the fight and abandon their cases in despair—thus leading to
12 more bodies deported from the United States. More importantly, it seems that these issues have
13 already been decided multiple times in the Southern District of California but respondents continue
14 to detain people and oppose habeas corpus petitions. Respondents actions are not justified.

15 **Conclusion**

16 So, to summarize: the court has jurisdiction to decide the petition and the administrative
17 remedies have been exhausted enough to ripen the case. Respondents violated the APA and Due
18 Process by the summary and unexplained re-detention of petitioner after his OR release. Petitioner
19 was entitled to a pre-deprivation of liberty hearing and an explanation as to why he is being sent to
20 the immigration jail. The court should order petitioner's immediate release from the jail; that he is
21 not subject to re-detention without a hearing where respondents must prove by clear and convincing
22 evidence that he is a danger or flight risk; and respondents to pay petitioner's attorney fees.

23 DATED: 18 November 2025

24 Respectfully submitted,

25 /s/ William Baker
26 William Baker (157 906)
27 Attorney for petitioner
28