

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

<b>Osmany Alexander Recinos</b>	)	
	)	
Petitioner,	)	Case No:
	)	
v.	)	<b>PETITION FOR WRIT OF</b>
	)	<b>HABEAS CORPUS</b>
<b>Dr Scarlet Grant</b> , Warden, Cimarron Correctional Facility;	)	
<b>Kelei Walker</b> , Director of Dallas Field office for U.S. Customs and Immigration Enforcement;	)	
<b>Todd M. Lyons</b> , Acting Director of Us. Immigration and Customs Enforcement	)	
<b>Kristi Noem</b> , Secretary of the U.S. Department of Homeland Security;	)	Oral Argument Requested
<b>Pamela Bondi</b> , Attorney General of the United States	)	
in their official capacities,	)	
	)	
Respondents	)	

**I. INTRODUCTION**

1. Osmany Alexander Recinos, (“Petitioner”) was born in El Salvador or [REDACTED] and he entered the United States near Lukeville, Arizona on or about November 5, 2013.<sup>1</sup> Petitioner was taken into the custody of the U.S. Department of Homeland Security (“DHS”) and given a credible fear review.<sup>2</sup> On November 27, 2013, the Petitioner was released from the custody of the U.S. Department of Homeland Security on a cash bond in the amount of \$1,500.00. After his release, Petitioner moved to [REDACTED] in Los Angeles, California. Petitioner requested a change

<sup>1</sup> Petitioner’s Exhibit 1

<sup>2</sup> *Id.*

of venue to the immigration court having jurisdiction over his case at his new address and this was granted on February 3, 2014.<sup>3</sup>

2. On June 25, 2014, Respondent's retained counsel, Rosana Kit Wei Cheung, Esq. ("prior counsel") entered the Petitioner's case and timely filed an I-589 Application for Asylum and Withholding of Removal on the Petitioner's behalf with the Immigration Court on September 18, 2014. On February 18, 2014, DHS exercised Prosecutorial Discretion and an oral joint motion to Administratively Close the Petitioner's case was presented to the Immigration Court and was granted.<sup>4</sup> The Petitioner's case has been pending, although removed from the Immigration Court's active calendar, since February 18, 2014.
3. On October 25, 2025, the Petitioner was pulled over in Blaine County Oklahoma by a Blaine County Sheriff's Deputy allegedly for a cracked windshield. The Petitioner was given a written warning by the Blaine County Sheriff's Deputy ("Deputy").<sup>5</sup> Although the Petitioner presented a valid drivers' license and work authorization, the Deputy ignored this and used his judicial power to take the Petitioner into custody on behalf of the Department of Homeland Security. The Deputy did not know anything about the Petitioner's asylum case pending before the immigration court nor had the Petitioner done anything that would typically warrant physical detention by any police force in the United States. It is unclear why the Deputy chose to take someone who presented a valid drivers' license into judicial custody after giving them a warning for a cracked windshield except that he

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<sup>3</sup> Petitioner's Exhibit 2

<sup>4</sup> Petitioner's Exhibit 3

<sup>5</sup> Petitioner's Exhibit 4

suspected that he was unlawfully present based on unarticulated and likely questionable reasons for this belief.

4. On October 27, 2025, DHS took the Petitioner into their custody from that of Blaine County's and is currently detaining him in the Cimmaron Detention Center in Cushing, Oklahoma. For reasons unclear, DHS filed a new I-862 Notice to Appear with the Dallas Immigration Court initiating a new separate case for the same Petitioner.<sup>6</sup> This opened a new case even though there was already a pending case that had been administratively closed and could have been re-calendared with a Motion to Recalendar proceedings filed by either party with proper notice to the non-moving party. The new NTA contained the same dates of entry and allegations about the Petitioner's including the date of entry and where he entered the United States as the original NTA. This indicates that DHS was fully aware of the pending case in the Los Angeles Immigration Court and still chose to file a new initiating document. On November 4, 2025, Gina V. Pointon (current counsel) entered appearance as Counsel in the newly filed NTA only to discover that there was already a pending immigration case in another jurisdiction. An oral Motion to Terminate was submitted to the Immigration Court by current counsel on November 7, 2025. The Immigration Judge summarily dismissed the NTA as improper and DHS counsel had no response except to claim a desire to change the Respondent's venue from Los Angeles to Dallas but instead improperly filed a new initiating document. At no time did the DHS Assistant Chief Counsel (ACC) for DHS articulate any reasons for the agency's decision to re-detain the Petitioner who was released by DHS on bond in 2014.

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<sup>6</sup> Petitioner's Exhibit 5

5. Counsel requested release of the Petitioner at the November 7, 2025 hearing after the NTA had been dismissed and the DHS Assistant Chief Counsel (ACC) did not answer and refused to give an email address or contact information where she could be directly contacted about releasing the Petitioner and instead directed current counsel to email a general lockbox for DHS to which counsel has still not received a response. To date, DHS has given no explanation as to why the Petitioner is being detained as there has been no change in conditions or violations of the conditions of his release.
6. Accordingly, to vindicate Petitioner's constitutional & regulatory rights, this Court should grant the instant petition for a writ of habeas corpus or order the Respondents to show cause why the Petitioner should be detained. Petitioner asks this Court to find that the Petitioner's detention is unlawful and order his immediate release.

## **II. JURISDICTION**

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

## **III. VENUE**

8. Venue is proper because Petitioner is detained at Cimarron Correction Facility, in Cushing, Oklahoma, which is within the jurisdiction of this District.

**IV. REQUIREMENTS OF 28 U.S.C. § 2243**

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**V. PARTIES**

11. Petitioner is a Pending Asylee currently detained at Cimmaron Detention Center in Cushing, Oklahoma and he is in the custody of, and under the direct control, of Respondents and their agents.
12. Respondent Dr. Scarlet Grant is the Warden of Cimarron Correctional Facility and she has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Grant is a legal custodian of Petitioner.
13. Respondent Kelei Walker is sued in her official capacity as the Director of the Dallas Field Office of U.S. Immigration and Customs Enforcement. Respondent Walker is a legal custodian of Petitioner and has authority to release him.
14. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of

the U.S. Immigration and Customs Enforcement. Respondent Lyons is responsible for the enforcement of the Immigration and Nationality Act, and oversees U.S.

Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of the Petitioner.

15. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

16. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

## VI. LEGAL ARGUMENT

### **DHS Lacks Authority to Re-Detain a Respondent Previously Released on Bond Absent Materially Changed Circumstances**

17. Although 8 C.F.R. § 236.1(c) authorizes DHS to arrest and detain a noncitizen whose removal proceedings are pending, that authority is *not unlimited*. Detention under § 236.1(c) implements INA § 236(a), which is discretionary and constrained by fundamental due process principles. Once DHS has exercised that discretion to

release a respondent on bond, it may not re-detain the individual without a legitimate and materially changed custody basis.

18. Allowing re-detention in the absence of new facts would render the initial bond determination meaningless and permit indefinite, cyclical detention, a result inconsistent with the regulatory scheme and constitutional norms.

## **VII. CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

19. The allegations in the above paragraphs are realleged and incorporated herein.
20. The Fifth Amendment's Due Process Clause protects all "persons" within the United States, including noncitizens, from arbitrary deprivation of liberty. Immigration detention is civil, not punitive, and therefore must be reasonably related to a legitimate governmental purpose and accompanied by fundamentally fair procedures.
21. Once the government has exercised its detention authority and released an individual from custody, the individual's liberty interest is reinvigorated and substantial. Any subsequent deprivation of that liberty requires heightened procedural and substantive justification.
22. The Fifth Amendment prohibits detention that is disconnected from its civil purpose. Civil detention is constitutional only when it is reasonably related to its stated purpose. Re-detention without notice or new justification bears no rational relationship to ensuring appearance at proceedings or protecting the community

which it is alleged to accomplish. Instead, it operates as punishment for past conduct or procedural posture, which the Fifth Amendment categorically forbids in civil immigration enforcement.

23. To date, the Respondents have provided no legitimate basis to re-detain the Petitioner.

24. For these reasons, the Petitioner's detention violates the Due Process clause of the Fifth Amendment

### **COUNT TWO**

#### **Re-detention absent materially changed circumstances violates 8 C.F.R. § 236.1(c)**

25. The allegations in the above paragraphs are realleged and incorporated herein.

26. Under 8 C.F.R. § 236.1 re-detention absent materially changed circumstances is a violation of this Federal Regulation.

27. For these reasons, Petitioner's detention violates 8 C.F.R. § 236.1(c)

#### **VIII. PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, and 8 C.F.R. § 236.1(c)
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: January 13, 2026

s/ Gina V. Pointon  
*Counsel for Petitioner*  
Pointon Law Firm  
1127 NW 14<sup>th</sup> St  
Oklahoma City, Ok 73106  
(405) 876-6605 phone  
gpointon@pointonlaw.com  
Bar# 6736Z18M Alabama

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Osmany Alexander Recinos, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 13<sup>th</sup> day of January 2026.

s/ Gina V. Pointon .