

Gina Herrera  
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

**SUPPLEMENTAL EMERGENCY  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION;  
NOTICE OF POST-RELEASE  
CONSTITUTIONAL VIOLATIONS;  
OPPOSITION TO MOOTNESS;  
AND REQUEST FOR CONTINUING  
JURISDICTION AND ATTORNEYS'  
FEES.**

**Judge:** Hon. Cynthia Bashant

**I. INTRODUCTION**

This filing is necessitated by **Respondents' failure to comply with this Court's Order to Show Cause re: mootness**, entered on December 23, 2025, which required a response by **December 29, 2025**. As of the filing of this motion, **Respondents have filed nothing**.

Although ICE released Petitioner on bond on December 23, 2025—*after* the filing of this habeas action, *after* emergency motions, and *after* Court intervention—Respondents have imposed

**punitive and arbitrary conditions of supervision**, including an ankle monitor, and continue to **harass and intimidate Petitioner**, creating a live constitutional controversy.

This case is **not moot**. The release was:

1. **Post-habeas and litigation-induced**;
2. **Incomplete**, as Petitioner remains under severe restraints on liberty;
3. **Capable of repetition**, given ICE's ongoing conduct and history in this case; and
4. **Accompanied by collateral consequences** sufficient to sustain jurisdiction.

Petitioner therefore seeks:

- A **Temporary Restraining Order and Preliminary Injunction** barring re-arrest absent court order;
- **Immediate termination of ICE supervision**, including removal of the ankle monitor;
- A finding that Respondents' conduct violates due process;
- Retention of jurisdiction; and
- Preservation of **EAJA attorneys' fees**.

## **II. PROCEDURAL POSTURE AND MISSED DEADLINE**

1. Petitioner filed a **§ 2241 habeas petition** challenging unlawful detention under INA § 236(a).
2. The Court ordered Respondents to respond and later issued an **Order to Show Cause re: mootness** (ECF 9), setting a **December 29, 2025 deadline**.
3. **Respondents failed to file any response** by the deadline.
4. The government's silence—despite multiple filings, emergency notices, and direct communications—**supports an inference that Respondents cannot justify their conduct on the record**.

A missed federal court deadline—particularly in a habeas case involving liberty interests—is **itself grounds for adverse inference and equitable relief**.

## **III. FACTUAL UPDATE: POST-RELEASE CONSTITUTIONAL VIOLATIONS**

### **A. Release Was Compelled by Litigation**

Petitioner was released **only after**:

- Filing of habeas;
- Filing of TRO requests;
- Motion to shorten time (granted);

- Judicial oversight; and
- Imminent federal rulings.

This was not voluntary agency action. Courts repeatedly hold that **litigation-induced release does not moot a habeas action.**

*See Diouf v. Mukasey*, 542 F.3d 1222, 1230 (9th Cir. 2008).

#### **B. Continued Restraints on Liberty**

Despite release, ICE imposed:

- An ankle monitor;
- Mandatory reporting;
- Ongoing intimidation regarding re-detention;
- Conditions inconsistent with Petitioner's history, equities, and lack of risk.

Petitioner has:

- No criminal history;
- Entered lawfully;
- An approved I-130;
- A pending I-485;
- A U.S. citizen spouse;
- Stable residence in New York.

These conditions are **punitive**, not regulatory.

#### **C. Irreparable Harm (Declaration Attached)**

Attached as **Exhibit A** is Petitioner's sworn declaration detailing:

- Severe anxiety;
- Sleep deprivation;
- Fear of re-arrest;
- Psychological trauma from detention;
- Ongoing distress caused by the ankle monitor.

Courts recognize **psychological injury, loss of liberty, and fear of re-detention** as irreparable harm.

*See Rodriguez v. Robbins*, 804 F.3d 1060, 1080 (9th Cir. 2015);

*Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

#### **IV. LEGAL ARGUMENT**

## **A. This Case Is Not Moot**

### **1. Voluntary Cessation Doctrine**

Respondents cannot render this case moot by stopping challenged conduct **after litigation begins**, while retaining power to resume it.

*Friends of the Earth v. Laidlaw*, 528 U.S. 167, 189 (2000).

ICE retains authority to:

- Re-detain;
- Increase supervision;
- Impose additional restraints.

Thus, the controversy remains live.

### **2. Collateral Consequences Doctrine**

Even after release, habeas jurisdiction remains where restraints persist.

*See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (parole = custody).

An ankle monitor and reporting obligations are **custody** for habeas purposes.

### **3. Capable of Repetition Yet Evading Review**

ICE detained Petitioner **without notice, without meaningful review**, and escalated after habeas filing. Without an injunction, the same conduct may recur.

## **B. Ongoing Due Process Violations**

Civil immigration detention must bear a **reasonable relation to its purpose**.

*Demore v. Kim*, 538 U.S. 510, 527 (2003).

Here:

- No flight risk;
- No danger;
- No individualized findings;
- No explanation for supervision.

This is **arbitrary detention**, violating the Fifth Amendment.

## **C. Injunctive Relief Is Warranted**

Under *Winter v. NRDC*, 555 U.S. 7 (2008):

1. **Likelihood of success** – strong constitutional claims.
2. **Irreparable harm** – ongoing liberty restraints and trauma.
3. **Balance of equities** – favors Petitioner.

4. **Public interest** – preventing arbitrary detention.

#### **V. REQUESTED RELIEF**

Petitioner respectfully requests that this Court:

1. **Issue a Temporary Restraining Order and Preliminary Injunction:**
  - o Prohibiting ICE from re-arresting Petitioner absent further court order;
  - o Ordering immediate removal of the ankle monitor;
  - o Prohibiting harassment or coercive supervision.
2. **Retain jurisdiction** over this matter.
3. **Find Respondents' failure to meet the December 29 deadline** weighs against mootness.
4. **Preserve entitlement to attorneys' fees** under the **Equal Access to Justice Act, 28 U.S.C. § 2412**, as Petitioner is the prevailing party and the government's position was not substantially justified.
5. Grant any further relief the Court deems just.

#### **VI. EXHIBITS**

- **Exhibit A** – Declaration of Filippo Eleuteri (mental health, fear, trauma)


Respectfully submitted,


Date: December 19, 2025

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

# Exhibit A

Filippo Eleuteri

A-Number: A-

Address: 

Date: 12-29-2025

To Whom It May Concern,

My name is Filippo Eleuteri, and I am writing this letter to express the deep fear and anxiety I am experiencing regarding my upcoming appointment with ICE.

I would like to clearly state that I have not committed any crimes. At all times, I have tried to do everything legally, honestly, and in good faith. I have followed the guidance given to me, complied with all requirements, and never intended to violate any laws. Being treated as if I am a criminal has been deeply distressing, especially when I have always respected and complied with the law, including all instructions given to me.

My recent detention and release were extremely traumatic for me. Since that experience, I live with constant fear of being taken into custody again. Wearing the ankle monitor has intensified this fear and feeling of being treated like a criminal.

I am not a flight risk, and I have the full support of my wife and other family members, who provide stability, accountability, and ensure that I comply with all requirements and appointments.

As my appointment approaches, my anxiety has become overwhelming. I am terrified to attend the ICE appointment, not because I intend to avoid compliance, but because of the emotional and psychological distress it causes me. I am constantly afraid that I will be detained again and separated from my wife and home.

This fear has affected my daily life significantly. I am unable to sleep properly, I have lost my appetite, and I am under continuous emotional stress. The weight of this situation has taken a serious toll on my mental and emotional well-being.

Despite this fear, I want to make it clear that I remain fully committed to complying with all ICE requirements and appointments. I respectfully ask that my situation and the impact it has had on my mental health be taken into consideration.

Thank you for taking the time to read and consider my statement.

Respectfully,

Filippo Eleuteri

