

1 MARIO PORTUGAL, SBN 337525
2 Global Law Group San Diego, P.C
3 1455 Frazee Road, Suite 500
4 San Diego, CA 92108
5 Telephone: (858) 833-2020
6 Facsimile: (619) 839-3152
7
8 Attorney for Petitioner N.A.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 N.A.¹
11 Petitioner-Plaintiff,

12 vs.

13
14 CHRISTOPHER J. LAROSE, Senior
15 Warden, Otay Mesa Detention Center;
16 PATRICK DIVVER, Field Office
17 Director, San Diego Office of Detention
18 and Removal, U.S. Immigration and
19 Customs Enforcement; TODD M.
20 LYONS, Acting Director, U.S.
21 Immigration and Customs Enforcement,
22 U.S. Department of Homeland Security;
23 and KRISTI NOEM, Secretary, U.S.
24 Department of Homeland Security,

25 Respondents-Defendants.

CASE NO.: 3:25-CV-03028-RBM-DEB



PETITIONER'S TRAVERSE IN
SUPPORT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

26
27
28 ¹ Petitioner Noe AVILA CASTILLO will move this Court for leave to proceed under a pseudonym (using the initials N.A.).

1 Petitioner N.A. petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241
2 to remedy Respondents' detaining him unlawfully, and states as follows:

3 **1. INTRODUCTION**

4 1. Petitioner N.A. ("Petitioner" or "Mr. N.A.") entered the United States on or about
5 2008. Mr. N.A. is a Guatemalan U-visa and Cancellation of Removal for Certain Non-legal
6 Permanent Residents seeker detained at Otay Mesa Detention Center in San Diego, California. On
7 or about December 2, 2019, Form I-918, Application for U Nonimmigrant Status, was filed with
8 USCIS.

9 2. After that, on December 21, 2023, USCIS granted deferred action to the Respondent.
10 This status remains valid as shown in the employment authorization to the noncitizen under
11 category C-14, non-immigrants who were placed on deferred action.

12 3. On June 23, 2025, Respondents took the Petitioner under custody and commenced
13 removal proceedings against him in immigration court. Even when, on or about December 21, 2023,
14 USCIS granted deferred action to the Respondent. This status remains valid as shown in the
15 employment authorization to the noncitizen under category C-14, non-immigrants who were placed
16 on deferred action.

17 4. Since then, Petitioner has remained in detention and attended his immigration court
18 hearings.

19 5. Since approximately mid-May 2025, DHS has implemented a coordinated practice of
20 leveraging immigration detention to strip people like Mr. N.A. of their substantive and procedural
21 rights and pressure them into deportation.² Immigration detention is civil and thus is permissible for
22 only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent
23 danger to the community. But DHS did not arrest and detain Mr. N.A.—who demonstrably poses no
24 risk of absconding from immigration proceedings or danger to the community—for either
25 of these reasons.

26 6. In immigration court, noncitizens have the right to pursue claims for relief from
27 removal (including U-visa and Cancellation of Removal for Certain Non-legal Permanent
28

² Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice-agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9> (last visited September 12, 2025) ("The exact number of arrests is unclear, but footage shows agents detaining people immediately after court appearances.").

1 Residents), be represented by counsel, gather and present evidence, and pursue appeals. 8 U.S.C. §
2 1229(a).

3 7. Respondents now seek to keep Mr. N.A. detained without a meaningful opportunity
4 to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based
5 not on Mr. N.A.'s personal circumstances or individualized facts. Due to his detention, Mr. N.A. is
6 at risk of being transferred away from the Southern District of California while he remains in the
7 Respondents' physical and legal custody.

8 8. But Respondents cannot evade due process requirements so easily. The U.S.
9 Constitution requires the Respondents to provide at least the rights available to him when he filed
10 his application for U-visa, deferred action, and cancellation of removal for certain non-permanent
11 legal residents.

12 9. The Constitution protects Mr. N.A.—and every other person present in this
13 country—from arbitrary deprivations of his liberty and guarantees him due process of law. The
14 government's power over immigration is broad, but as the Supreme Court has declared, it "is
15 subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
16 "Freedom from bodily restraint has always been at the core of the liberty protected by the Due
17 Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

18 10. Mr. N.A. seeks declaratory and injunctive relief to compel his immediate release
19 from the immigration jail where he has been held by DHS since being unlawfully detained on June
20 15, 2025, without first being provided a due process hearing to determine whether his incarceration
21 is justified.

22 11. Absent review in this Court, no other neutral adjudicator will examine Mr. N.A.'s
23 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §
24 1225(b)(1), INA § 235(b)(1), without due process. Mr. N.A. appeared before the Otay Mesa
25 Immigration Court within Otay Mesa Detention Center in San Diego, California.

26 12. For the reasons outlined below, Mr. N.A.'s arrest and inability to contest his arbitrary
27 detention violate his statutory and constitutional rights, including Due Process protections under the
28 U.S. Constitution. Mr. N.A. respectfully requests that this Court should grant the instant petition for
a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to
prevent such harms from recurring. Mr. N.A. also asks this Court to find that Respondents' attempts
to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to
immediately issue an order preventing his transfer out of this district.

2. FACTUAL BACKGROUND

13. Petitioner is 24-year-old citizen and national of Guatemala.

14. On or about June 16, 2017, in Los Angeles, California, Mr. N.A. was assaulted by a suspect [REDACTED] sustaining significant injuries. Mr. N.A. suffered [REDACTED]

[REDACTED] A police report was subsequently filed with the Los Angeles Police Department, and Mr. N.A. provided a statement.

15. Mr. N.A.'s aggressor was arrested for PC 245(A)(1).

16. Mr. N.A. passed through Guatemala and Mexico to reach the USA.

17. Mr. N.A. attended one or more master calendar hearings. He filed a U-Visa application with U.S.C.I.S. In November 2024, Deferred Action was granted.

18. DHS started this removal proceeding on or about June 23, 2025. Respondents alleged he was subject to removal from the United States under INA 212(a)(6)(A)(i) and commanded him to appear for a hearing on July 10, 2025, in the immigration court in Otay Mesa, California.

19. On or about December 2, 2019, Petitioner filed his U-visa application.

20. At the master calendar hearing, on July 28, 2025, the Immigration Judge and counsel for Respondents indicated that Mr. N.A. would likely be ineligible for bond or release because he is subject to *Matter of M-S-*, 27 I&N 509 (2019). Mr. N.A. remains in the Respondents' legal and physical custody at Otay Mesa Detention Center, in San Diego, California.

3. ARGUMENT

A. PETITIONER'S CLAIMS AND REQUESTED RELIEF ARE NOT JURISDICTIONALLY BARRED

21. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

22. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

23. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act).

1 24. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
2 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
3 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533
4 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3
5 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
6 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

7 25. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
8 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs Act, 28 U.S.C. § 1651,
9 and the Court’s inherent equitable powers.

10 **B. DHS LACKS AUTHORITY FOR THE DETENTION, AND THE PETITIONER**
11 **SHOULD BE RELEASED FROM DETENTION BECAUSE DEFERRED**
12 **ACTION STATUS WAS GRANTED BY USCIS AFTER A BONA FIDE**
13 **DETERMINATION OF THE PENDING U-VISA APPLICATION.**

14 26. Petitioner restates, realleges, and incorporates by reference each and every allegation
15 in the paragraphs above as if fully set forth herein.

16 27. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits
17 the federal government from depriving any person of “life, liberty, or property, without due process
18 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,
19 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
20 *Zadvydas*, 533 U.S. at 693.

21 28. Due process requires that government action be rational and non-arbitrary. *See U.S.*
22 *v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

23 29. Moreover, Mr. N.A. has a vital liberty interest in remaining free from DHS custody.
24 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)
25 (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)
26 (explaining that a non-citizen that ICE released from custody after initial apprehension “has a
27 substantial private interest in remaining out of custody” which includes an interest in “...obtaining
28 necessary medical care, [and] maintaining her relationships in the community...”). While on release
from DHS custody, Mr. N.A. was building his emotional support system, which helped him cope
with the emotional trauma he suffered in the underlying incident that led to the U-visa certification.

30. Even if the initial decision to release a non-citizen from DHS custody is
discretionary, “...after that individual is released from custody, she has a protected liberty interest

1 in remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL
2 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025
3 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

4 31. The Respondent's motion for reconsideration should be granted because he does not
5 violate any admissibility grounds. While a conviction involving a crime involving moral turpitude
6 (CIMT) may result in a finding of inadmissibility, Mr. Avilas’s arrest did not lead to any
7 convictions on April 30, 2025, and June 23, 2025, and they should not be considered as such
8 crimes.

9 32. The arrest records dated April 30, 2025, from the Los Angeles Police Department
10 pertain to an alleged use-of-force incident. However, these charges were dropped due to a lack of
11 evidence. Moreover, the records for the arrest by ICE on June 23, 2025, was improper, as it was
12 stipulated that the Respondent had been granted deferred action.

13 33. Further, on August 29, 2025, the government stated that termination should be
14 denied under 8 CFR §1003.18(d)(1)(i). However, the Respondent is not requesting termination.

15 34. Further, the Government states the new rule, Efficient Case and Docket Management
16 in Immigration Proceedings under 89 Fed. Reg. 46,742 (May 29, 2024) also codifies grounds for the
17 discretionary termination of removal, deportation, and exclusion proceedings. The immigration
18 judge may, in the exercise of discretion, terminate the case if the noncitizen is prima facie eligible
19 for naturalization, relief from removal, or lawful status; USCIS has jurisdiction to adjudicate the
20 associated petition, application, or other action if the alien were not in proceedings; and the alien
21 has filed the petition, application, or other action with USCIS. However, no filing is required where
22 the alien is prima facie eligible for adjustment of status or naturalization. 8 C.F.R. §
23 1003.18(d)(1)(ii)(B).

24 35. However, 8 C.F.R. § 1003.18(d)(1)(ii)(C) states discretionary termination is
25 available when: (c) The noncitizen is a beneficiary of Temporary Protected Status, deferred action,
26 or Deferred Enforced Departure.

27 36. Here, the Respondent warrants dismissal of his removal proceedings because of the
28 approved deferred action. As previously stated, the Respondent meets the requirements under the
Act to be eligible for dismissal.

37. Deferred action is an act of prosecutorial discretion to defer the removal of an
individual. Individuals who receive deferred action will not be removed from the United States for a

1 specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate
2 the grant of deferred action.

3 38. Once jurisdiction vests with the Immigration Court, the government no longer has
4 the sole authority to dismiss proceedings. However, this analysis shows that the IJ does have the
5 authority to dismiss proceedings once jurisdiction vests with the Immigration Court. Motions to
6 dismiss are, in fact, frequently used by Respondents in removal proceedings on many grounds. One
7 example would be if the Respondent has a colorable claim to U.S. Citizenship. Another might be
8 that the NTA does not state valid grounds for removal. See 8 CFR 1239.2(c).

9 39. Respondent requests that their removal proceedings be dismissed without prejudice.
10 In support of his request, Respondents state that: Respondent is a twenty-four-year-old Guatemalan
11 native who entered in 2008.

12 40. On December 15, 2023, the I-797, Notice of Action, was received, indicating the
13 Respondent would be issued an employment authorization and may be placed in deferred action.
14 Furthermore, on December 21, 2025, USCIS granted employment authorization under the deferred
15 action category C-14 to the noncitizen who was placed on deferred action for individuals who
16 applied for a U Nonimmigrant Status. He was a victim of a qualifying crime, which caused him
17 substantial harm. Thus, the Respondent's presence is required by law enforcement.

18 41. Here, the approved deferred action should allow the Respondent to pursue his
19 application for a U visa and related relief, with USCIS conserving judicial resources and providing
20 the Respondents with an opportunity to fairly present their case before a trained professional,
21 equipped and authorized for such adjudication. See 8 CFR § 208.1(b). If the USCIS officer does not
22 believe that the Respondent is entitled to a U-visa and related relief, that officer can then issue an
23 NTA and refer the matter to the Court. If, however, USCIS decides to grant a U visa and related
24 relief, the removal case is not initiated, and the matter is resolved at that stage. 8 CFR § 208.14(b).
25 Accordingly, the Court should grant the Respondents' habeas petition for release.

26 **C. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION, AND**
27 **DEFENDANTS ARE IN VIOLATION OF THE ADMINISTRATIVE**
28 **PROCEDURE ACT – 5 U.S.C. § 706(2)(A) NOT IN ACCORDANCE WITH LAW**
AND IN EXCESS OF STATUTORY AUTHORITY, VIOLATION OF 8 U.S.C. §
1225(B)

42. Petitioner restates, realleges, and incorporates by reference each and every allegation
in the paragraphs above as if fully set forth herein.

1 43. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
2 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B)
3 contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

4 44. Congress has made it clear that the expedited removal statute does not apply and
5 may not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It
6 further applies to the non-citizens seeking admission. *Id.* § 1225(b)(2).

7 45. Because Mr. N.A. is not subject to the January 2025 Designation, Respondents’ use
8 of the January 2025 designation to detain him while his INA section 240 proceedings were ongoing
9 is unlawful arbitrary, capricious, and unlawful.

10 **D. PETITIONER’S DUE PROCESS CLAIMS ARE MERITORIOUS**

11 46. Petitioner restates, realleges, and incorporates by reference each and every allegation
12 in the paragraphs above as if fully set forth herein.

13 Due Process Ensures Statutory Procedures Are Followed.

14 47. Even as an arriving noncitizen, Petitioner retains the right not to be detained through
15 procedures that violate statutory or regulatory mandates.

16 IJ Termination Without Prejudice Does Not Authorize Automatic §1225(b)(1) Detention

17 48. Placement into §1225(b)(1) detention following termination without prejudice
18 exceeds the statutory bounds set by Congress and is therefore subject to challenge under §2241.

19 APA Review Supports Relief

20 49. DHS’s placement of Petitioner into §1225(b)(1) detention after IJ termination
21 without prejudice is final in the only sense that matters here, it immediately and definitively
22 affected custody. Because this action directly governs detention and cannot be remedied
23 administratively, habeas relief remains appropriate under 5 U.S.C. §704.

24 Relief Would Directly Affect Custody

25 50. Petitioner seeks a declaration that his detention under §1225(b)(1) is unlawful and an
26 order for release. Granting this relief would directly alter custody, satisfying the requirement under
27 *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016), and *Pinson*, 69 F.4th at 1072, that habeas relief
28 must affect custody.

IV. CONCLUSION AND PRAYER FOR RELIEF

51. For the foregoing reasons, Petitioner respectfully requests that this Court deny
Respondent’s request to dismiss this action, grant the Petition for Writ of Habeas Corpus, declare

1 that §1225(b)(1) detention following IJ termination without prejudice is unlawful, and order
2 Petitioner’s immediate release or such other relief as the Court finds proper.

3 Dated: November 24, 2025

Respectfully submitted,

4
5 //s// Mario Portugal

6
7 _____
8 MARIO PORTUGAL, SBN 337525
9 Global Law Group San Diego, P.C
10 1455 Frazee Road, Suite 500
11 San Diego, CA 92108
12 Telephone: (858) 833-2020
13 Facsimile: (619) 839-3152

14 Attorney for Petitioner N.A.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
2 San Diego, CA 92108
Telephone: (858) 833-2020
3 Facsimile: (619) 839-3152
4 Attorney for Petitioner N.A.

5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**


10 N.A.³
11 **Petitioner-Plaintiff,**

12 vs.

13
14 **CHRISTOPHER J. LAROSE, Senior**
Warden, Otay Mesa Detention Center;
15 **PATRICK DIVVER, Field Office**
Director, San Diego Office of Detention
16 **and Removal, U.S. Immigration and**
Customs Enforcement; TODD M.
17 **LYONS, Acting Director, U.S.**
Immigration and Customs Enforcement,
18 **U.S. Department of Homeland Security;**
19 **and KRISTI NOEM, Secretary, U.S.**
Department of Homeland Security,

20 **Respondents-Defendants.**
21
22
23
24
25
26
27

CASE NO.: 3:25-CV-03028-RBM-DEB


**PETITIONER'S TRAVERSE IN
SUPPORT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

CHALLENGE TO UNLAWFUL
INCARCERATION; REQUEST FOR
DECLARATORY AND INJUNCTIVE
RELIEF

28 ³ Petitioner Noe AVILA CASTILLO will move this Court for leave to proceed under a pseudonym (using the initials N.A.).

EXHIBITS:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Petitioner’s Reply to the Intent to Deny, Dated November 18, 2025, showing the Deferred Actions Still Valid.
2. Booking Records Details Showing no Charges Against the Respondent Related to the Arrest Dated April 30, 2025.
3. LAPD Records Showing No Charges Against the Respondent Related to the Arrest Dated April 30, 2025.
4. Petitioner’s Declaration Explaining the Unlawful Arrest Dated April 30, 2025.

Dated: November 24, 2025

Respectfully submitted,

//s// Mario Portugal

MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner N.A.

EXHIBIT "1"