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February 4, 2026

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

Erik MERCADO-ARECHIGA,)
)
Petitioner,)

v.)



Christopher J. LAROSE, in his official)
Capacity as Warden of Otay Mesa)
Detention Center; Daniel A.)
BRIGHTMAN, in his official capacity)
as San Diego Field Office Director)
(FOD), Immigration & Customs)
Enforcement (ICE) Enforcement &)
Removal Operations (ERO); Todd)
LYONS, in his official capacity as Acting)
Director of ICE; and Kristi NOEM, in)
her official capacity as Secretary of)
Homeland Security, Pamela BONDI,)
U.S. Attorney General; ICE;)
DEPARTMENT OF HOMELAND)
SECURITY (DHS),)
Respondents.)

Case: '26CV0683 JES DEB

Agency ID: A 

**PETITION FOR WRIT
OF HABEAS CORPUS &
ORDER TO SHOW CAUSE;
COMPLAINT FOR
DECLARATORY &
EMERGENCY RELIEF**

I. INTRODUCTION

Petitioner Erik MERCADO-ARECHIGA (*hereinafter referred to as Erik*) is a 42-year-old Mexican national who last entered the United States in January 4, 2020.¹ He arrived at the San Ysidro Port of Entry seeking asylum after having just escaped from Mexican police that Erik believes were trying to kill him  . He has been fighting his asylum case while remaining detained for over six (6) years now. Erik argues his detention is no longer justified given that his prior convictions have either been vacated, were never violent, and not recent enough to keep him detained. Furthermore, Erik's father has been diagnosed with terminal cancer, thus, presenting an urgent humanitarian reason for his release so that he may care for his father. Erik's prolonged detention has been, and continues to be exacerbated by the government repeatedly transferring him to different detention centers in different states — 12 facility transfers from 2000 to the present.² Each transfer has caused delays in adjudicating his removal case, and there is no reason to believe this situation will change. Although the District Court of Nevada granted a Writ of Habeas Corpus in 2023, the Immigration Judges under this current administration have been finding ways to undermine the court's orders and keep Erik

¹ Exhibit A: Notice to Appear, DHS Form I-862, 3/18/2020.

² Exhibit B: Housed at Otay Mesa, CA; San Luis, AZ; Otay Mesa, CA; Imperial, CA; Otay Meas, CA; Pahrump, NV; Reno, NV; Pahrump, NV; Core Civic Pahrump, NV; Otay Mesa, CA; Florence, AZ; McFarland, CA; Otay Mesa, CA (DHS Form i-830, Change of Address notices filed with EOIR. Some transfers not filed with EOIR).

detained indefinitely. Erik has no confidence the Immigration Courts can fairly adjudicate a bond hearing in light of the vacatur of his burglary conviction, and they cannot look past his immigration history and his tenacity to keep fighting his asylum case. The number of housing transfers and disruptions to his removal proceedings raise serious questions about whether Erik is receiving equal and due process under the law. For these reasons, Erik files this new Petition before the Court.

1. Border agents arrested and detained Erik as an Arriving Alien under 8 U.S.C. § 1225(b) on January 4, 2020, at the San Ysidro Port of Entry.³

2. On December 17, 2020, an Immigration Judge (IJ) denied all of Erik's applications for relief and ordered him removed.

3. Around January 12, 2021, Erik appealed his removal to the Board of Immigration Appeals (BIA). The BIA dismissed his appeal on 5/28/2021.⁴

4. Erik appealed the BIA Decision to the Ninth Circuit Court of Appeals. On March 3, 2023, the Ninth Circuit granted the respondent's petition for review, finding the Immigration Judge and the Board abused their discretion and remanded the matter back to the BIA, who in turn sent the matter back to the Immigration Court to re-assess the applicability of his criminal convictions and to adjudicate his claims for relief.⁵

³ See Exhibit A.

⁴ Exhibit C: Decision of the BIA, 5/28/2021.

⁵ Exhibit D: Decision of the BIA, 7/17/2024.

5. Counsel represents Erik here in Pro Bono through the San Diego County Office of Assigned Counsel, and his representation is limited to matters within this County. Not surprisingly, the government has repeatedly made efforts to send represented respondents out of this county and to move for a change of venue, often resulting in lost representation or at least compromising the attorney/client relationship.

6. After the most recent remand, IJ Robinson at the Otay Mesa Immigration Court has kept the removal case in San Diego despite the government's motions to change venue.⁶ DHS made this motion despite Erik being represented by local Counsel here. Admirably, the Court has refused to allow the government to compromise his claims with motions to change venue when it suits their objectives. If venue is removed from San Diego, Erik loses his Pro Bono attorney here.

7. On October 23, 2024, the Immigration Court first set this matter to an Individual Merits' Hearing for February 18, 2025. However, due to the government's inability to make Erik available for legal visits with Counsel for a variety of reasons, plus transfers to new detention facilities as well as a failure to present him for court hearings, the court would go on to reset the final hearing date five more times.⁷

8. Regarding bond release, on August 11, 2023, Judge Christina Silva of

⁶ Exhibit E: DHS Motion to Change Venue to Arizona, 9/18/2024; Corresponding Order denying DHS Motion, 9/18/2024.

⁷ Exhibit F: Hearing Notices, set for 2/18/2025, 7/29/2025, 10/23/2025, 11/21/2025, 1/07/2026, 3/12/2026.

the Nevada District Court granted a Writ of Habeas Corpus, directing the Immigration Court to hold a bond hearing for Erik.⁸

9. Erik's first motion for bond was denied on September 11, 2023, two days before his prior burglary conviction was vacated, so the IJ found him to be a danger to the community and a flight risk.⁹

10. On May 6, 2025, IJ Partida held a bond hearing without Erik's presence because the government failed to make him present for the hearing. Not surprisingly, the IJ denied his bond, finding him to be a danger to the community despite no convictions for any serious crimes and not even a single arrest for crimes against persons. The IJ's finding that Erik was a gang member was an error given that he has never been a documented gang member, as evidenced by his detention classification. The IJ's conclusion was the result of not understanding the difference between a gang member, and the term "south-sider", a prison politics' label given to any English-speaking Latino who grew up in Southern California which applies to anyone in a detention setting. Erik was denied the ability to explain these concepts to the IJ because the government failed to make him present.¹⁰

11. When Erik's father was diagnosed with stage four cancer Erik filed a motion for another bond hearing based on changed circumstances, here humanitarian

⁸ Case No. 2:23-cv-00600-CDS-VCF.

⁹ Exhibit G: Order of IJ McDermott, 9/11/2023.

¹⁰ Exhibit H: Order of IJ Partida, 5/6/2025.

need to be with his father and vacatur of a burglary conviction that was the basis for remand by the Ninth Circuit. IJ Grande, a former DHS attorney who should have been conflicted out of the matter due to his prior involvement in Erik's case as a DHS Assistant Chief Counsel, denied this motion on January 22, 2026.¹¹

12. Not only is Erik's six-year detention unjustifiably prolonged, there is also a compelling humanitarian basis for granting this Petition now that his father has been diagnosed with stage four (4) cancer. Erik's mother cannot care for his father and Erik moves the Court here for a chance to care for his father during this life and death stage.¹²

13. This prolonged detention has also resulted in severe mental¹³ and physical distress for Erik, including poorly treated Hepatitis C that has developed into cirrhosis, which both ICE-contracted medical providers and independent medical providers tested and confirmed.¹⁴

14. Therefore, Mr. Erik MERCADO-ARECHIGA seeks a Writ of Habeas Corpus directing his immediate release.

II. VENUE AND JURISDICTION

15. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28

¹¹ Exhibit I: Order of Immigration Judge Guy Grande denying bond hearing, 1/22/2026.

¹² Exhibit L: Letter from Los Angeles Cancer Network, 12/2/2025.

¹³ Exhibit M: Psychological Evaluation Report, Luis A. Pérez Ramírez, Psy.D., MSCP, 12/18/2024.

¹⁴ Exhibit N: Emergency Room Nurses Notes, UCSD Medical Center, 10/5/2022.

U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution (Suspension Clause), as Mr. Erik MERCADO-ARECHIGA is presently in custody under the authority of the United States and challenging her detention as in violation of the Constitution, laws, or treaties of the United States.

16. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

17. Venue is proper because Mr. Erik MERCADO-ARECHIGA is detained in the Otay Mesa Detention Center, within the San Diego Division, and Christopher J. LAROSE, in his official capacity as Warden of Otay Mesa Detention Center; and Daniel A. BRIGHTMAN, in his official capacity as San Diego Field Office Director (AFOD), as his immediate custodians. *See* 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

18. Petitioner, Mr. Erik MERCADO-ARECHIGA, is a 42-year-old Mexican national being held in San Diego, California. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California, pending removal proceedings.

19. Respondent Christopher J. LAROSE is the Warden of Otay Mesa Detention Center. Respondent LAROSE is responsible for the operation of the Detention Center where Mr. Erik MERCADO-ARECHIGA is detained. As such,

Respondent LAROSE has immediate physical custody of the Petitioner. He is being sued in his official capacity.

20. Daniel A. BRIGHTMAN, in his official capacity as San Diego Field Office Director, ICE-ERO. Respondent BRIGHTMAN is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent BRIGHTMAN is being sued in his official capacity.

21. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Mr. Erik MERCADO-ARECHIGA and is being sued in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

IV. EXHAUSTION OF REMEDIES

23. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241; *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not jurisdictionally required.

24. The DHS has determined no bond or parole is warranted here despite

Erik being detained for over six (6) years, with no end in sight. Additional agency steps would be futile given that Immigration Courts have already rejected Erik's Bond Requests on September 11, 2023; May 6, 2025; and on January 22, 2026.¹⁵ Furthermore, it appears that DHS has implemented a policy to reserve appeal for all Petitioners like Erik, classified as Arriving Aliens (8 U.S.C. § 1225(b)), to prevent release, thus, subverting the District Court's Writ of Habeas Corpus.

25. Therefore, Mr. Erik MERCADO-ARECHIGA has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

V. STATEMENT OF FACTS

26. DHS detained Erik under INA 235(b) – People who are “applicants for entry” and who are “arriving” to the United States.¹⁶ Although the government classifies these kinds of entries as mandatory detention, DHS has the authority to release aliens arriving in this matter under Section 235(b) of the Immigration and Nationality Act (INA) through the discretionary parole authority granted under INA § 212(d)(5)(A). This provision allows the Secretary of the DHS to parole individuals into the United States on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit". *Arias v. LaRose*, Southern District of California,

¹⁵ See Exhibit G, H and I: Denial of Bond, 9/11/2023, 5/6/2025, and 1/22/2026 respectively.

¹⁶ See Exhibit A.

November 25, 2025 (citing *Doe v. Noem*, 152 F.4th 272, 1st Cir. 2025).

27. DHS has granted no parole for Erik.

28. Immigration Courts denied Erik's Bond Requests on September 11, 2023; May 6, 2025; and again, on January 22, 2026.¹⁷

29. Aside from his criminal history in the U.S., the government may try to present an arrest warrant for Erik that was issued by Mexico [REDACTED] as evidence that he is a danger to the community, to justify his continued detention. [REDACTED]

[REDACTED]

[REDACTED] Here, the warrant is missing identifying information such as when the crime occurred, and the location of the alleged crime.¹⁸ Most significantly, the death certificate for the alleged victim shows the death occurring on January 7, 2020 at 0216 hours.¹⁹ The date cited is three (3) days after Erik was already in DHS custody, so he could not have been responsible for the death cited in this arrest warrant.

30. Erik has no criminal history in the U.S. involving crimes against persons.²⁰

¹⁷ See Exhibits G, H, and I.

¹⁸ Exhibit R: Mexican attorney analysis of Mexican Arrest Warrant with English Translation.

¹⁹ Exhibit S: Death Certificate with English Translation, 1/9/2020.

²⁰ Exhibit J: Summary of Criminal History; FBI Rap Sheet, 9/1/2020.

31. On or around February 16, 2023, Erik filed, pro se, a motion to vacate his underlying convictions under PC § 459 and VC § 10851(a) with the Superior Court of California. On September 13, 2023, the Superior Court vacated his convictions pursuant to PC § 1473.7. On May 23, 2024, Mr. Mercado's underlying charges were fully dismissed.²¹

32. On October 23, 2024, the Immigration Court first set this matter to an Individual Merits' Hearing for February 18, 2025. The court vacated this hearing on motion from Counsel because he and Erik were unable to communicate and prepare for the hearing. Each time Counsel would attempt to arrange for a legal call the detention center would refuse to acknowledge the request or they would not respond at all. From October 24, 2024, when Counsel here started representing Erik, until February 12, 2025, Counsel was only able to speak with Erik for a total of 25 minutes on an unsecured phone call.²²

²¹ Exhibit K: Sup. Court Order Vacating Guilty Plea Based on Legal Invalidity, 9/13/2023; Minute Order, Sup. Court of California, Van Nuys, May 23, 2024.

²² Exhibit O: Erik's Motion to Continue hearing set for April 10, 2025, 3/17/2025 (We have made several attempts to try to get in contact with Respondent, including, but not limited to:

- a. 11/14/2024: Called Florence Correctional Facility to find out if Respondent was even housed at their facility. The phone at the correctional facility rang for 20 minutes with no answer. Another call the same day ended in the same result. An email was also sent the same day to ICE at phoenix.outreach@ice.dhs.gov and our office did not receive a response.
- b. 11/26/24: Called Florence Correctional Facility and left a message for the Respondent to call our office. We received a call from Respondent the next day. This was our first communication with the Respondent.
- c. 11/27/2024: Called Florence Correctional Facility and attempted to leave another message for Respondent to call our office. Our office was told that the correctional facility does not do such things. We asked how to get in contact with our client for legal calls and our office was told the only way to have legal communication is for Counsel to appear in-person or write a

33. The next Individual Merits' Hearing was set for April 10, 2025. Again, the court vacated this hearing on motion from Counsel because he and Erik were unable to communicate to prepare for the hearing, despite many attempts to coordinate a legal consultation with facility staff as well as ICE Deportation Officers.²³

34. The next Individual Merits' Hearing was set for July 29, 2025. DHS failed to deliver Erik on time for the hearing. The court addressed some evidentiary issues and reset the matter for October 23, 2025.²⁴

35. The hearing on 10/23/2025 lasted only two hours, instead of the four hours that Immigration Courts used to set aside for Individual Merits' Hearings. The matter was continued.²⁵

36. The hearing set for 11/21/2025 was vacated because government

letter to the client. After explaining that we are located in California and cannot appear in person, the officer stated he would transfer the call to the person who could help schedule a legal visit. The call was then transferred and after ringing for approximately 20 minutes... no one answered the call.

d. 11/27/2024: Our office received an email with instructions on how to conduct legal proceedings for phone calls. The email stated we needed to email another person to set up the phone number as privileged so a detainee may be able to call us. After following the instructions, Client still has not been able to get in contact with Counsel.

e. 12/31/2024: We mailed a letter to Respondent asking him to call our office. Client finally called back on January 13, 2025 for a very brief call before getting cut off by the phone system.

f. Detainees in Florence Correctional Facility are given free legal calls, but they last only five-minutes. On 2/11/2024, our office emailed the core civic visitation group at Florence Correctional Facility to schedule a virtual legal visit with multiple date and time options. However, our office was given a date which was on the same date as the Individual Hearing, too late to prepare for trial.

²³ See Exhibit O (Staff admitted Erik's unavailability due to change in status, p. 9 of motion).

²⁴ Exhibit P: Hearing Notices for 7/29/2025, 10/23/2025, 11/21/2025, 1/7/2026, and 3/12/2026.

²⁵ *Id.*

counsel moved to continue the matter due to a medical procedure.²⁶

37. Around January 5, 2026, the government relocated Erik yet again. This was his twelfth (12) transfer, this time to McFarland, CA.²⁷

38. The court removed the matter from the trial docket and reset it for a Master Calendar Hearing on January 13, 2026. During this hearing the government again failed to present Erik to court. Government counsel had no explanation for why Erik was not present via Webex appearance or otherwise. The court reset the matter for Individual Merit's Hearing on March 12, 2026.²⁸

39. Erik's right to have his asylum case heard by the Immigration Court has been delayed by government's transfers and failures to present him for court. The next court date will also not be the last given that this matter still requires Erik's direct testimony, cross-examination, redirect, and at least one other witness. Thus, his detention is likely to continue for many more months, even without counting any likely appeals.

40. This prolonged detention has caused Erik severe mental²⁹, and physical³⁰ distress. "According to the Diagnostic and Statistical Manual of Mental Disorders

²⁶ Exhibit Q: Motion to Continue, DHS Counsel, 11/18/2025; Order granting DHS motion, 11/19/2025.

²⁷ See Exhibit B.

²⁸ See Exhibit B.

²⁹ Exhibit M: Psychological Evaluation Report, Luis A. Pérez Ramírez, Psy.D., MSCP, 12/18/2024.

³⁰ See Exhibit N.

(DSM-5-TR), Mr. Mercado has Post-traumatic Stress Disorder (PTSD); Major Depressive Disorder, Recurrent Episode, Severe; and Generalized Anxiety Disorder.”³¹

41. His time away from his family has been a hardship for them because his father is battling cancer, his mother is unable to render proper assistance, and they have to suffer the thought that they could die without seeing Erik again.³²

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

42. Habeas corpus relief extends to a person “in custody under or by color of the authority of the United States” if the person can show he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241 (c)(1), (c)(3); see also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner’s claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement).

43. “[H]abeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that “[t]he court shall ... dispose of [] as law and justice require,” 28 U.S.C. § 2243. “[T]he court’s role was most extensive in cases of pretrial and noncriminal detention.” *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). “[W]hen the judicial power to issue habeas corpus properly is invoked

³¹ See Exhibit M.

³² See Exhibit L.

the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." *Id.* at 787.

VII. CAUSES OF ACTION

COUNT ONE (PROCEDURAL DUE PROCESS)

44. Petitioner incorporates paragraphs 1 to 43 as if fully set out herein.

45. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001); *Trump v. J. G. C.*, 604 U.S. 670, 673 (2025) ("The Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.").

46. Applying *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001), Petitioner's liberty interest is paramount; the risk of deprivation of Erik's interest is extreme considering the lack of a non-independent adjudicator here, the six-year detention, and the anticipated further delays caused by the government's transfer of Erik to different detention centers over twelve (12) times.

47. While the government has discretion to detain individuals this discretion is not "unlimited" and must comport with constitutional due process. *See*

Zadvydas, 533 U.S. at 698.

**COUNT TWO
(SUBSTANTIVE DUE PROCESS)**

48. Petitioner incorporates paragraphs 1 to 43 as if fully set out herein.

49. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

50. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. CONT. amend. V. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause. This vital liberty interest is at stake when an individual is subject to detention by the federal government.

51. Under the civil-detention framework set out in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose.

52. Given that government filings with the Immigration Court show Eric MERCADO-ARECHIGA has no criminal history of crimes against persons, no recent serious crimes, and no indications he will abscond given his family ties and the poor health of his father, the Government’s continued detention here serves no legitimate purpose. The most serious of his convictions, a burglary charge from

2002, has been vacated. Thus, continued confinement bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a Writ of Habeas Corpus directing Respondents to immediately release him from custody, under reasonable conditions of supervision;
- 3) Order Respondents to refrain from transferring Petitioner out of the jurisdiction of this court during the pendency of these removal proceedings and while the Petitioner remains in Respondents' custody;
- 4) Order Respondents to file a response within 3 business days of the filing of this petition;
- 5) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.
Respectfully submitted this 4th day of February, 2026.

/s/Eduardo (Ed) Perez
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