

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
415-283-9923

DETAINED

Robert G. Cummings
Lead Attorney
Law Offices of Robert G. Cummings
2000 Broadway Street
Redwood City, CA 94063
650-363-7280

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FILIPPO ELEUTERI,

Petitioner,

vs.

GREGORY J. ARCHAMBRAULT, Field
Office Director, ICE/San Diego;
CHRISTOPHER J. LAROSE, Warden, Otay
Mesa ICE Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States,

Respondents.

Case No. **'25CV3620 BAS DDL**

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

PETITION FOR WRIT OF HABEAS CORPUS

28 U.S.C. § 2241

I. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody within this District.
2. Venue is proper in the Southern District of California because Petitioner is detained at Otay Mesa Detention Center, located in San Diego, California.

3. This Court has authority to grant immediate release where detention violates the Constitution, laws, or treaties of the United States.

II. PARTIES

4. Petitioner Filippo Eleuteri is an Italian national currently detained at Otay Mesa.
5. Respondent **CHRISTOPHER J. LAROSE** is the Acting Warden and immediate custodian.
6. Remaining Respondents exercise legal control over Petitioner's detention.

III. FACTUAL BACKGROUND

7. Petitioner lawfully entered the United States on an F-1 visa.
8. He is married to a United States citizen.
9. USCIS approved his Form I-130 after interview.
10. Petitioner has a pending Form I-485 for adjustment of status.
11. Petitioner has no criminal history.
12. On or about December 11, 2025, ICE arrested and detained Petitioner.
13. ICE has not issued or filed a Notice to Appear, leaving the case in a pre-NTA posture.
14. Counsel immediately demanded release under INA § 236(a).
15. ICE ignored counsel, refused to identify the Deportation Officer, and transferred Petitioner to Otay Mesa.
16. ICE attempted to coerce Petitioner into signing a "custody redetermination" document after notice of representation.
17. ICE failed to respond to counsel's deadline of December 15, 2025 , at 5:00 PM. To provide the legal basis for Petitioners detention.
18. Petitioner remains detained without lawful justification.

IV. LEGAL CLAIMS

COUNT I

UNLAWFUL AND ARBITRARY DETENTION IN VIOLATION OF INA § 236(a)

(8 U.S.C. § 1226(a))

19. Petitioner's detention is governed, if at all, by **INA § 236(a)**, which authorizes **discretionary**, not mandatory, civil detention pending removal proceedings.
20. Section 236(a) does not permit blanket or prolonged detention. Rather, it requires an **individualized custody determination** assessing whether detention is necessary to

prevent flight risk or danger to the community. See **Zadvydas v. Davis**, 533 U.S. 678, 690 (2001) (civil immigration detention must bear a reasonable relation to its purpose and may not be arbitrary or indefinite).

21. Petitioner is **not subject to mandatory detention under INA § 236(c)**. He has **no criminal history**, no allegations of dangerousness, and no prior removal orders. ICE therefore retains **full discretionary authority** to release him on recognizance, parole, or bond. See **Demore v. Kim**, 538 U.S. 510, 527–28 (2003) (distinguishing discretionary detention under § 236(a) from mandatory detention).
22. Despite this clear statutory framework, ICE has **failed to issue any written custody determination**, failed to articulate any flight-risk or danger rationale, and failed to provide Petitioner with a bond hearing or meaningful review.
23. Courts within the Ninth Circuit have repeatedly held that discretionary detention under § 236(a) **cannot be prolonged or maintained without adequate procedural safeguards and individualized justification**. See **Casas-Castrillon v. DHS**, 535 F.3d 942, 951 (9th Cir. 2008) (holding that prolonged detention under § 236(a) requires procedural protections); **Singh v. Holder**, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government bears the burden to justify continued detention).
24. Petitioner has overwhelming equities demonstrating that detention is unnecessary, including:
 - lawful entry into the United States;
 - a **bona fide marriage to a U.S. citizen**, already vetted and approved by USCIS;
 - an **approved Form I-130**;
 - a **pending Form I-485** adjustment application;
 - no criminal or immigration violations;
 - strong family and community ties; and
 - every incentive to appear for all proceedings.
25. Continued detention under these circumstances is **ultra vires**, exceeds ICE’s statutory authority under § 236(a), and constitutes **unlawful custody** subject to habeas relief.

COUNT II

VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE

(Arbitrary and Punitive Civil Detention)

26. The Due Process Clause of the Fifth Amendment prohibits civil detention that is arbitrary, punitive, or unrelated to a legitimate regulatory purpose. *Zadvydas*, 533 U.S. at 690.
27. Although immigration detention is civil in nature, it must be **reasonably related to its non-punitive purpose** and accompanied by adequate procedural safeguards. *Demore*, 538 U.S. at 527; *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).
28. ICE's conduct here violates both **substantive and procedural due process**.
Substantively, Petitioner's detention serves no legitimate governmental purpose where he poses no flight risk or danger. Procedurally, ICE has deprived Petitioner of any meaningful custody review, written determination, or opportunity to challenge detention.
29. ICE's attempt to solicit Petitioner's signature on a purported "custody redetermination" document **after notice of representation** further underscores the coercive and constitutionally defective nature of the detention. Any waiver obtained under such circumstances would be **invalid, unknowing, and involuntary**. See *United States v. Ramos*, 623 F.3d 672, 680 (9th Cir. 2010) (waivers obtained through coercion or deception violate due process).
30. Each additional day of detention inflicts a **new constitutional injury**, including loss of liberty, separation from Petitioner's U.S. citizen spouse, emotional distress, and interference with his lawful adjustment-of-status process.
31. Because ICE's actions are **arbitrary, punitive, and unsupported by individualized findings**, Petitioner's continued detention violates the Due Process Clause and must be terminated.

COUNT III

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(Unlawful Agency Action and Unreasonable Delay)

(5 U.S.C. § 706(1)–(2))

32. The Administrative Procedure Act requires federal agencies to act in accordance with law and prohibits actions that are **arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law**. 5 U.S.C. § 706(2)(A).
33. ICE's conduct—including its failure to issue a custody determination, refusal to identify the assigned Deportation Officer, silence in the face of counsel's time-certain demands,

and continued detention without explanation—constitutes **agency action unlawfully withheld or unreasonably delayed**. 5 U.S.C. § 706(1).

34. An agency must articulate a rational connection between the facts found and the decision made. *Arrington v. Daniels*, 516 F.3d 1106, 1113 (9th Cir. 2008). ICE has articulated **no rationale whatsoever** for Petitioner’s continued detention.
35. ICE’s silence and inaction—particularly after formal notice of representation and explicit notice of impending litigation—demonstrate **bad-faith administrative conduct** and an abdication of statutory responsibility.
36. Because ICE’s detention of Petitioner is unsupported by law, unreasoned, and contrary to controlling Supreme Court and Ninth Circuit precedent, it must be set aside under the APA, and this Court should order immediate relief.

V. REQUEST FOR RELIEF

Petitioner respectfully requests:

- A. Immediate release from ICE custody;
- B. Alternatively, an order requiring a prompt custody hearing with the burden on the government;
- C. Injunctive relief preventing removal or transfer;
- D. Attorneys’ fees under EAJA; Award Petitioner reasonable attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority, as Respondents’ continued detention and refusal to act after notice is not substantially justified.
- E. Any other relief this Court deems just.

Respectfully submitted,

Date: December 15, 2025

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner