


1 Leah L. Chavarria, Esq.  
CA Bar # 297506  
2 2251 San Diego Ave., STE B-200  
San Diego, CA 92110  
3 leah@hurwitzholt.com  
Attorney for Petitioner  
4

5 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
6 **SAN DIEGO**

7 Cesar Ernesto TUNACA-GALINDO,  
Petitioner,

Case No. '26CV2226 LL B JW

8 Agency No. 

v.

9 Attorney General of the United States,  
Department of Justice;

**PETITION FOR WRIT OF  
HABEAS CORPUS BY A  
PERSON IN FEDERAL  
CUSTODY UNDER  
28 U.S.C. § 2241 AND ORDER TO  
SHOW CAUSE**

10 Markwayne Mullin, Secretary of  
11 Homeland Security;

12 Todd Lyons, Senior Official  
Performing the Duties of the Director  
13 of U.S. Immigration and Customs  
Enforcement;


14 Patrick Divver, Field Office Director of  
15 the San Diego Immigration and  
Customs Enforcement Office;

16 Jorge Velarde, Assistant Field Office  
17 Director of the Immigration and  
Customs Enforcement, Otay Mesa  
18 Detention Center;

19 Christopher J. LaRose; Senior Warden,  
Otay Mesa Detention Center;

20 Respondents.  
21

1 **INTRODUCTION**

- 2 1. Petitioner, Cesar Ernesto Tunaca-Galindo  (hereinafter  
3 “Petitioner” or “Mr. Tunaca-Galindo”), alleges he has been re-detained unjustly in  
4 violation of his U.S. Constitutional right to liberty. Additionally, that he has  
5 experienced prolonged detention in violation of his due process rights and  
6 requests a bond hearing. Therefore, he requests this court make an order to show  
7 cause and that he may not be transferred during the pendency of this petition.
- 8 2. Petitioner prefers not to file a temporary restraining order given the clear legal  
9 precedent in this case substantiating Petitioner’s claims, and would instead request  
10 Respondents be required to provide a response within three days or alternatively  
11 timing pursuant to Chief Judge Order No. 144.

12 **JURISDICTION**

- 13 3. This action arises under the Constitution of the United States and the Immigration  
14 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
- 15 4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
16 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States  
17 Constitution (Suspension Clause).
- 18 5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*  
19 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs  
20 Act, 28 U.S.C. § 1651.

1 6. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of  
2 jurisdiction. Petitioner is not contesting the commencement or adjudication of  
3 removal proceedings against him, nor is he raising an issue with respect to the  
4 execution of removal. Petitioner does challenge his re-detention and prolonged  
5 detention. The petition is independent of the removal proceedings and all  
6 questions related to the commencement of removal proceedings or any part of the  
7 removal process. “[C]laims that are independent of or collateral to the removal  
8 process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d  
9 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit  
10 challenges to unlawful practices merely because they are in some fashion  
11 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997  
12 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)  
13 and 1252(b)(9).

#### 14 VENUE

15 7. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center  
16 in the County of San Diego, which is within the jurisdiction of this District. When  
17 he was not detained, he lived in San Diego, California, with his daughter and  
18 partner. Further, a substantial part of the events or omissions giving rise to his  
19 claims occurred in this District and no real property is involved in this action. 28  
20 U.S.C. § 1391(e).



1 11. Respondent U.S. Attorney General<sup>1</sup> is sued in their official capacity as the  
2 Attorney General of the United States and the senior official of the U.S.  
3 Department of Justice (“DOJ”). In that capacity, they have the authority to  
4 adjudicate removal cases and to oversee the Executive Office for Immigration  
5 Review (“EOIR”), which administers the immigration courts and the Board of  
6 Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of  
7 Petitioner.

8 12. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland  
9 Security (“DHS”) is sued in their official capacity as the Secretary of the DHS. In  
10 this capacity, Respondent Secretary is responsible for the implementation and  
11 enforcement of the Immigration and Nationality Act, and oversees U.S.  
12 Immigration and Customs Enforcement (“ICE”), the component agency  
13 responsible for Petitioner’s detention and custody. Respondent Secretary is a legal  
14 custodian of Petitioner.

15 13. Respondent Todd Lyons is sued in his official capacity as the Senior Official  
16 Performing the Duties of the Director ICE. Respondent Lyons is the legal  
17 custodian of Petitioner.

18  
19  
20 <sup>1</sup> According to the federal rules, a U.S. government official may be named by official  
21 title instead of the official’s name. Fed. R. Civ. P. 17(d). The U.S. Attorney General  
Pamela Bondi’s termination was announced on April 2, 2026.

1 14. Respondent Patrick Divver is sued in his official capacity as the Field Office  
2 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of  
3 Petitioner and has authority to release him.

4 15. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office  
5 Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a  
6 legal custodian of Petitioner and has direct authority to release him.

7 16. Respondent Christopher J. LaRose is sued in his official capacity as the Senior  
8 Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical  
9 custodian of Petitioner and has direct authority to release him.

10 **STATEMENT OF FACTS**

11 17. Mr. Tunaca-Galindo is a 34-year-old El Salvadoran national, who entered the  
12 United States without inspection on or about August 24, 2022. U.S. immigration  
13 officials apprehended him soon after entry, issued him a Notice to Appear  
14 (“NTA”) in removal proceedings in Los Angeles, California, and released him on  
15 parole. Ex. A, Interim Notice Authorizing Parole.

16 18. Petitioner reported to Immigration and Customs Enforcement (“ICE”) about eight  
17 times for almost three years. Ex. B, ICE Form I-220A, p. 2. Throughout that time,  
18 ICE did not file his NTA with the Executive Office for Immigration Review  
19 (“EOIR”) and informed him at each check-in that he did not yet have court.

1 19. Before his detention, Mr. Tunaca-Galindo worked to support his partner and their  
2 daughter in the United States and his El Salvadoran child who is still in El  
3 Salvador. He has no criminal arrests or convictions in the United States<sup>2</sup>.

4 20. On June 20, 2025, Mr. Tunaca-Galindo appeared *pro se* at U.S. Citizenship and  
5 Immigration Services (“USCIS”) for a Credible Fear Interview (“CFI”) before an  
6 asylum officer presumably because ICE attempted to process him for expedited  
7 removal illegally after he had already been at liberty in the United States on parole  
8 since August 2022<sup>3</sup>. The asylum officer found him to be a credible witness but  
9 did not find a credible or reasonable fear. Following the interview, ICE took him  
10 into custody and transferred him to the Otay Mesa Detention Center in San Diego,  
11 California. He was later transferred to the Pine Prairie Correctional Facility in  
12 Louisiana.

13 21. On June 26, 2026, an immigration judge at the Los Angeles Immigration Court  
14 located in Van Nuys, California, ordered Mr. Tunaca-Galindo removed *in*  
15 *absentia*.

---

16 <sup>2</sup> As a part of his asylum application, he admitted to being jailed in El Salvador for  
17 approximately 9 months but was released without charge. Such a long arbitrary  
18 detention without charge has a relation to his asylum claim. He also has an offense in  
19 El Salvador related to possession of marijuana.

20 <sup>3</sup> It is confounding that Mr. Tunaca-Galindo was at liberty, on parole, in the United  
21 States waiting for his removal proceedings to be initiated by ICE and then nearly 3  
years later ICE scheduled a CFI with USCIS. The CFI process is governed by CITE  
and for individuals who are in expedited removal. *See Make the Road N.Y. v.*  
*Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

1 22. On or about July 15, 2025, a *pro bono* organization in Louisiana assisted the still  
2 detained Mr. Tunaca-Galindo to *pro se* file a motion to reopen and rescind his *in*  
3 *absentia* removal order because he was detained at the time of the June 26, 2026,  
4 hearing and was not produced for his hearing by ICE who had taken him into  
5 custody 6 days earlier. Counsel has yet to locate any result of this motion.

6 23. While Mr. Tunaca-Galindo remained detained, ICE transferred him back to the  
7 Otay Mesa Detention Center and there issued to him a second NTA, dated October  
8 16, 2025. ICE charged him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as  
9 someone who entered the United States without inspection and is present without  
10 admission and 8 U.S.C. § 1182(a)(7)(A)(i), a seemingly conflicting charge for  
11 someone who has applied for admission without proper documentation. Ex. C,  
12 NTA.

13 24. On January 2, 2026, counsel for the Department of Homeland Security (“DHS”)  
14 filed a motion to pretermite Mr. Tunaca-Galindo’s asylum application pursuant to  
15 the Asylum Cooperative Agreements with Ecuador, Guatemala, and Honduras.

16 25. Represented by prior *pro bono* counsel, Mr. Tunaca-Galindo filed an asylum  
17 application on February 1, 2026.

18 26. The immigration judge granted DHS’s motion on February 26, 2026, and ordered  
19 Mr. Tunaca-Galindo removed to Ecuador, with Guatemala and Honduras as  
20 alternative countries for removal.

21

1 27. On March 16, 2026, present counsel filed an appeal of that removal order, which  
2 is now pending before the Board of Immigration Appeals (“BIA”).

3 28. Mr. Tunaca-Galindo remains detained. He has been detained for nine months and  
4 19 days. Therefore, upon consideration of the legal bases below, Mr. Tunaca-  
5 Galindo requests this court issue a habeas order requiring he be immediately  
6 released from custody because there is no basis for his unlawful arrest and re-  
7 detention or that he be provided a lawful bond hearing before a fair, neutral, and  
8 open-minded arbiter where DHS must provide by clear and convincing evidence  
9 that he should not be released from his prolonged detention.

10 **CLAIMS FOR RELIEF**

11 **CLAIM ONE**

12 **Violation of the Fifth Amendment to the United States Constitution**  
13 **(Substantive Due Process – Detention)**

14 29. Petitioner incorporates by reference the allegations of fact set forth in the  
15 preceding paragraphs.

16 30. Petitioner’s arrest and detention was unlawful and on this basis his immediate  
17 release is required. The scheduling of a credible fear interview for someone who  
18 was initially processed for removal proceedings and then granted parole is not  
19 someone contemplated under the expedited removal statutes. *See Make the Road*  
20 *N.Y. v. Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025). The unlawful arrest is  
21 verified by ICE then later placing him in 8 U.S.C. § 1229a removal proceedings

1 even though an asylum officer found his fear did not meet the requisite  
2 reasonableness or credibility required to pass the interview. Even and  
3 immigration judge agreed. Thus, on what basis was Petitioner detained if not by  
4 unlawful means?

5 31. The Due Process Clause of the Fifth Amendment protects all “person[s]” from  
6 deprivation of liberty “without due process of law.” U.S. Const. amend.  
7 V. “Freedom from imprisonment—from government custody, detention, or other  
8 forms of physical restraint—lies at the heart of the liberty that [the Due Process]  
9 Clause protects.” *Zadvydas*, 533 U.S. at 690.

10 32. Immigration detention is constitutionally permissible only when it furthers the  
11 government’s legitimate goals of ensuring the noncitizen’s appearance during  
12 removal proceedings and preventing danger to the community. *See id.* When the  
13 Government has previously decided to release a noncitizen and there is no  
14 evidence in the record of any changed circumstance that might have caused the  
15 Government to reconsider its initial decision to release the noncitizen, courts have  
16 found the Government’s interest in re-detention is low. *Doe v. Chestnut*, No.  
17 1:25-cv-01372CDB (HC), 2025 WL 3295154, at \*10 (E.D. Cal. Nov. 26, 2025)  
18 (citations omitted).

19 33. “[E]ven when ICE has the initial discretion to detain or release a noncitizen  
20 pending removal proceedings, after that individual is released from custody she  
21

1 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792  
2 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-  
3 02508, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*  
4 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021);  
5 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at \*3 (N.D. Cal.  
6 Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

7 34. Many courts in this district have joined a number of district courts to recognize  
8 that noncitizens have a significant liberty interest in both “continued freedom after  
9 release on own recognizance,” *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-  
10 MMP, ECF No. 14, at \*6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in  
11 “freedom from imprisonment” after “the government grants a [noncitizen] parole  
12 into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL  
13 2770629, at \*3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Prieto-*  
14 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19,  
15 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.  
16 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),  
17 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-  
18 cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo*  
19 *Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15,  
20 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y.

1 Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828  
2 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-  
3 MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*,  
4 No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

5 35. Petitioner is not a flight risk or danger to the community, as evidenced by his near  
6 three years at liberty without issue. Accordingly, Petitioner is being detained in  
7 violation of the Due Process Clause of the Fifth Amendment.

## 8 CLAIM TWO

### 9 Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process – Detention)

10 36. As part of the liberty protected by the Due Process Clause, Petitioner has a  
11 weighty liberty interest in avoiding re-detention after his release. *See Young v.*  
12 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82  
13 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at 969–  
14 70 (holding that a noncitizen has a protected liberty interest in remaining out of  
15 custody following an IJ’s bond determination).

16 37. Accordingly, “[i]n the context of immigration detention, it is well-settled that due  
17 process requires adequate procedural protections to ensure that the government’s  
18 asserted justification for physical confinement outweighs the individual’s  
19 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872  
20 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127 (Generally, “the Constitution

1 requires some kind of a hearing *before* the State deprives a person of liberty or  
2 property.”). In the immigration context, for such hearings to comply with due  
3 process, the government must bear the burden to demonstrate, by clear and  
4 convincing evidence, that the noncitizen poses a flight risk or danger to the  
5 community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also*  
6 *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

7 38. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*  
8 *Wofford*, 2025 WL 2996577, \* 4 (E.D. Ca. Oct. 24, 2025) (confirming that  
9 noncitizen with an outstanding removal order had a protected liberty interest due  
10 to his previous conditional release).

11 39. Prior to his re-detention in June of 2025, Petitioner had no notice of Respondents’  
12 intention to re-detain him and no opportunity to contest that action. Because the  
13 private interest in freedom from immigration detention is substantial, due process  
14 requires the government to bear the burden of proving by clear and convincing  
15 evidence that Petitioner is a flight risk or danger to the community before re-  
16 detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852, \*11 (N.D.  
17 Ca. Sep. 16, 2025).

18 40. The government has no legitimate interest in detaining Petitioner without a  
19 hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, \*7 (E.D. Ca. Aug. 8,  
20 2025) (finding that “the government’s asserted interest is hinged on mere  
21

1 speculation about [the noncitizen’s] risk of flight or dangerousness” given that  
2 noncitizen was complying with terms of his probation when detained); *Noori*,  
3 2025 WL 2800149 at \*11 (“Respondents did not provide Petitioner individualized  
4 notice and reasoning prior to his arrest and detention on June 12, 2025 and have  
5 presented no legitimate reason for why those decisions were made. Any  
6 governmental interest of efficient administration of immigration laws . . . does not  
7 outweigh these first two factors.”). Bond hearings are a routine part of  
8 immigration court proceedings, imposing a minimal cost to the government. *See*  
9 *Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, \*6 (E.D. Ca. March 3,  
10 2025). Nothing in Petitioner’s record suggests that he would abscond or endanger  
11 the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v.*  
12 *Wilkinson*, 2021 WL 783561 \*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*,  
13 2020 WL 5074312, \*3 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s  
14 concern that delay in scheduling a hearing could exacerbate flight risk or danger is  
15 unsubstantiated in light of petitioner’s strong family ties and his continued  
16 employment during the pandemic as an essential agricultural worker”). In fact,  
17 Petitioner is represented by counsel and has a demonstrated record of attendance  
18 when scheduled for hearings or immigration-related appointments apart from  
19 when ICE failed to present him for his hearing when he was detained. The  
20 government has not sufficiently demonstrated the changed circumstances that

1 required his detention given that Petitioner had been released on parole and out of  
2 custody for almost three years waiting for proceedings to initiate and has had no  
3 issues with law enforcement in the United States. There is no reason to think that  
4 his compliance will change if he is released pending a pre-deprivation custody  
5 hearing.

6 **COUNT THREE**

7 **Violation of 8 U.S.C. § 1231(a)(6)**  
8 **(Detention in Excess of Six Months)**

9 41. Petitioner incorporates the allegations in the paragraphs above as though fully set  
10 forth here.

11 42. The Immigration and Nationality Act authorizes a post-removal-period detention  
12 of six months to allow the United States to effectuate removal. 8 U.S.C. §  
13 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001).

14 43. There is good reason to believe that there is no significant likelihood of  
15 Petitioner's removal in the reasonably foreseeable future.

16 44. Respondents do not have evidence sufficient to demonstrate that Petitioner's  
17 removal is reasonably foreseeable.

18 45. Petitioner is being held in violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas v.*  
19 *Davis*, 533 U.S. 678 (2001).

20 **COUNT FOUR**

21 **Violation of Due Process**  
**(Indefinite Detention)**

1 46. Petitioner incorporates the allegations in the paragraphs above as though fully set  
2 forth here.

3 47. Indefinite detention violates the Fifth Amendment's Due Process Clause.  
4 *Zadvydas v. Davis*, 533 U.S. at 682, 689.

5 48. There is no significant likelihood of Petitioner's removal in the reasonably  
6 foreseeable future.

7 49. Respondents do not have evidence sufficient to demonstrate that Petitioner's  
8 removal is reasonably foreseeable. Petitioner's detention in excess of six months  
9 without such evidence of imminent removal is a violation of Due Process.

10 **PRAYER FOR RELIEF**

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

- 12 1) Assume jurisdiction over this matter;
- 13 2) Issue an order preventing Respondents from transferring Petitioner away from the  
14 Otay Mesa Detention Center, the closest detention center to counsel's office;
- 15 3) Issue an order to show cause and require a response within three days from  
16 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §  
17 2243 or another timeline so determined by the Court;
- 18 4) Declare that Petitioner's detention is unlawful;
- 19 5) Issue a writ of habeas corpus requiring Respondents to release Petitioner under the  
20 same conditions as before he was detained and that re-detention may not be in  
21

1 violation of the Constitution, any law, or any regulation; or that EOIR must  
2 provide a bond hearing before a fair, neutral, open-minded arbiter, where the DHS  
3 bears the burden by clear and convincing evidence and if the bond hearing is not  
4 fair and neutral, and the burden of proof incorrectly applied, that Petitioner be  
5 released immediately;

6 6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
7 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;  
8 and

9 7) Grant any other and further relief that this Court deems just and proper.

10  
11 Dated: April 8, 2026

Respectfully submitted,

12 /s/ Leah L. Chavarria  
13 Leah L. Chavarria  
14 *Counsel for Petitioner*

15  
16 **LIST OF EXHIBITS**

17 EXHIBIT A: Interim Notice Authorizing Parole

18 EXHIBIT B: ICE Form I-220A, p. 2

19 EXHIBIT C: Notice to Appear

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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

I represent Petitioner, Cesar Ernesto Tunaca-Galindo, and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California 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 8th day of April, 2026.

*/s/ Leah L. Chavarria*  
*Leah L. Chavarria*  
*Counsel for Petitioner*