

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

| | | |
|---|---|---------------------------------|
| Suren Ordoian |) | |
| |) | |
| Petitioner, |) | Case No. |
| v. |) | |
| |) | |
| TODD M. LYONS, <i>in his official capacity</i> |) | AMENDED PETITION FOR WRIT OF |
| as Acting Director, Immigration and |) | HABEAS CORPUS AND COMPLAINT FOR |
| Customs Enforcement, U.S. Department of |) | DECLARATORY AND INJUNCTIVE |
| Homeland Security; |) | RELIEF |
| |) | |
| JOEL GARCIA, <i>in his official capacity</i> as |) | |
| Field Office Director of the ICE El Paso |) | |
| Field Office of Enforcement and Removal |) | |
| Operations, U.S. Immigrations and Customs |) | |
| Enforcement; U.S. Department of Homeland |) | |
| Security; |) | |
| |) | |
| KRISTI NOEM, <i>in her official capacity</i> as |) | |
| Secretary, U.S. Department of Homeland |) | |
| Security; and |) | |
| |) | |
| PAMELA JO BONDI, <i>in her official</i> |) | |
| <i>capacity</i> as Attorney General of the United |) | |
| States; |) | |
| |) | |
| DORA CASTRO, <i>in her official capacity</i> as |) | |
| Warden of the Otero County Processing |) | |
| Center. |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

INTRODUCTION

1. This case challenges the unlawful detention of Suren Ordoian (“Petitioner”), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at Otero County Processing Center located at 26 McGregor Range, Chaparral, New Mexico 88081. Petitioner is neither a flight risk nor a danger to the community. But on June 20,

2025, ICE detained him without notice, opportunity to be heard, and without a pre-deprivation hearing.

2. On December 9, 2022, ICE determined that Petitioner was neither a flight risk nor a danger to the community when it granted parole and release to him and his family. Since that time, Petitioner fully complied with all parole conditions by timely applying for asylum in the United States, obtaining proper employment authorization, notifying the Immigration Court of any change of address, and remaining attentive to all notices of hearing issued by the Immigration Court. Petitioner consistently complied with all reporting requirements imposed as part of his supervision order.
3. Without any change in circumstances—either in Petitioner’s case or personal situation—Respondents detained Petitioner during his routine ICE check-ins. To date, Respondents have not disclosed whether the arrest was supported by a warrant or the legal basis for Petitioner’s detention. Petitioner was the only member of his family detained, leaving his wife and two minor daughters alone.
4. Petitioner asks the Court to accept jurisdiction over this action, declare that Petitioner’s arrest and detention without an individualized determination violates the Due Process Clause of the Fifth Amendment, and issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 ordering relief from unlawful custody and/or constitutionally adequate individualized process regarding continued detention.

UPDATED PROCEDURAL POSTURE

5. When Petitioner filed his original petition on January 29, 2026, his appeal from the Immigration Judge’s denial of relief was pending before the Board of Immigration Appeals (“BIA”). The BIA has now dismissed Petitioner’s appeal. Exhibit A. On

February 10, 2026, Petitioner filed a Petition for Review (“PFR”) in the United States Court of Appeals for the Tenth Circuit. Petitioner is not seeking a judicial stay of removal at this time.

6. Respondents may contend that, following the BIA dismissal and in the absence of a judicial stay, Petitioner’s detention is now governed by INA § 241 / 8 U.S.C. § 1231. Regardless of whether detention is characterized under INA § 236 / 8 U.S.C. § 1226, INA § 241 / 8 U.S.C. § 1231, or any other provision, Petitioner challenges only his detention and the constitutionally inadequate process supporting continued custody.

CUSTODY

7. Petitioner is currently in the custody of Immigration and Customs Enforcement (“ICE”) at the Otero County Processing Center. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and the Fifth Amendment to the United States Constitution. Petitioner challenges the lawfulness and constitutionality of his current detention and seeks release and/or a constitutionally adequate process.
9. Petitioner does not seek review of the validity of any removal order. This Petition challenges only the fact of custody and the constitutional adequacy of the process used to (re)detain and continue to detain Petitioner. Accordingly, this action does not fall within the exclusive review provisions applicable to challenges to a final order of removal. See 8 U.S.C. § 1252(a)(5), (b)(9).

10. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas.”).
11. Petitioner’s detention authority is currently disputed and may be characterized by Respondents as arising under either INA § 236 / 8 U.S.C. § 1226 or INA § 241 / 8 U.S.C. § 1231. Regardless of the statutory label applied, Petitioner alleges that Respondents’ decision to (re)detain him and continue custody without constitutionally sufficient individualized process violates due process and exceeds lawful authority. This Court has jurisdiction to grant relief from unlawful custody under 28 U.S.C. § 2241.
12. 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, to the extent necessary to effectuate its habeas jurisdiction.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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.*

VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because

Petitioner is currently detained at Otero County Processing Center located at 26 McGregor Range Road, Chaparral, NM 88081.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Petitioner has no administrative remedies to exhaust as to this detention challenge.
16. The NTA names Petitioner an “arriving alien.” By regulation, immigration judges lack jurisdiction to redetermine the custody of arriving aliens via a bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). As such, Petitioner’s continued detention in ICE custody cannot be challenged by way of bond proceedings before the Immigration Judge.
17. Therefore, a writ of habeas corpus is the sole avenue to vindicate his constitutional rights and restore his liberty.



PARTIES

18. Petitioner is from Armenia and has resided in the U.S. since December 9, 2022. He is currently detained at the Otero Processing Center in Chaparral, New Mexico.
19. Respondent Joel Garcia is sued in his official capacity as Field Office Director, El Paso Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent Joel Garcia is a legal custodian of Petitioner.
20. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
21. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner’s ultimate legal custodian.

22. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.
23. Dora Castro is the Warden of the Otero County Processing Center, a private facility that contracts with ICE to detain non-citizens. She is responsible for overseeing Otero's administration and management. Ms. Castro is Petitioner's immediate custodian. She is sued in her official capacity.

FACTUAL BACKGROUND

24. Petitioner is a native and citizen of Armenia. On December 9, 2022, Petitioner, his spouse, and two minor children presented themselves at the San Ysidro Port of Entry in California. At that time, the Department of Homeland Security ("DHS") issued Petitioner a Form I-862, NTA charging him with inadmissibility pursuant to § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA") for being "an immigrant not in possession of [valid immigration and travel documents]." The NTA ordered Petitioner to appear before an Immigration Judge at the Immigration Court in Van Nuys, CA on October 18, 2023. *See Exhibit A: Notice to Appear (Form I-862).*
25. DHS paroled Petitioner into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) to seek asylum for him and his family. Petitioner and his family received a Form I-94, indicating that Petitioner's class of admission is "DT" with a validity period of one year. Petitioner's Form I-94 number is [REDACTED] Petitioner and his family appeared to their immigration court hearings at the non-detained docket and complied with all ICE reporting requirements.

26. On March 1, 2023, Petitioner timely filed an asylum application with the Los Angeles Immigration Court. Following Petitioner's detention, his case was severed from his family's case and placed on the detained docket.
27. On August 22, 2025, Immigration Judge Jacinto Palomino denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). *See Exhibit B: Immigration Judge Decision and Order dated August 22, 2025.*
28. Petitioner, through counsel, timely appealed to the Board of Immigration Appeals ("BIA"). The BIA has now dismissed the appeal. *See Exhibit C: Board of Immigration Appeals Order of Dismissal dated January 30, 2026.*
29. On February 10, 2026, Petitioner filed a Petition for Review in the United States Court of Appeals for the Tenth Circuit. *See Exhibit D: Petition for Review filed in the United States Court of Appeals for the Tenth Circuit on February 10, 2026.* Petitioner is not seeking a judicial stay of removal at this time.
30. Prior to Petitioner's current detention, he resided in Glendale, CA, with his wife, Kristine Torosian, and their two children,  and  Petitioner maintained steady employment, a valid employment authorization through 2028, and diligently filed his taxes. Petitioner is involved in his church, a loving husband, and a dedicated father to his two children. *See Exhibit E: Letter from Fr. Khajag Shahbazyan, Parish Priest, St. Leon Armenian Cathedral.* Petitioner forged strong ties within his religious community.
31. Petitioner is the sole breadwinner for his family. His wife does not work outside of the home. Removing Petitioner from his family without notice—and without any changed

circumstances since he was released on parole on December 9, 2022—violates his due process rights. Upon information and belief, at no time following Petitioner’s arrest did ICE explain why he was being detained, despite his release in 2022 and his compliance for more than two years. Until now, Petitioner has not been afforded the opportunity to demonstrate that he is neither a danger to the community nor a flight risk that justifies re-detention and continued detention.

32. Petitioner appeared to all of his immigration court hearings and complied with all terms of his parole and his supervision with ICE, including timely applying for asylum and obtaining valid work authorization. Petitioner does not have any prior negative immigration history and no criminal history. There is no indication that he is a danger to the community or a flight risk that justifies his continued detention.

LEGAL STANDARD

33. The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). Section 2241 of Title 28 confers the federal courts with the power to issue writs of habeas corpus to persons “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. This includes challenges by non-citizens in immigration-related matters. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The Fifth Amendment guarantees that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
34. The Due Process Clause generally “requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

35. Even where the government has discretion to detain or release, “the government's decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’” *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).
36. Accordingly, even when ICE has initial discretion to detain or release a noncitizen, after release the noncitizen has a protected liberty interest in remaining out of custody absent constitutionally adequate procedures. *See Pinchi*, 2025 WL 2084921, at *3.
37. The INA establishes the framework governing noncitizens’ entry and removal, and provides for parole into the United States “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Applicants for admission may be temporarily released on parole on a case-by-case basis. *Id.*
38. When the purpose of parole has been served, the statute provides that the noncitizen “shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).
39. Here, the purpose of Petitioner’s parole has not been accomplished. Petitioner entered the United States at a port of entry to seek asylum and timely filed an asylum application. He complied with parole terms for more than two years. There is nothing establishing that humanitarian or significant public benefit grounds supporting parole no longer apply.
40. Notice and individualized determination are still required even if Respondents claim Petitioner’s return to custody is automatic.

COUNT I

VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS

41. Petitioner restates and realleges all paragraphs as if fully set forth here.
42. The Fifth Amendment’s Due Process Clause prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V.
43. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
44. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).
45. To determine whether detention violates procedural due process, courts apply the *Mathews v. Eldridge* three-part balancing test. 424 U.S. 319 (1976). Under the *Mathews* framework, the balance of interests strongly favors Petitioner’s release and/or an order requiring constitutionally adequate individualized custody procedures.
46. The first *Mathews* factor weighs heavily in Petitioner’s favor because he has a profound liberty interest in freedom from physical detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).
47. The second *Mathews* factor also weighs in Petitioner’s favor because, absent an individualized determination regarding the revocation of parole, arrest, and continued detention, there is a substantial risk that Petitioner will be erroneously deprived of his liberty—particularly where he is neither a danger to the community nor a flight risk. Due

process requires that Petitioner be afforded an opportunity to submit evidence relevant to whether he poses a danger to the community or a flight risk that justifies re-detention, whether the purpose of parole has been satisfied, and whether humanitarian or significant public benefit grounds continue to support parole in his specific case.

48. Under the third *Mathews* factor, Respondents have a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community. Here, there is nothing in Petitioner's record that suggests he poses a flight risk or danger. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance. *Zadvydas*, 533 U.S. at 690. The fiscal and administrative burdens of providing constitutionally adequate individualized process are minimal compared to the liberty interests at stake.
49. Petitioner's claim is not limited to duration of detention; it challenges Respondents' re-detention and continued detention without constitutionally adequate individualized process. This constitutional injury is ongoing and redressable through habeas relief and/or an order requiring prompt individualized custody procedures.
50. Balancing the *Mathews* factors demonstrates that Petitioner's continued detention violates his Fifth Amendment due process rights. He should be released, or at minimum, afforded prompt constitutionally adequate individualized process regarding continued detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Pursuant to 28 U.S.C. § 2243, issue an order to show cause ordering Respondents to show cause why his Petition should not be granted within ten (10) days, or within such other expedited timeframe as the Court deems appropriate;
3. Declare that Respondents' re-detention and continued detention of Petitioner without constitutionally adequate individualized process violates the Due Process Clause of the Fifth Amendment;
4. Issue a writ of habeas corpus and order Petitioner's immediate release from ICE custody; OR, in the alternative, order Respondents to provide Petitioner a prompt individualized custody hearing before a neutral decisionmaker at which Respondents bear the burden to justify continued detention and at which less restrictive alternatives are meaningfully considered;
5. Enjoin Respondents from transferring Petitioner outside of this District without providing prior notice to Petitioner's counsel and to this Court sufficient to ensure that this Court's habeas jurisdiction is not defeated;
6. Grant him any further relief this Court deems just and proper.

Respectfully Submitted,

/s/ Brenda M. Villalpando
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Date: February 10, 2026

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

I represent the Petitioner, Suren Ordoian, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 10th day of February 2026.

/s/ Brenda M. Villalpando

Brenda M. Villalpando

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on February 10, 2026, I filed this Amended Petition for Writ of Habeas Corpus using the CM/ECF system.

Respectfully submitted,

/s/ Brenda M. Villalpando

Brenda M. Villalpando

Counsel for Petitioner