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UNITED STATES DISTRICT COURT

IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

2:26-cv-00032-JNW

Name: Navarro Martinez Tosi

Petitioner

vs.

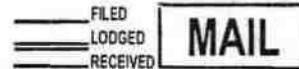
ICE Field Office Director

Respondent

) Case No. :

) A #

) PETITION FOR WRIT OF HABEAS CORPUS
) UNDER 289 USC 2241



JAN 05 2026

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

The Appellant is currently held in custody of the Attorney General at Tacoma's Northwest Detention Center in Tacoma Washington.

Here, the Appellant moves this Court to issue an order commanding his release from the custody of BICE due to the fact that such custody violates the due process rights of the Petitioner.

FACTS

1. This Petitioner has been within the confines of the Northwest Detention Center, a Center run by the United States Bureau of Immigration and Customs Enforcement for the ongoing period of 20 months.
2. On the date of 4/8/2024 the Petitioner entered the Northwest Detention Center and has not been released since that date.

1 3. The current charges of deportation is

2 212(a)(6)(A)(i)(I)

4 4. Petitioner has appealed before the BIA / Ninth Circuit (Circle One) and the case remains
5 pending.

6 5. The Ninth Circuit has issued a Stay of Removal in the case # _____.

7 **JURISDICTION**

8 The Jurisdiction of this Court is sought under 28 USC 2241.

9 **QUESTION PRESENTED**

- 10 1. Is the Petitioner entitled to release from the Attorney General?
11 2. Is alternative relief in the form of release on conditions appropriate or release on bond that is
12 reasonable?

13 **RELIEF REQUESTED**

14 That the Court Order the Petitioner to be released on supervised release pending all finality or
15 that the court orders the Agency to hold a bond hearing where individual factors are considered that can
16 allow for the release of the Petitioner pending the conclusion of his legal matters with ICE and the
17 District Courts and the Ninth Circuit.

18 **ARGUMENT**

19 An alien should not be held in custody unless there are no facts or circumstances
20 that would guarantee his return for hearings or to be deported. In general, an alien should not be
21 detained or required to post bond unless it is found that he is a threat to the national security or a
22 poor bail risk. Matter of Patel, 15 I & N Dec. 666 (BIA 1976). National Center for Immigrant
23 Rights v INS, 743 F2d 1365 (9th Cir. 1984).

24 Furthermore, the Ninth Circuit has recently issued guidelines regarding the release of aliens
25 and the jurisdiction of the Immigration Judge and BIA to grant bond in these cases. In particular,

1 the Ninth Circuit, in an unpublished Order in Bromfield v Mukasey, 07-72319 made the distinction
2 regarding persons due bond and those who are held under the authority of the Attorney General.
3 The Ninth Circuit decided that Bromfield was due a bond hearing, and that, even though he was
4 being held pending the Ninth Circuit's ruling on his Petition for Review, he was entitled to bond,
5 and the BIA and IJ had authority to grant the bond.

6 The Ninth Circuit on July 25th, 2008 issued two decisions in cases that had been pending before it.
7 Those precedential cases are Preito-Romero v A. Neil Clark, 07-35458 F. 3d ____; and Casas-
8 Castrillon v Lockyer, 07-56261, ____ F. 3d ____. Those decisions deliberately discuss the interplay
9 between the statutes governing detention of aliens and release of aliens. In particular, the Ninth Circuit
10 issued precedents dealing with several inter-related issues: A. When bond hearing is required; B. The
11 burden of the parties in bond hearings; C. When detention remains legally authorized.

12 In this case we have a person who is currently being held by the Immigration Services where the
13 Bond is either nonexistent or where the Bond is too high to afford and is unreasonable given the
14 circumstances that the Respondent will appear for all future hearings.

15 The Respondent has equities in the United States and those equities far outweigh any adversities.
16 If the Respondent is released he will appear for all hearings and will appear if he is to be removed from
17 the country.

18 The Respondent here moves the Judge to grant a bond review in this case and to release the
19 Respondent upon conditions that is fair and just.

20 The release on bond or conditions will allow the Respondent to continue with his life, with his
21 family, and to gain evidence to use in his hearing and to gain possible assistance of counsel or other
22 adequate representative.

23 Petitioner is not held under 8 USC 1226 (c) according to the Ninth Circuit's decision on the
24 matter. The Ninth Circuit cited that the Government's interpretation was incorrect where the Agency and
25 the Government has repeatedly held that aliens are held under 8 USC 1226 (c) and ineligible for a grant of
bond. The Ninth Circuit cited that an alien who has completed the administrative process is held under 8

1 USC 1226 (a). “which gives the Attorney General general discretionary authority to detain an alien
2 ‘pending a decision on whether the alien is to be removed from the United States.’”

3 The Court in Cases-Castrillon cited, “the Supreme Court similarly recognized in *Denmore v Kim*,
4 538 US. 510 (2003) that 1226 (c) was intended only to “govern [] detention of deportable criminal aliens
5 *pending their removal proceedings*,” which the Court emphasized typically “lasts roughly a month and a
6 half in the vast majority of cases in which it is invoked and about five months in the minority of cases in
7 which the alien chooses to appeal’ his removal order to the BIA. *Id.* at 527-528.

8 Importantly, the Ninth Circuit held that the conclusion of proceedings occurs upon the dismissal
9 of the alien’s appeal by the BIA.

10 Thus, under the explicit Ninth Circuit holding, the fact that the custody has changed from 1226
11 (c) to 1226 (a) means that the Agency no longer had mandatory detention of the alien, but has the
12 authority to order release on bond or upon conditions.

13 Moreover, the Ninth Circuit explicitly rejected the Government’s contention that the custody
14 again shifts once the Circuit Court issues an order of stay of removal. The Ninth Circuit also rejected that
15 the custody authority changes once the Circuit grants relief. “We therefore conclude that the mandatory,
16 bureaucratic detention of aliens under 1226 (c) was intended to apply for only a limited time and ended in
17 this case when the BIA affirmed...” *id.* See Prieto-Romero slip op. at 9295.

18 Directly contradicting the Agency’s previous holdings, the Court cited, “Even though Casas’
19 detention is permitted by statute because keeping him in custody could serve a legitimate immigration
20 purpose, **Casas may nonetheless have the right to contest before a neutral decision maker whether**
21 **the government’s purported interest is actually served by detention in his case.** There is a difference
22 between detention being authorized and being necessary to any particular person. We hold that the
23 government may not detain a legal permanent resident such as Casas for a prolonged period without
24 providing him a neutral forum in which to contest the necessity of his continued detention.”
25

1 This decision by the Ninth Circuit completely establishes the right of aliens to an impartial hearing
2 before a neutral decider who will take evidence on the issue and grant bond in the cases where it is amply
3 demonstrated that bond is applicable. Moreover, this finding by the Ninth Circuit is directly in line with
4 Matter of Patel, supra. This standard is the same for persons who are aliens without criminal histories as
5 for those with such a history. According to the Ninth Circuit's decision in Prieto-Romero and Casas-
6 Castrillon, both are entitled to impartial hearings before a neutral factfinder.

7 Although this Petition is not within the *Zadvydas* mold, the *Zadvydas* opinion opened by noting the
8 clear applicability of general due process standards: physical detention requires both a "special
9 justification" that "outweighs the 'individual's constitutionally protected interest in avoiding physical
10 restraint'" and "adequate procedural protections." 533 U.S. at 690, 150 L Ed 2d 653, 121 S Ct
11 2491 (quoting *Hendricks* at 356, 138 L Ed 2d 501, 117 S Ct 2072). Nowhere did the Court suggest that
12 the "constitutionally protected liberty interest" in avoiding physical confinement, even for aliens already
13 ordered removed, was conceptually different from the liberty interest of citizens considered in *Jackson*,
14 *Salerno*, *Foucha*, and *Hendricks*. On the contrary, the Court cited those cases and expressly adopted their
15 reasoning, even as applied to aliens whose right to remain in the United States had already been declared
16 forfeited. *Zadvydas*, 533 U.S., at 690, 150 L Ed 2d 653, 121 S Ct 2491.

17 Thus, this Court's review must begin by positing commonly accepted substantive
18 standards and proceeded to enquire into any "special justification" that might outweigh the aliens'
19 powerful interest in avoiding physical confinement "under [individually ordered] release conditions that
20 may not be violated." *Id.*, at 696, 150 L Ed 2d 653, 121 S Ct 2491. The Supreme Court found nothing to
21 justify the Government's position. The statute was not narrowed to a particularly dangerous class of
22 aliens, but rather affected "aliens ordered removed for many and various reasons, including tourist visa
23 violations." *Id.*, at 691, 150 L Ed 2d 653, 121 S Ct 2491. The detention itself was not subject to "stringent
24 time limitations," *Salerno*, 481 U.S., at 747, 95 L Ed 2d 697, 107 S Ct 2095, but was potentially indefinite
25 or even permanent, *Zadvydas*, 533 U.S., at 691, 150 L Ed 2d 653, 121 S Ct 2491. Finally, although both

1 Zadvydas and Ma appeared to be dangerous, this conclusion was undermined by defects in the procedures
2 resulting in the finding of dangerousness. *Id.*, at 692, 150 L Ed 2d 653, 121 S Ct 2491. The upshot was
3 such serious doubt about the constitutionality of the detention statute that the Supreme Court construed it
4 as authorizing continuing detention only when an alien's removal was "reasonably foreseeable." *Id.*, at
5 699, 150 L Ed 2d 653, 121 S Ct 2491.

6 In Demore v Kim, 538 U.S. 510; 123 S. Ct. 1708; the Court stated, "While it is true that
7 removal proceedings are unlikely to prove "indefinite and potentially permanent," 533 US, at 696, 150 L
8 Ed 2d 653, 121 S Ct 2491, they are not formally limited to any period, and often extend beyond the time
9 suggested by the Court, that is, "an average time of 47 days" or, for aliens who exercise their right of
10 appeal, "an average of four months." *Ante*, at 155 L Ed 2d, at 742; see also Case Hearing Report 12
11 (finding that the average time from receipt of charging documents by a detained alien to a final decision
12 by the immigration judge was 54 days). However, in this case, the confinement has been for
13 600 days. This is completely excessive and this Court has jurisdiction to order the Agency to release
14 the Petitioner or to set a bond for the Petitioner's release or that the Petitioner be released on conditions.

15 Petitioner does assert the fact that he is not able to afford a large bond, but may be able to gain
16 assistance from the community in gaining access to a low bond.

17 For the reasons that go before, the Petitioner urges that the court issues orders that does
18 substantial justice.

19 Dated: 12/28/25

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21 Signed: SR
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