

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. 3:25-cv-03620-BAS-DDL

**PETITIONER’S TRAVERSE TO
RESPONDENTS’ RETURN,
SUPPLEMENTAL NOTICE OF POST-
FILING EVENTS, AND MOTION FOR
CONTINUING INJUNCTIVE RELIEF
AND EAJA PRESERVATION**

Judge: Hon. Cynthia Bashant

I. INTRODUCTION

Respondents’ assertion that this case is “moot” because an Immigration Judge granted bond fundamentally misunderstands both the nature of Petitioner’s claims and the scope of this Court’s habeas jurisdiction.

This habeas action was not rendered moot by the belated scheduling of a bond hearing after Petitioner filed suit, after ICE refused repeated release requests, and after ICE issued a retaliatory Notice to Appear and custody determination in response to federal litigation.

Petitioner seeks prospective and continuing relief to prevent re-detention, retaliatory enforcement, and unlawful custodial restraints — harms that remain live, concrete, and imminent notwithstanding bond.

II. SUPPLEMENTAL NOTICE OF POST-FILING EVENTS

After Petitioner filed his habeas petition and emergency motions:

1. ICE issued a Notice to Appear on December 13, 2025 — after habeas filing;
2. ICE refused discretionary release despite repeated counsel demands;
3. ICE scheduled a bond hearing only after judicial intervention;
4. ICE opposed immediate release and refused same-day bond;
5. An Immigration Judge granted bond on December 22, 2025;
6. ICE retains unilateral authority to:
 - o re-detain Petitioner,
 - o impose electronic monitoring,
 - o restrict travel,
 - o or retaliate further absent judicial restraint.

These facts confirm voluntary cessation, not mootness.

III. THE PETITION IS NOT MOOT

A. Voluntary Cessation Doctrine Applies

A case is not moot where the government ceases challenged conduct only after litigation begins. *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 189 (2000).

Respondents must show it is “absolutely clear” the conduct will not recur. They cannot.

ICE continues to assert authority under § 1226(a), continues removal proceedings, and continues custodial discretion.

B. Bond Does Not Moot Habeas Where Re-Detention Is Possible

The Ninth Circuit has repeatedly held that habeas jurisdiction persists where restraints remain or may recur.

- *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)
- *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)
- *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)

Petitioner remains “in custody” for habeas purposes because:

- ICE retains authority to re-detain,
- Conditions may be imposed,
- Removal proceedings continue.

IV. CONTINUED DETENTION AND CONDITIONS WOULD BE UNLAWFUL

A. Detention Was Arbitrary and Punitive

Civil detention must bear a reasonable relation to its purpose.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

Petitioner:

- Entered lawfully;
- Has no criminal history;
- Has an approved I-130;
- Has a pending I-485;
- Is married to a U.S. citizen;

- Was never a flight risk or danger.

ICE's refusal to release him until judicial pressure renders the detention punitive, not regulatory. *Demore v. Kim*, 538 U.S. 510, 527 (2003).

B. Retaliatory Enforcement Violates Due Process

Issuing an NTA and custody determination after habeas filing constitutes impermissible retaliation.

Government action taken in response to protected litigation activity violates the Fifth Amendment.

Hartman v. Moore, 547 U.S. 250 (2006).

This Court may enjoin retaliatory enforcement under § 2241.

Sissoko v. Rocha, 509 F.3d 947 (9th Cir. 2007).

V. REQUEST FOR CONTINUING INJUNCTIVE RELIEF

Petitioner respectfully requests the Court:

1. Enjoin ICE from re-detaining Petitioner absent a material change in circumstances;
2. Prohibit electronic monitoring, GPS, or ankle bracelet conditions absent individualized findings;
3. Prohibit retaliatory custody actions related to this litigation;
4. Order release on recognizance pending removal proceedings;
5. Retain jurisdiction to enforce compliance.

Courts routinely grant such relief where liberty interests are threatened.

Elrod v. Burns, 427 U.S. 347, 373 (1976).

VI. EAJA FEES — PRESERVATION NOTICE

Petitioner provides formal notice that he intends to seek attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412.

Respondents' position was not substantially justified where:

- ICE refused release despite clear equities;
- ICE acted only after habeas filing;
- ICE delayed bond until court pressure;
- ICE forced unnecessary federal litigation.

Prevailing party status exists where litigation is a catalyst for relief.
Carbonell v. INS, 429 F.3d 894 (9th Cir. 2005).

VII. CONCLUSION

Bond does not erase constitutional violations.

Release does not moot retaliation.

And ICE's conduct remains subject to this Court's equitable authority.

Petitioner respectfully requests that the Court:

- Deny Respondents' mootness argument,
- Grant continuing injunctive relief,
- Preserve jurisdiction for EAJA adjudication.

Respectfully submitted,

Date: December 19, 2025

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