

1 Rose M. Thompson, Cal Bar No. 214003
2 ROSE IMMIGRATION LAW
3 P.O. Box 23651
4 San Diego, CA 92193
(619) 500-2911

5 *Attorney for Petitioner*

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 In the Matter of)

10 Yonathan Donaldo Santos Zelaya)

11 *Petitioner,*)

12 v.)

13)
14 **DANIEL A. BRIGHTMAN**, in his)
15 official capacity as Field Office)
16 Director of the Immigration and)
17 Customs Enforcement, Enforcement)
18 and Removal Operations San Diego)
19 Field Office; **KRISTI NOEM**, in her)
20 official capacity as Secretary of the)
21 Department of Homeland Security;)
22 **DEPARTMENT OF HOMELAND)
SECURITY**)

23 *Respondents*)
24)
25)

Case No. '25CV3489 LL DDL

Agency No. 

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

IMMIGRATION HABEAS CASE

PETITION FOR WRIT OF HABEAS CORPUS

1 I. INTRODUCTION

2 1. Since February 26, 2014, Petitioner Yonathan Donaldo Santos Zelaya
3 (Hereinafter “Petitioner” or “Mr. Santos Zelaya”), a citizen of Honduras, has been
4 under the custody of the U.S. Department of Homeland Security’s Immigration and
5 Customs Enforcement (“ICE”), specifically its Enforcement and Removal
6 Operations (“ERO”) division. For ease of reference, ICE will be used throughout
7 this submission to refer to ICE and its ERO division.

8 2. Petitioner’s physical detention initially occurred while his immigration
9 proceedings were ongoing. On August 25, 2015, an immigration judge (“IJ”)
10 granted Petitioner’s application for withholding of removal under the Convention
11 Against Torture (“CAT”). Petitioner initially appealed to the Board of Immigration
12 Appeals (“BIA”). The Department of Homeland Security (“DHS”) did not appeal
13 the IJ’s decision.

14 3. On or about November 18, 2015, the IJ granted bond of \$1,500 to
15 Petitioner. On December 8, 2015, the BIA acknowledged the withdrawal of
16 Petitioner’s appeal. As such, the IJ’s grant of CAT withholding became a final
17 order, thereby making Respondents’ detention of Petitioner a post-final-order
18 detention.

19 4. Petitioner was placed on an Order of Supervision (“OSUP”), however
20 that original OSUP was lost. On October 30, 2019, ICE placed Petitioner on a new
21 OSUP. He continued in compliance with annual ICE check-ins per the original and
22 2019 OSUP from then to present, approximately 10 years.

1 action took place in the Southern District of California. All material decisions
2 regarding Mr. Santos Zelaya's detention have been made at the ICE's San Diego
3 Field Office, located within San Diego, California.

4 5 IV. EXHAUSTION

6 11. Mr. Santos Zelaya is not required to exhaust administrative remedies.
7 Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*,
8 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be
9 waived if "administrative remedies are inadequate or not efficacious, pursuit of
10 administrative remedies would be a futile gesture, [or] irreparable injury will
11 result..." *Id.* at 1000.

12 12. Administrative remedies would be futile, inadequate, and not
13 efficacious for Mr. Santos Zelaya. Exhausting his constitutional claim would be
14 futile because the agency does not have the authority to rule on constitutional
15 questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam)
16 ("the inability of the INS to adjudicate the constitutional claim completely
17 undermines most, if not all, of the purposes underlying exhaustion").

18 13. Even if exhaustion were not futile, waiver is warranted because Mr.
19 Santos Zelaya's claim presents purely legal issues, and no purpose is served by
20 requiring an administrative appeal. *See Hernandez v. Sessions*, 872 F.3d 976, 988–
21 89 (9th Cir. 2017).

22 14. Exhaustion of remedies at the BIA is not required because this
23 post-order custody matter falls squarely under ICE's jurisdiction. Mr. Santos Zelaya
24 has suffered irreparable harm in the form of continued increased custody conditions

1 that make it difficult to provide for his 3 U.S. citizen minor children. If he were
2 physically re-detained, the resulting separation would irreparably harm the children,
3 who rely on Petitioner as their sole source of care.

4
5 **V. PARTIES**

6 15. Petitioner, **YONATHAN DONALDO SANTOS ZELAYA**, is a
7 citizen of Honduras, who has resided in the United States since 2013 and was
8 granted Withholding of Removal under the CAT on August 25, 2015, and has been
9 under the custody of ICE since his release on bond on or about November 18, 2015.

10 16. Respondent, **DANIEL A. BRIGHTMAN**, is the Field Office Director
11 for the San Diego Field Office of the U.S. Immigration and Customs Enforcement
12 (“ICE”), Enforcement and Removal Operations (“ERO”), a component of the
13 Department of Homeland Security (“DHS”). Respondent Brightman maintains his
14 office in San Diego, California, within this judicial district. The San Diego Field
15 Office is responsible for carrying out ICE’s immigration enforcement and removal
16 operations in San Diego, therefore Respondent Brightman is a legal custodian of
17 Petitioner and is sued in his official capacity.

18 17. Respondent, **KRISTI NOEM**, is the Secretary of the Department of
19 Homeland Security, an agency of the United States. She is responsible for the
20 administration and enforcement of the immigration laws. *See* 8 U.S.C. § 1103(a).
21 Respondent Noem is a legal custodian of Petitioner and is sued in her official
22 capacity.

1 18. Respondent Department of Homeland Security (DHS) is the federal
2 agency responsible for implementing and enforcing the INA, including the
3 detention and removal of noncitizens.

4
5 **VI. FACTUAL ALLEGATIONS**

6 19. On July 28, 2011, Petitioner was physically removed to Honduras, his
7 country of birth. He remained in Honduras for only a few weeks because he
8 experienced persecution and torture. He lived in Mexico until he entered the U.S.
9 without inspection on October 16, 2013.

10 20. On November 7, 2013, he was arrested by DHS/ICE. He was
11 transferred to criminal custody and then back to DHS/ICE custody on or about
12 February 26, 2014, after he served time for his illegal reentry after deportation
13 conviction. On May 5, 2014, ICE placed Petitioner in “withholding only”
14 proceedings and he was detained at the Otay Mesa Detention Center.

15 21. On August 25, 2015, an IJ granted Petitioner’s application for
16 withholding of removal under the CAT. Petitioner appealed to the BIA and on
17 November 18, 2015, he was granted bond pursuant to *Rodriguez III*, after which
18 petitioner withdrew his appeal. ICE never filed an appeal. His release from ICE
19 custody thereafter became a final post-order detention as Petitioner was issued an
20 OSUP.

21 22. For over ten years, Petitioner has been living in the United States
22 complying with annual check-ins. He lost his initial OSUP from 2015, therefore on
23 October 30, 2019, ICE issued a new OSUP with conditions, including to report in
24 person on October 27, 2020.

1 23. On October 27, 2020, Petitioner attended his ICE check-in
2 appointment. His next report date was set for October 18, 2021, then it was changed
3 to October 18, 2022.

4 24. On October 18, 2022, Petitioner attended his ICE check-in
5 appointment. His next report date was set for November 15, 2023.

6 25. On November 15, 2023, Petitioner attended his ICE check-in
7 appointment and was enrolled in Compliance Assistance Reporting Terminal
8 (“CART”). He was scheduled for an office visit on November 14, 2024.

9 26. On November 14, 2024, Petitioner attended his ICE check-in
10 appointment, and his next scheduled report date was set for November 14, 2025.
11 Despite a clerical error on a date on the OSUP form, Petitioner has attended all
12 required OSUP appointments.

13 27. On November 14, 2025, Petitioner attended his ICE check-in
14 appointment and was placed in an Alternatives to Detention Program (“ATD”),
15 Intensive Supervision Appearance Program (“ISAP”). Respondents affixed an
16 ankle monitor on Petitioner and required him to download the corresponding
17 application on his phone.

18 28. On November 17, 2025, ICE agents went to Petitioner’s house to take
19 his photo.

20 29. On November 19, 2025, Petitioner attended his ICE check-in
21 appointment with undersigned counsel. The ICE officer stated that it was the
22 intention of the officer in charge of Petitioner’s case to take Petitioner into custody
23 at the next check-in date, December 3, 2025. This was because ICE was making
24 arrangements with the country of Mexico to accept Petitioner. Petitioner is not a
25

1 citizen of Mexico, nor does he have any immigration status in Mexico. ICE
2 provided no written document reflecting this. On November 25, 2025, Petitioner
3 attended his ICE check-in appointment at the ISAP office.

4 30. On December 3, 2025, Petitioner attended his ICE check-in
5 appointment with undersigned counsel. After waiting for over two hours, the
6 appointment was rescheduled to January 6, 2026. Petitioner was not physically
7 detained.

8 31. Pursuant to his custody, Respondents have scheduled Petitioner for
9 multiple future appointments: December 9, 2025 (home visit anytime 7am-6pm);
10 December 23, 2025 (office visit at 10am); January 6, 2026 (home visit anytime
11 7am-6pm); January 20, 2026 (office visit at 10am); February 3, 2026 (home visit
12 7am-6pm); February 17, 2026 (office visit at 10am), March 3, 2026 (home visit
13 7am-6pm).

14 15 VII. LEGAL ARGUMENT

16 32. A federal district court can grant a writ of habeas corpus if the
17 petitioner "is in custody in violation of the Constitution or laws or treaties of the
18 United States." 28 U.S.C. § 2241. It is well established that the Fifth Amendment
19 entitles non-citizens to process of law in deportation proceedings. *Demore v. Kim*,
20 538 U.S. 510, 523 (2003). The Due Process Clause of the Fifth Amendment forbids
21 the government from depriving any "person" of liberty without due process of law.
22 U.S. Const. amend. V.

23 33. Individuals under an order for supervision are considered in custody
24 for habeas purposes. "As the Supreme Court recently noted, physical detention (or
25

1 here, physical detention by federal, rather than state, authority) is no longer required
2 for a petitioner to meet the custody requirement and obtain habeas relief.” *Rosales*
3 *v. Bureau of Immigr. & Customs Enft*, 426 F.3d 733, 735 (5th Cir. 2005) *citing*
4 *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2711, 2719, 159 L.Ed.2d 513 (2004)
5 (“[O]ur understanding of custody has broadened to include restraints short of
6 physical confinement[.]”); *see also Jones v. Cunningham*, 371 U.S. 236, 239–40,
7 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (recognizing that restraints on liberty other than
8 physical confinement may constitute custody for habeas purposes).

9 34. The Ninth Circuit has held that a final deportation order subjects a
10 noncitizen to a restraint on liberty sufficient to place the noncitizen “in custody.”
11 “We have broadly construed “in custody” to apply to situations in which [a non-
12 citizen] is not suffering any actual physical detention; *i.e.*, so long as he is subject
13 to a final order of deportation, [a non-citizen] is deemed to be “in custody” for
14 purposes of the INA, and therefore may petition a district court for habeas review
15 of that deportation order.” *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th
16 Cir. 1995).

17 35. Here, after his removal from the U.S., Mr. Santos Zelaya reentered
18 without inspection on October 16, 2013. On August 25, 2015, the IJ ordered that
19 his removal to Honduras be withheld and granted him protection under the CAT.
20 The IJ order became final on December 8, 2015. He has been under an OSUP since
21 then. Therefore, Petitioner’s custody is governed by 8 U.S.C. § 1231(a) because he
22 has a final order of removal to Honduras but cannot be removed there due to
23 withholding of removal under the CAT. Post-order custody is limited by §
24
25

1 1231(a)(6) and implementing regulations, 8 C.F.R. §§ 241.4–241.5. Accordingly,
2 this Court has jurisdiction over this habeas action.

3 36. Respondents have subjected Petitioner to prolonged custody or
4 custody-like restrictions since his physical release on or about November 18, 2015,
5 or 120 months ago. Because removal to Honduras is barred and removal to another
6 country is unforeseeable, any continued detention or increased restrictions violates
7 the Due Process Clause (*Zadvydas*, 533 U.S. at 699; *Diouf II*, 634 F.3d at 1086–
8 87).

9 37. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
10 analyzed the due process rights of noncitizens held during and after a removal
11 period. *Zadvydas* concerned a resident noncitizen who could not be deported
12 because none of the relevant countries would accept him. *Id.* at 684. Because
13 indefinite detention without adequate safeguards could violate noncitizens’ due
14 process rights, the Supreme Court established a presumption of six months as a
15 reasonable period of detention while an order of removal is carried out. *Id.* at 701.
16 After that period elapses, a noncitizen who “provides good reason to believe that
17 there is no significant likelihood of removal in the reasonably foreseeable future”
18 must be released, unless the government can “respond with evidence sufficient to
19 rebut that showing.” Courts have found that individuals subject to an Order of
20 Supervision may be considered in custody for purposes of 28 U.S.C. § 2241 where
21 they challenge the conditions of their release. *See, e.g., Doe v. Barr*, 479 F. Supp.
22 3d 20, 26 (S.D.N.Y. 2020); *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass.
23 2017); *Xiao Biao Li v. Barr*, 839 F. App’x 589, 591 (2d Cir. 2020); *Alvarez v.*
24 *Holder*, 454 F. App’x 769, 772-73 (11th Cir. 2011) (citing *Dawson v. Scott*, 50 F.3d

1 884, 886 n 2 (11th Cir. 1995)); *Gozo v. Mayorkas*, No. 1:23-cv-159, 2024 WL
2 2027510, at *1 (S.D. Tex. Mar. 4, 2024). But see, e.g., *Berrezueta v. Decker*, No.
3 1:20-cv-10688-MKV, 2021 WL 601649, at *1-2 (S.D.N.Y. Jan. 11, 2021) (habeas
4 petition filed while individual in custody, who was later released subject to Order
5 of Supervision, could be dismissed as moot absent proof of collateral consequences
6 from prior detention).

7 38. Respondents' increase in custodial restrictions exceeds the lawful
8 scope of § 1231(a)(6) and the INA. In the Ninth Circuit, post-order detention may
9 not be prolonged, increased, or reimposed without individualized findings and
10 procedural safeguards (*Diouf II*; *Franco-Gonzalez*, 767 F. Supp. 2d at 1054).
11 Respondents have not made any such showing.

12 39. A civil detainee's confinement is unconstitutional under the Fifth
13 Amendment if his conditions of confinement "amount to punishment." *Bell v.*
14 *Wolfish*, 441 U.S. 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.
15 2004) (quoting *Bell*, 441 U.S. at 535); *accord Bent v. Barr*, 445 F. Supp. 3d 408,
16 413-14 (N.D. Cal. 2020). "[P]unitive conditions may be shown (1) where the
17 challenged restrictions are expressly intended to punish, or (2) where the challenged
18 restrictions serve an alternative, non-punitive purpose but are nonetheless excessive
19 in relation to the alternative purpose, . . . or are employed to achieve objectives that
20 could be accomplished in so many alternative and less harsh methods." *Jones*, 393
21 F.3d at 932, *also Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.
22 Ed. 2d 285 (1963) (recognizing that restraints on liberty other than physical
23 confinement may constitute custody for habeas purposes.).

1 40. Petitioner was released on bond on or about November 18, 2015 and
2 from that date to present he has been constructively detained through his OSUP. He
3 has been living in the San Diego county, complying with his annual check-ins. No
4 issues surrounding Petitioner's check-ins have occurred and none have been
5 alleged.

6 41. On November 14, 2025, Petitioner was placed in an ATD ISAP, and,
7 as delineated in "Section VI. Factual Allegations," the conditions of his custody
8 drastically intensified. On November 17, 2025, ICE agents went to Petitioner's
9 house to take his photo. On November 19, 2025, Petitioner attended his ICE check-
10 in appointment with undersigned counsel. On November 25, 2025 and December
11 3, 2025, Petitioner attended his ICE office check-ins. Between November 14 and
12 December 3, 2025, he was required to attend four check-ins, including an in-home
13 visit, a sudden and dramatic escalation from his prior annual check-in, with all
14 events occurring in just *sixteen days*.

15 42. Respondents have scheduled Petitioner for two check-ins before the
16 New Year, two in January, two in February and one in March, alternating between
17 office and home visits. For the home visits, Petitioner must be at home from 7am
18 to as late as 6pm to wait for the ICE officers to come to his home.

19 43. Respondent's increased custody conditions are unwarranted because
20 there has been no change in circumstances. The increased conditions are therefore
21 punitive and excessive in relation to their purpose. There are less harsh methods
22 that were previously in place and that functioned well from his release on November
23 18, 2015 to present, totally over ten years.

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: December 9, 2025

Respectfully submitted,

/s/ Rose M. Thompson

Rose M. Thompson
Attorney at Law

Attorney for Petitioner