

Juan Osornio-Galvan

Alien No. 

Central Valley Annex

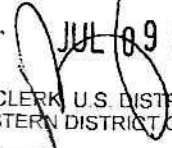
254 Taylor Avenue

McFarland, CA 93250

**FILED**

JUL 09 2026

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY   
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JUAN OSORNIO-GALVAN,

-Petitioner, *Pro Se*,

v.

Markwayne MULLIN, in his Official Capacity,  
Secretary of the Department of Homeland Security,

Todd BLANCHE, in his Official Capacity,  
Attorney General, Department of Justice,

Poly KAISER, in his Official Capacity,  
Field Office Director, San Francisco Field Office,  
U.S. Immigration and Customs Enforcement,

Todd LYONS, in his Official Capacity,  
Acting Director, Immigration & Customs Enforcement,

Acting WARDEN, in their Official Capacity,  
Warden of Immigration Detention Facility,  
Central Valley Annex;

-Respondents.

1:26-cv-5286-NW

Case No.:

INS.: 

Custody Status: **DETAINED**

**Petition for Writ of Habeas  
Corpus Pursuant to  
28 U.S.C. § 2241**

**PETITION FOR WRIT OF HABEAS CORPUS**

**PURSUANT TO 28 U.S.C. § 2241**

COMES NOW JUAN OSORNIO-GALVAN, as the Petitioner in this present matter, appearing *Pro Se*, and hereby respectfully petitions this Honorable Eastern District Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

The Petition of Juan OSORNIO-GALVAN respectfully shows:

**INTRODUCTION**

1. Petitioner's full name is Juan Gabriel Osornio-Galvan, a male who was born in Mexico and entered the United States ("US") in 1999 and in 2011.
2. Petitioner submitted an affirmative asylum application with the United States Citizenship and Immigration Services ("USCIS"). See attachment.
3. On June 10, 2026, Petitioner was driving his vehicle with his pregnant girlfriend when federal ICE agents pulled them over at gun-point. Subsequently, they arrested him and detained him, despite his pending application with USCIS.
4. Despite Petitioner's attempts in presenting these documents, the federal ICE agents arrested and detained Petitioner without a pre-deprivation hearing.
5. Petitioner is currently being physically detained under the full custody of the Respondents, including the Department ("DHS/ICE") at the Central Valley Annex in McFarland, California.
6. Petitioner, Mr. Osornio-Galvan, seeks protection relief in the form of an application to Register Permanent Residence or Adjust Status, Asylum, Withholding of Removal, and Convention Against Torture. Again, Petitioner submitted an affirmative asylum application with USCIS and has a case pending with USCIS.

- 1 7. Again, on June 10, 2026, while driving with his pregnant girlfriend, Petitioner was  
2 apprehended at gun-point and detained by ICE agents without a pre-deprivation hearing  
3 and has not been afforded due process of law up to the present day.
- 4 8. Interestingly, Petitioner's bond proceeding case is meritorious as it presents a highly  
5 likelihood of success on the merits because he has significant favorable factors.
- 6 9. As such, Petitioner was not afforded a full and fair bond hearing wherein the  
7 government must establish by a constitutional, due process, standard of *clear and*  
8 *convincing* evidence that Petitioner presents a risk of flight or danger to the community.
- 9 10. Petitioner therefore respectfully requests that this Court issue a Writ of Habeas Corpus,  
10 and determine that Petitioner's ongoing detention is not justified because the  
11 government has not established by *clear and convincing* evidence that Petitioner  
12 presents a risk of flight or danger in light of reasonable available alternatives to  
13 detention, and order Petitioner's release, with appropriate conditions of supervision if  
14 necessary.
- 15 11. Petitioner respectfully requests that this Court issue a Writ of Habeas Corpus and order  
16 Petitioner's release within twenty ("20") days unless Respondent's schedule a hearing  
17 before the IJ where it holds proper jurisdiction and where: (1) to continue detention,  
18 the government must establish by *clear and convincing* evidence that Petitioner present  
19 a risk of flight or current public danger, even after consideration of alternatives to  
20 detention that could mitigate any risk that Petitioner's release would present; and (2) if  
21 the government cannot meet its heavy burden, the IJ orders Petitioner's release on  
22 appropriate conditions of supervisions.
- 23 12. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243  
24 to order the Respondents to file a return within three days, unless they can show good

1 cause for additional time. *See* 28 U.S.C. § 2243 (stating that an order to show cause  
2 why a petition for a writ of habeas corpus should be denied is returnable “within three  
3 days unless for good cause additional time, not exceeding twenty days, is allowed”).

4 13. In order to permit full judicial review of the claims herein and requested relief,  
5 Petitioner respectfully requests that the Court order Respondents not to transfer  
6 Petitioner outside the jurisdiction of this Court pending consideration of this Petition

7 **PARTIES**

8 14. Petitioner is a native and citizen of Mexico who has a pending affirmative asylum  
9 application with USCIS. Yet, lacking criminal convictions, ICE aggressively arrested  
10 and detained him without a pre-deprivation hearing and without due process of law.

11 15. Respondent, Markwayne MULLIN is sued in his official capacity as the Secretary of  
12 the Department of Homeland Security (herein after referred to as “DHS”). In his  
13 capacity he has the responsibility for administration and enforcement of the  
14 immigration laws pursuant to section 402 of the Homeland Security Act of 2002, 107  
15 Pub. L. 296, 116 Stat. 2135 (Nov. 25, 2002). *See Armentero v. INS*, 340 F.3d 1058 (9th  
16 Cir. 2003).

17 16. Respondent Todd BLANCHE is sued in his official capacity as the Attorney General  
18 of the United States. He has responsibility for the administration and enforcement of  
19 the immigration laws pursuant to 8 U.S.C. § 1103, and Immigration and Nationality  
20 Act § 103. As the “INA” has not been amended to reflect the designation of the  
21 Secretary of the DHS as the administrator and enforcer of the immigration laws. In this  
22 case, Todd BLANCHE is sued in his official capacity to the extent that 8 U.S.C. § 1102  
23 gives him the authority to detain Petitioner. *See Armentero v. INS, supra*. Thus, Todd  
24 BLANCHE is considered a legal custodian of Juan Osornio-Galvan.

1 17. Respondent, Poly KAISER is the Field Office Director responsible for the San  
2 Francisco Field Office of ICE Enforcement and Removal Operations, which has  
3 administrative jurisdiction over Petitioner's case. He is a legal custodian of Mr. Juan  
4 Osornio-Galvan and is named in his official capacity.

5 18. Respondent, Todd LYONS is Acting Director of ICE. As the head of ICE, an agency  
6 within the U.S. Department of Homeland Security that detains and removes certain  
7 noncitizens, Respondent Todd LYONS is a legal custodian of Mr. Osornio-Galvan and  
8 he is named in his official capacity.

9 19. Respondent, Acting WARDEN of Central Valley Annex, in McFarland, California  
10 where Petitioner is currently detained under the authority of ICE, alternatively he may  
11 be considered to be Petitioner's immediate custodian.

12 20. The Respondents in this action are the legal custodian of Petitioner and are named in  
13 their official capacity.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 21. Because Petitioner is considered as an arriving alien, as defined in 8 C.F.R. § 1001.1(g),  
16 in removal proceedings, the immigration court does not have jurisdiction. *See*  
17 Immigration Court Practice Manual ("ICPM") Section 9.3(b)(1). For this very reason,  
18 the Immigration Judge will deny bond for lack of jurisdiction. *See* ICPM § 9.3(b)(1).

19 22. Consequently, Petitioner need not exhaust his administrative remedies. Exhaustion is  
20 required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S.  
21 140, 144 (1992). In all other instances, "sound judicial discretion governs." *Id.* This  
22 Court should not require Petitioner to exhaust his administrative remedies.

23 23. Having a pending asylum claim with USCIS, Petitioner is being held under mandatory  
24 detention without a pre-deprivation hearing.

1 24. Even if Petitioner would move for such a bond hearing, it would be futile as the  
2 Immigration Court lacks proper jurisdiction.

3 25. Petitioner is challenging the constitutionality of the procedures by which ICE reviews  
4 the custody status of aliens who cannot be removed within six months, and whose  
5 removal is not significantly likely to occur in the reasonably foreseeable future.

6 26. Petitioner is also challenging the constitutionality of his arrest and detention where  
7 there are no violations, no felony convictions and no justification for his detention.

8 27. As a result, the administrative remedy is inadequate to address these constitutional  
9 grounds for recovery.

10 **JURISDICTION**

11 28. This action arises under the United States Constitution, the Immigration & Nationality  
12 Act of 1952, as amended (herein after referred to as "INA") 8 U.S.C. § 1101 *et. seq.*,  
13 and the Administrative Procedures Act (herein after referred to as "APA"), 5 U.S.C. §§  
14 701 *et. seq.*

15 29. This Court has Habeas Corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 *et. seq.*;  
16 Article 1, Clause 2 of the United States Constitution (hereinafter referred to as  
17 "Suspension Clause"); and the Common Law.

18 30. As Petitioner is presently in custody under color of the authority of the United States,  
19 and such custody is in violation of the Constitution, laws, and/or treaties of the United  
20 States.

21 31. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 and may grant  
22 relief pursuant to the Declaratory Judgement Act, 28 U.S.C. § 2201 *et. seq.*, and the All  
23 Writs Act, 28 U.S.C. § 1651.

**VENUE**

32. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(c) because the Respondents are employees or officers of the United States, acting in their official capacity, and an agency of the United States.

33. Venue is additionally proper in this Court because the Petitioner is detained in this District, and pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500(1973). Venue is proper in this District because this is the district in which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

**STATEMENT OF THE FACTS**

34. Mr. Osornio-Galvan, is a native, citizen and national of Mexico who has a pregnant girlfriend and a pending asylum application with USCIS. *See* attachments.

35. Yet, Respondents have failed to provide a pre-deprivation hearing prior to his detention and Petitioner has not been afforded due process. This is, in fact, arbitrary.

36. For some capricious reason, ICE arrested and detained Petitioner at gun-point and without following its own regulations or the law, which puts into question the fundamental fairness towards Petitioner.

**CRIMINAL HISTORY**

37. In this case, Petitioner lacks criminal convictions and has not been arrested for alcohol, drugs, violence or anything close to relevant here in the United States and has taken steps to live a law-abiding lifestyle.

38. Further, Petitioner does not exhibit any history of violent behavior or violent criminal history. Conversely, he has demonstrated excellent behavior while detained and in the last few months and has no disciplinary actions against him while detained. Petitioner lacks felony convictions.

1 39. Petitioner has shown commendable willingness to reintegrate to day-to-day society  
2 once released. Petitioner lacks violent criminal convictions in the US and has not been  
3 afforded a bond hearing where it comports with due process.

4 40. The following positive factors are also important to consider. Petitioner is not a threat  
5 to national security, has no history of such activity and presents no danger to public  
6 safety. This is supported by the fact that Petitioner lacks criminal convictions.

7 41. Finally, Petitioner has not participated in a criminal street gang and does not have any  
8 gang related conviction as defined under in 18 U.S.C. § 521(a).

9 42. Based on the totality of these compelling mitigating factors, it demonstrates that  
10 Petitioner, Mr. Juan Osornio-Galvan merits, at the very least, a fair and impartial bond  
11 hearing where the immigration court holds proper jurisdiction.

#### 12 LEGAL ARGUMENT

13 43. "It is well established that the Fifth Amendment entitles aliens to due process of law in  
14 deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*  
15 *Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government  
16 custody, detention, or other forms of physical restraint—lies at the heart of liberty" that  
17 the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also*  
18 *id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause included  
19 protection against unlawful or arbitrary personal restraint or detention."). This  
20 fundamental due process protection applies to all noncitizens, including both  
21 removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("both  
22 removable and inadmissible aliens are entitled to be free from detention that is arbitrary  
23 or capricious").

1 44. Due process therefore requires “adequate procedural protections” to ensure that the  
2 government’s asserted justification for physical confinement “outweighs the  
3 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at  
4 690. Civil commitment for *any* purpose constitutes a significant deprivation of liberty.  
5 *Addington v. Texas*, 441 U.S. 418, 425 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). In the  
6 immigration context, the Supreme Court has recognized only two valid purposes for  
7 civil detention—to mitigate the risks of danger to the community and to prevent flight.  
8 *Id.*; *Demore*, 538 U.S. at 528.

9 45. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue  
10 had found either the immigration statutes or due process require a hearing for  
11 noncitizens subject to unreasonably prolonged detention pending removal proceedings.  
12 *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (8 U.S.C. § 1226(a)); *Reid*  
13 *v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (8 U.S.C. § 1226(c)); *Sopo v. U.S. Attorney*  
14 *Gen.*, 825 F.3d 1199 (11th Cir. 2016) (detention under 8 U.S.C. § 1226(c)); *Lora v.*  
15 *Shanahan*, 804 F.3d 601 (2d Cir. 2015) (8 U.S.C. § 1226(c)); *Rodriguez v. Robbins*  
16 *(Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015) (8 U.S.C. § 1226(c) and 8 U.S.C. §  
17 1225(b)); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011) (8 U.S.C. §  
18 1226(c)); *Diouf v. Holder (Diouf II)*, 634 F.3d 1081 (8 U.S.C. § 1231(a)); *Ly v. Hanse*,  
19 351 F.3d 263 (6th Cir. 2003) (8 U.S.C. § 1226(c)) (requiring release when mandatory  
20 detention exceeds a reasonable period of time).

21 46. While the Supreme Court upheld the mandatory detention of a noncitizen under Section  
22 1226(c) in *Demore*, it did so based upon the petitioner’s concession of deportability  
23 and the Court’s understanding that detentions under Section 1226(c) are typically  
24 “brief”. *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a

1 prolonged period or is pursuing a substantial defense to removal or claim to relief, due  
 2 process requires an individualized determination that such a significant deprivation of  
 3 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“individualized  
 4 determination as to his risk of flight and dangerousness” may be warranted “if the  
 5 continued detention became unreasonable or unjustified”). *See also, Jackson v.*  
 6 *Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires  
 7 additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972)  
 8 (“lesser safeguards may be appropriate” for “short term confinement”); *Hutto v.*  
 9 *Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, “the length of  
 10 confinement cannot be ignored in deciding whether [a] confinement meets  
 11 constitutional standards”).

12 47. This Court should grant this Habeas Corpus petition on the grounds that detention  
 13 without a proper bond hearing is unconstitutional when it exceeds six-months. *See*  
 14 *Demore*, 538 U.S. at 529-30 (upholding only “brief” detention under Section 1226(c),  
 15 which last “roughly a month and a half in the vast majority of cases in which it is  
 16 invoked, and about five months in the minority of cases in which the alien chooses to  
 17 appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the  
 18 constitutionality of detention for more than six months”).

19 48. The recognition that six months is a substantial period of confinement—and is the time  
 20 after which additional process is required to support continued incarceration—is deeply  
 21 rooted in our legal tradition. With few exceptions, “in the late 18th century in America  
 22 crimes triable without a jury were for the most part punishable by no more than a six-  
 23 month prison term . . .” *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968).

1 49. Consistent with this tradition, the Supreme Court has found six months to be the limit  
2 of confinement for a criminal offense that a Federal Court may impose without the  
3 protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966)  
4 (plurality opinion). The Court has also looked to six-months as a benchmark in other  
5 contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245,  
6 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without  
7 individualized inquiry for civil commitment). The Court has likewise recognized the  
8 need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*,  
9 559, U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda  
10 rights); *Cty. Of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for  
11 probable cause hearing).

12 50. Even if a bond hearing is not required after six-months in every case, at a minimum,  
13 due process requires a bond hearing after detention has become unreasonably  
14 prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have  
15 considered three main factors in determining whether detention is reasonableness. First,  
16 courts have evaluated whether the noncitizen has raised a “good faith” challenge to  
17 removal—that is, the challenge is “legitimately raised” and presents “real issues”.  
18 *Chavez-Alvarez v. Wardern York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015).  
19 Petitioner’s detention is prolonged detention without an impartial and fair bond hearing  
20 that guarantees fundamental Due Process of Law. Any delay has occurred as a result  
21 of litigating favorable and substantive issues affecting removal.

22 51. Second, reasonableness is a “function of the length of the detention,” with detention  
23 presumptively unreasonable if it lasts six-months to a year. *Id.* at 477-78; *accord Sopo*,  
24 825 F.3d at 1217-18. Third, courts have considered the likelihood that detention will

1 continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding  
2 detention unreasonable after nine months of detention, when the parties could “have  
3 reasonably predicted that *Chavez-Alvarez’s* appeal would take a substantial amount of  
4 time, making his already lengthy detention considerably longer”); *Sopo*, 825 F.3d at  
5 128; *Reid*, 819 F.3d at 500.

6 **52.** At a proper bond hearing, due process requires certain minimal protections to ensure  
7 that a noncitizen’s detention is warranted: the *government* must bear the burden of  
8 proof by *clear and convincing* evidence to justify continued detention, taking into  
9 consideration available alternatives to detention; and if the government cannot meet its  
10 burden, the noncitizen’s ability to pay a bond must be considered in determining the  
11 appropriate conditions of release.

12 **53.** To justify immigration detention, the government must bear the burden of proof by  
13 *clear and convincing* evidence that the noncitizen is a danger or flight risk. *See Singh*  
14 *v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011). Where the Supreme Court has  
15 permitted civil detention in other contexts, it has relied on the fact that the Government  
16 bore the burden of proof at least by *clear and convincing* evidence. *See United States*  
17 *v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where “full-  
18 blown adversary hearing,” requiring “clear and convincing evidence” and “neutral  
19 decisionmaker”) *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil  
20 detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692  
21 (finding post-final-order custody review procedures deficient because, inter alia, they  
22 placed burden on detainee).

23 **54.** The Ninth Circuit Court of Appeals confirmed that *Jennings v. Rodriguez*, 138 S. Ct.  
24 830 (2018) did not invalidate the holding in *Singh* and *Rodriguez v. Robbins* (Rodriguez

1 III), 804 F.3d 1060 (9th Cir. 2015), which required that the Government justify a non-  
2 citizen's detention by *clear and convincing* evidence. *Aleman Gonzalez v. Barr*, ---  
3 F.3d ---, 2020 WL 1684034 (9th Cir. Apr. 7, 2020).

4 **55.** Since *Jennings*, numerous district courts in this circuit and others have concluded that  
5 due process requires the government to prove by *clear and convincing* evidence that a  
6 non-citizen is a flight risk or a danger to the community to justify denial of bond. E.g.,  
7 *Ixchop Perez v. McAleenan*, --- F. Supp. 3d ---, 2020 WL 1181492, at \*4 (N.D. Cal. Jan.  
8 23, 2020) (rejecting the government's "attempt to cabin *Singh* to only apply to *Casas*  
9 hearings" as "illogical" since such interpretation would "create a system in which a  
10 detained noncitizen bears the burden at their initial bond hearing, but the burden then  
11 shifts at a *Casas* hearing"); *Singh v. Barr* ("Singh v. Barr"), 400 F. Supp. 3d 1005,  
12 1017-18 (S.D. Cal. 2019) ("Because *Jennings* expressly addressed itself to the  
13 mandates of the INA, and not the Constitution, the procedural due process holding[ ]  
14 in *Singh* . . . still stand[s]."); *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 775 (N.D.  
15 Cal. 2019); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1033 n.8 (W.D. Was.  
16 2019); *Cortez v. Sessions*, 318 F. Supp. 3d 1134 (N.D. Cal. 2018), appeal dismissed,  
17 2018 WL 4173027 (9th Cir. July 25, 2018); *Ramos v. Sessions*, 293 F. Supp. 3d 1021,  
18 1029-30 (N.D. Cal. 2018).; *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019  
19 WL 2774211, at \*11 (D. Colo. July 2, 2019); *Darko v. Sessions*, 342 F. Supp. 3d 429  
20 (S.D. N.Y. 2018); *Linares Martinez v. Decker*, 2018 WL 5023946, at \*4 (S.D. N.Y.  
21 Oct. 17, 2018); *Sajous v. Decker*, No. 28 Civ. 2447 (AJN), 208 WL 2357266, at \*12  
22 (S.D. N.Y. May 23, 2018); *Hernandez v. Decker*, No. 18 Civ. 5026 (ALC), 2018 WL  
23 3579108, at \*10 (S.D. N.Y. July 25, 2018); *Frederic v. Edwards*, No. 18 Civ. 5540  
24 (AT), Docket No. 13 (S.D. N.Y. July 19, 2018); *Figueroa v. McDonald*, No. 18-CV-

1 10097 (PBS), --- F. Supp. 3d ---, --- 2018 WL 2209217, at \*5 (D. Mass. May 17, 2018);  
2 *Pensamiento*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018); *Portillo v. Hott*, 322 F. Supp.  
3 3d 698, 709 n.9 (E.D. Va. 2018).

4 56. The Fifth Amendment requires that, before depriving a person of his liberty, the  
5 government allow that person to be heard at a meaningful time and in a meaningful  
6 manner. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The determination of  
7 whether particular government conduct violates this procedural due process balances  
8 (1) the private interest affected by the official action; (2) the risk of erroneous  
9 deprivation of the interest and value (if any) of additional or substitute procedural  
10 safeguards; and (3) the government's interest, including the burden that additional or  
11 substitute procedural requirements would impose. *Id.* at 335.

12 57. To conform to the requirements of due process, such a hearing must take place before  
13 an independent and impartial adjudicator. *Id.* at 334-35. The requirement that the  
14 government bear the burden of proof by *clear and convincing* evidence is also  
15 supported by application of the three-factor balancing test from *Mathews v. Eldridge*,  
16 424 U.S. 319, 335 (1976). First, prolonged incarceration deprives noncitizens of a  
17 "profound" liberty interest. *See Diouf II*, 634 F.3d at 1091-92 (9th Cir. 2011). Second,  
18 the risk of error is heavily great where the government is represented by trained and  
19 qualified attorneys and detained noncitizens, as it is in this present case, are often  
20 unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455  
21 U.S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination  
22 proceedings because "numerous factors combine to magnify the risk of erroneous  
23 factfinding" including that "parents subject to termination proceedings are often poor,  
24 uneducated, or members of minority groups" and "[t]he State's attorney usually will be

expert on the issues contested”). Moreover, detainees are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra*.

58. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen’s immigration records and other information that it can use to make its case for continued detention.

59. While detention pending removal proceedings is constitutionally permissible, it must comport with due process. Among other requirements, the government must justify prolonged detention with clear and convincing evidence that the noncitizen presents a current flight risk or danger to the community.

60. Although the Court cannot review the IJ’s discretionary judgement, it may review the record for constitutional claims and legal error and to ensure that the clear and convincing evidence standard is met as a matter of law. *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 2033 n.8 (W.D. Wash. 2019).

61. The following facts establish the government will not meet its Burden of Proof i.e., “clear and convincing” evidence of dangerousness as a matter of law:

62. Petitioner does not pose a danger to persons or property as he lacks criminal convictions. If the heavy burden of proof is placed on the Respondents, rather than on the Petitioner, it reveals that Petitioner does not pose a danger to persons or property.

63. Surely, the adjudication of denying relief in this case serves neither the purposes of the INA statute nor the interests of justice. Petitioner is neither a flight risk nor does he present a danger to the community. Here, the Respondents cannot prove so by *clear and convincing* evidence, or any standard of proof, that Petitioner should remain unlawfully detained.

**IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION RELIEF IS**  
**WARRANTED TO PREVENT IRREPARABLE HARM**

64. Petitioner respectfully requests that this Court issue preliminary injunction relief and order his immediate release from ICE custody or, in the alternative, a constitutionally adequate bond hearing. Injunctive relief is appropriate where the petitioner demonstrates: (1) a likelihood of success on the merits, (2) irreparable harm absent relief, (3) that the balance of equities tips in his favor, and (4) that the public interest supports relief. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (a serious question going to the merits plus a balance of hardships that tips sharply toward the petitioner also supports injunctive relief).

**A. Likelihood of Success on the Merits**

65. Petitioner has demonstrated a high likelihood of success. His detention without a constitutionally adequate bond hearing violates the Fifth Amendment's Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must bear a reasonable relation to its purpose and cannot be indefinite); *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (government bears the burden of proving danger or flight risk by clear and convincing evidence in prolonged detention cases); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (requiring individualized bond determinations and consideration of ability to pay). Because DHS has failed to justify Petitioner's continued detention under the appropriate legal standard, success on the merits is likely.

**B. Irreparable Harm**

66. Petitioner suffers ongoing irreparable harm every day that his liberty is restrained in

1 violation of due process. Prolonged detention imposes significant psychological and  
2 physical hardship and impedes Petitioner's ability to meaningfully participate in his  
3 defense. The Ninth Circuit has recognized that "prolonged detention without adequate  
4 procedural protections would raise serious constitutional concerns." *Rodriguez v.*  
5 *Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015), *vacated on other grounds*, 138 S. Ct.  
6 830 (2018). The deprivation of liberty is the quintessential form of irreparable harm.

7 **C. Balance of Equities**

8 67. The balance of equities strongly favors Petitioner's release. The government's interest  
9 in ensuring attendance at removal proceedings can be met through less restrictive  
10 means, such as bond or supervision, particularly where Petitioner has taken steps of  
11 rehabilitation and has no record of absconding. See *Valdez-Jimenez v. Eighth Judicial*  
12 *Dist. Ct.*, 460 P.3d 976, 992 (Nev. 2020) (holding that due process requires  
13 individualized findings before continued pretrial detention).

14 **D. Public Interest**

15 68. The public interest is always served by upholding constitutional rights and preventing  
16 unlawful detention. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
17 (recognizing that enforcement of constitutional rights is in the public interest).

18 69. Prompt judicial intervention will preserve the integrity of removal proceedings and  
19 reinforce the rule of law. As the Supreme Court reaffirmed in *Boumediene v. Bush*, 553  
20 U.S. 723, 745 (2008), the Great Writ is a critical safeguard against unlawful executive  
21 detention and ensures that no person is deprived of liberty without judicial review.

22 70. Because Petitioner was not afforded a pre-deprivation hearing where it comports with  
23 due process and no other remedy exists to challenge DHS/ICE's arbitrary detention  
24 decisions, habeas corpus relief is proper and necessary to protect Petitioner's

1 constitutional rights. This Court should therefore grant the writ and order Petitioner's  
2 immediate release or, at minimum, require a constitutionally adequate bond hearing  
3 where DHS bears the burden of proof by clear and convincing evidence.

4 **i. DHS/ICE's Arbitrary Detention Decisions Are Unlawful and**  
5 **Deprive Petitioner of Due Process**  
6

7 **71.** Because Petitioner was arrested and re-detained at the courthouse while his case was  
8 under litigation, it reveals that DHS/ICE, have acted in an arbitrary and capricious  
9 manner by cherry-picking arrests and selectively detaining noncitizens like Petitioner  
10 without a reasoned basis or individualized assessment.

11 **72.** Administrative detention must be rationally related to its purpose—to secure  
12 attendance at proceedings or protect the public—and cannot be punitive or arbitrary.  
13 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must bear a reasonable  
14 relation to its purpose); *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (agency action must  
15 be based on a reasoned explanation and not arbitrary decision-making).

16 **73.** DHS/ICE re-detained Petitioner without any meaningful explanation and with no  
17 opportunity to present evidence or rebut allegations. This lack of procedural safeguards  
18 renders the review process constitutionally deficient. The Ninth Circuit has consistently  
19 held that the government must provide individualized determinations and consider less  
20 restrictive alternatives to detention. *Rodriguez v. Robbins*, 804 F.3d 1060, 1082–83 (9th  
21 Cir. 2015) (requiring bond hearings and consideration of alternatives to detention),  
22 *vacated on other grounds*, 138 S. Ct. 830 (2018).

23 **74.** Petitioner was detained without a pre-deprivation hearing, leaving him with no other  
24 adequate remedy exists to challenge this unlawful arrest and unlawful detention—and  
25 because detention without judicial oversight would result in irreparable harm and

1 injury—this Court’s intervention through habeas corpus relief is not only proper but  
2 necessary. The writ of habeas corpus serves as a critical check on executive overreach  
3 and unlawful deprivation of liberty. *See Boumediene v. Bush*, 553 U.S. 723, 745 (2008)  
4 (habeas corpus is a fundamental safeguard against arbitrary detention).

5 75. DHS/ICE’s decision to continue Petitioner’s detention without meaningful  
6 individualized review is arbitrary, capricious, and violates the Fifth Amendment’s Due  
7 Process Clause. Administrative agencies must exercise discretion based on a reasoned  
8 explanation and may not engage in arbitrary decision-making. *Judulang v. Holder*, 565  
9 U.S. 42, 53 (2011). Civil immigration detention must bear a reasonable relation to its  
10 purpose—to ensure appearance at proceedings and protect the public—and cannot  
11 become punitive or indefinite. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

12 76. The Ninth Circuit has likewise emphasized that due process requires a neutral decision-  
13 maker and individualized determinations supported by clear and convincing evidence.  
14 *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Hernandez v. Sessions*, 872  
15 F.3d 976, 991 (9th Cir. 2017). Respondents’ failure to provide a fair custody review or  
16 viable appeal rights leaves Petitioner under indefinite detention without meaningful  
17 process, warranting this Court’s intervention and immediate release through the Great  
18 Writ of habeas corpus.

19 **ii. ICE’s Cherry-Picking Arrests Are Arbitrary, Capricious, and**  
20 **Violate Petitioner’s Due Process Rights**  
21

22 77. DHS/ICE’s decision to arrest and detain Petitioner despite his compliance with USCIS  
23 constitutes arbitrary and capricious enforcement action that violates both the Fifth  
24 Amendment’s guarantee of due process and the Administrative Procedure Act’s  
25 requirement of reasoned decision-making. *See Judulang v. Holder*, 565 U.S. 42, 53

1 (2011) (agency action must not be arbitrary or capricious but must rest on a reasoned  
2 explanation).

3 78. Targeting him for arrest and detention under these circumstances amounts to  
4 impermissible “cherry-picking” enforcement—a practice where the agency singles out  
5 compliant individuals while taking no action against others, without articulating any  
6 rational basis for the disparate treatment.

7 79. Such selective enforcement is constitutionally suspect and undermines the integrity of  
8 the immigration system.

9 80. The Supreme Court has emphasized that agency actions must be guided by intelligible  
10 principles and consistent application of law. *Encino Motorcars, LLC v. Navarro*, 579  
11 U.S. 211, 221 (2016) (agency decisions must reflect reasoned analysis and avoid  
12 arbitrary departures from settled policy).

13 81. Respondents’ decision here reflects no individualized assessment of danger or flight  
14 risk, as required by due process. *See Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir.  
15 2011) (government bears burden of proving danger or flight risk by clear and  
16 convincing evidence).

17 82. Because ICE’s arrest and detention decisions lack a rational connection to a legitimate  
18 governmental objective and instead reflect arbitrary “cherry-picking” enforcement, this  
19 Court should grant the writ of habeas corpus and order Petitioner’s immediate release.  
20 Judicial intervention is necessary to prevent further constitutional injury and to ensure  
21 that agency discretion is exercised within lawful bounds.

22 83. This Court should order Petitioner’s immediate release because DHS/ICE’s arbitrary  
23 and capricious detention decisions violate the Fifth Amendment’s guarantee of due  
24 process.

- 1 **84.** In similar cases analogous to this one, federal courts regularly hold that detaining  
2 noncitizens without pre-deprivation hearing in which the government bears the burden  
3 of proof violates due process, and grants the preliminary relief Petitioner seeks here.  
4 *See Garro Pinchi v. Noem*, \_\_ F. Supp. 3d \_\_, 2025 WL 2084921, at \*7 (converting  
5 TRO requiring release of asylum seeker arrested at her immigration court hearing into  
6 preliminary injunction prohibiting the government from re-detaining her without a  
7 hearing); *Singh v. Andrews*, 2025 WL 1918679, \*8-10 (E.D. Cal. July 11, 2025)  
8 (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at \*8 (granting TRO  
9 over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL  
10 1676854, at \*3- \*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*3  
11 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at \*4; *Romero v. Kaiser*,  
12 No. 22-CV-02508-TSH, 2022 WL 1443250, at \*4 (N.D. Cal. May 6, 2022); *Vargas v.*  
13 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*4 (N.D. Cal. Aug. 23, 2020).
- 14 **85.** Several federal courts have ordered release for petitioners whose immigration case are  
15 still pending.<sup>1</sup> *See, e.g., Hiestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL  
16 2606983, at \*2 (N.D. Cal. Sept. 9, 2028); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK,  
17 2025 WL 2607924, at \*12 (D. Mass Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-  
18 CV-01141-KES-SKO (HC), 2025 WL 2617255, at \*6 (E.D. Cal. Sept. 9, 2025).
- 19 **86.** The courts in those cases have determined that, for these long-term releases, liberty is  
20 the status quo, and only return to that status quo can vert irreparable harm.

<sup>1</sup> Because immigration detainees whose cases have not been adjudicated are entitled only to a bond hearing-not to outright release-some of these TROs and preliminary injunctions require release unless ICE provides that hearing. But because *Zadvydas* requires outright release on supervision, a TRO or preliminary injunction is fitted to Petitioner's claims should order that relief.

1 87. Granting this relief would not even be breaking new ground. Indeed, other federal  
2 courts have granted habeas relief. *See Cavieres Gomez v. Mattos*, No. 2:25-CV-00975-  
3 GMN-BNW, 2025 WL 3101994, at \*6–7 (D. Nev. Nov. 6, 2025). *See also, Shadalo v.*  
4 *Mattos et al*, No. 2:25-CV-02076-RFB-BNW (D. Nev. Dec. 14, 2025) and relevant  
5 cases. Petitioner therefore respectfully requests that this Court grant this preliminary  
6 injunction and moves for immediate release. This Court should find that “petitioner is  
7 entitled to h[is] release” on an order of supervision. *Liu*, 2025 WL 1696526, at \*3.

8 88. For these reasons, this Court should grant immediate release or, in the alternative, order  
9 Respondents to afford Petitioner a bond hearing under 8 U.S.C. § 1226(a) where DHS  
10 bears the heavy burden of proof, under the correct legal standard and analysis of *clear*  
11 *and convincing evidence* establishing danger or flight risk.

12 89. Respondents do not, nor could they, dispute Petitioner’s allegations that he was not  
13 given proper notice of the reason for the arrest or detention or an opportunity to be  
14 heard on those purported reasons. Respondents make no real attempt to contest this  
15 claim. They do not discuss or even cite the relevant regulations.

16 90. Rather, they may simply contend that his detention is authorized. But that contention  
17 is irrelevant in this claim. This claim concerns the process guaranteed to Petitioner  
18 related to his *detention*. *See Fajardo v. Raycraft*, No. 1:25-CV-1529, 2025 WL  
19 3649522, at \*4 (W.D. Mich. Dec. 17, 2025) (“However, Respondents arguments  
20 confuse their ability to hold Petitioner once properly detained with Petitioner’s “right  
21 not to be detained without adequate—in fact, without any— process.”). As shown  
22 above, those regulations govern this situation. Respondents’ failure to discuss any of  
23 this must be viewed as a concession.

1 91. Government agencies are required to follow their own regulations. *United States ex rel.*  
2 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

3 92. The failure to follow the regulations prejudiced Petitioner because it deprived him of  
4 his due process protections. Because there is no indication that any of the required  
5 process was provided to Petitioner—opportunity to be heard, and a valid reason for the  
6 detention—this Court should grant relief, just as in the large number of cases that have  
7 granted relief on this claim. *See, e.g., Moskovyan v. Noem*, No. 3:25-cv-03537-RBM-  
8 AHG, 2026 WL 63472 at \*2 (S.D. Cal. Jan. 8, 2026) (granting petition based on ICE's  
9 failure to follow its own regulations on re-detention); *Briones v. LaRose*, No. 3:25-cv-  
10 03421-RBM-AHG, 2026 WL 18787 at \*2-3 (S.D. Cal. Jan. 2, 2026) (same); *Fajardo*,  
11 2025 WL 2649522 at \*5-6; *Touch v. Noem*, No.: 3:25-cv-03118-RBM-AHG, 2025 WL  
12 3278019 at \*3, \*6 (S.D. Cal. Nov. 25, 2025), *adopted*, No.: 3:25-cv-03118-RBM-  
13 AHG, 2025 WL 3296280 (S.D. Cal. No. 26, 2025); *Rasakhamdee v. Noem*, No.: 3:25-  
14 cv-02816-RBM-DEB, 2025 WL 3102037 at \*4-5 (S.D. Cal. Nov. 6, 2025) (same); *J.R.*  
15 *v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025);  
16 *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25,  
17 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. Jun. 26,  
18 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*7 (E.D.  
19 Cal. July 16, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL  
20 1993735, at \*7 (E.D. Cal. July 16, 2025). Courts in this district have granted a  
21 temporary restraining order, preliminary injunction or habeas relief on this claim and  
22 issued immediate release in similar cases.

23 93. It is clear from the record that ICE violated the regulations in every way. Respondents  
24 did not present any evidence to show that Petitioner was given any notice of why he

1 was being detained prior to ICE arresting him. Petitioner was never told why he was  
2 being detained. Yet, having no violations, no change in circumstances and without any  
3 felony convictions he was detained for some capricious reason.

4 94. In this case, Petitioner was not allowed to “submit any evidence or information”  
5 relevant to detention and evaluating “any contested facts.” 8 C.F.R. §§ 241.4(l)(1),  
6 241.13(i)(3). Petitioner re-alleges and incorporates by reference the paragraphs below  
7 and the paragraphs above.

8 95. “Just as the public has an interest in the orderly and efficient administration of this  
9 country’s immigration laws, [] the public has a strong interest in upholding procedural  
10 protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-5785-PJH,  
11 2020 WL 5074312, at \*4 (N.D. Cal. Aug. 23, 2020) (internal quotation omitted); *see*  
12 *also Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public  
13 interest concerns are implicated when a constitutional right has been violated, because  
14 all citizens have a stake in upholding the Constitution.”). Petitioner has demonstrated  
15 that he is likely unlawfully detained in violation of his due process rights and is  
16 suffering irreparable harm as a result.

17 96. On the other hand, the burden on Respondents in releasing Petitioner from detention is  
18 minimal. “[T]he only potential injury that the government faces is a ‘short delay’ in  
19 detaining Petitioner[] if it ‘ultimately demonstrates to a neutral decisionmaker’ that  
20 their detention is necessary to prevent flight or danger to the community.” *Valencia*  
21 *Zapata*, 2025 WL 2741654, at \*13 (quoting *Salcedo Aceros*, 2025 WL 2637503, at  
22 \*14). Respondents cannot reasonably assert that the public and government will be  
23 harmed in any legally cognizable sense by being enjoined from violating Petitioner’s  
24 due process rights, which is the case here. *See Zepeda v. U.S. Immigr. & Nat. Serv.*,

1 753 F.2d 719, 727 (9th Cir. 1983) (finding “the INS cannot reasonably assert that it is  
2 harmed in any legally cognizable sense by being enjoined from constitutional  
3 violations.”).

4 97. Petitioner respectfully points out that the government has only negligible interest in  
5 detaining him without providing a pre-detention custody hearing in front of a neutral  
6 adjudicator. “In immigration court, custody hearings are routine and impose a minimal  
7 cost.” *Salcedo Aceros*, 2025 WL 2637503, at \*12 (internal quotation marks omitted)  
8 (quoting *Singh*, 2025 WL 1918679, at \*7); see *Espinoza*, 2025 WL 2581185 at \*11  
9 (“[T]he Court concludes that Respondents’ interest in detaining Petitioners or re-  
10 detaining them without a hearing, is slight.”). Respondents cannot persuasively argue  
11 that its interest in detaining Petitioner outweighs the cost of providing the additional  
12 process to which Petitioner is due.

13 98. Accordingly, this Court should find that the balance of equities and public interest  
14 weigh in favor of injunctive relief and consequently, all four *Winter* factors weigh in  
15 favor of Petitioner.

#### 16 STATUS QUO

17 99. “The status quo ante litem is the last uncontested status which preceded the pending  
18 controversy.” *Hoac*, 2025 WL 1993771, at \*7 (internal quotation marks and brackets  
19 omitted) (quoting *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir.  
20 2000)).

21 100. “A TRO immediately releasing Petitioner is appropriate to return him to the status  
22 quo. . . . That is the moment prior to Petitioner’s likely illegal detention.” *Larios v.*  
23 *Albarran*, No. 25-cv-08799 AMO, 2025 WL 2939223, at \*3 (N.D. Cal. Oct. 16, 2025).  
24

**BOND**

101. With respect to Bond, this Court should decline a bond. “Federal Rule of Civil Procedure 65(c) permits a court to grant preliminary injunctive relief ‘only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.’” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting Fed. R. Civ. P. 65(c)). “Despite the seemingly mandatory language, ‘Rule 65(c) invests the district court with discretion as to the amount of security required, if any.’” *Id.* (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)). “In particular, ‘[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.’” *Johnson*, 572 F.3d at 1086 (quoting *Jorgensen*, 320 F.3d at 919). Here, Petitioner asks that no bond be required and for this Court to find that no security is required here.

102. Courts regularly waive security in cases like this one. *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011); *Lepe v. Andrews*, No. 25-cv-01163-KES-SKO, 2025 WL 2716910, at \*10 (E.D. Cal. Sep. 23, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RFL, 2025 WL 1853763, at \*4 (N.D. Cal. Jul. 4, 2025).

103. Based on the laws and facts, Petitioner’s detention and ongoing detention violates due process and his primary requested relief is release from custody because immediate release is the appropriate remedy here because Petitioner is likely to succeed on the merits of his claim that his detention was unlawful.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF IN VIOLATION OF DUE PROCESS CLAUSE OF THE  
FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

1 **104.** All persons, including aliens, residing in the United States are protected by the  
2 Due Process Clause of the Fifth Amendment to the United States Constitution. *See*  
3 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982).  
4 The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be  
5 ... deprived of life, liberty, or property, without due process of law.” *U.S. Const.*,  
6 *amend. V*. “Freedom from imprisonment—from government custody, detention, or  
7 other forms of physical restraint—lies at the heart of the liberty that Clause protects.”  
8 *Zadvydas*, 533 U.S. at 690.

9 **105.** Petitioner re-alleges and incorporates by reference the paragraphs above.  
10 Detention by the Respondents puts at risk Petitioner’s protected liberty interest. The  
11 Due Process Clause of the Fifth Amendment forbids the government from depriving  
12 any “person” of liberty “without due process of law.” *See U.S. Const. amend. V*.

13 **106.** Based on the laws and facts, Petitioner’s detention and ongoing detention without  
14 such a fair and impartial hearing violates due process

## 15 **COUNT TWO**

### 16 **STATUTORY VIOLATIONS**

17 **107.** Petitioner continues to languish in detention. Petitioner’s removal to his country  
18 of origin, which would be Mexico, or any country is not significantly likely to occur in  
19 the foreseeable future. The Supreme Court held in *Zadvydas* and *Martinez* that ICE’s  
20 continued detention of someone like Petitioner under such circumstances is unlawful.

## 21 **COUNT THREE**

### 22 **SUBSTANTIVE DUE PROCESS VIOLATION**

23 **108.** Petitioner re-alleges and incorporates by reference paragraphs 1 through 107.

24 **109.** Petitioner was detained by ICE and his continued detention violates Petitioner’s

1 right to substantive due process through a deprivation of the core liberty interest in  
2 freedom from bodily restraint.

3 **110.** This Court has long held that the Due Process Clause of the Fifth Amendment  
4 requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a  
5 compelling government interest. Even while Respondents would have an interest in  
6 detaining Petitioner in order to effectuate removal, that interest does not justify  
7 Petitioner's detention nor indefinite detention of Petitioner, who is not significantly  
8 likely to be deported in the reasonably foreseeable future. *Zadvydas* recognized that  
9 ICE may continue to detain aliens only for a period reasonably necessary to secure the  
10 alien's removal. Petitioner has a pending application with USCIS. *See* attachments.

#### 11 **COUNT FOUR**

##### 12 **PROCEDURAL DUE PROCESS VIOLATIONS**

13 **111.** Petitioner re-alleges and incorporates by reference paragraphs 1 through 110.

14 **112.** Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a  
15 timely and meaningful opportunity to demonstrate that he should not be detained.  
16 Petitioner in this case has been denied that opportunity. Petitioner respectfully notes  
17 that ICE does not make decisions concerning aliens' custody status in a neutral and  
18 impartial manner. The failure of Respondents to provide a neutral decision-maker to  
19 review the continued custody of Petitioner violates Petitioner's right to procedural due  
20 process. Again, Respondents failed to afford Petitioner with a pre-deprivation hearing.

21 **113.** Further, Respondents have failed to acknowledge or act upon the Petitioner's  
22 administrative request for release in a timely manner. There is no administrative  
23 mechanism in place for the Petitioner to demand a decision, ensure that a decision will  
24 ever be made, or appeal a custody decision that violates *Zadvydas*.

1 114. Even if Petitioner's detention is authorized under Section 1231, 1225 or 1226,  
2 Petitioner's continued detention must comport with due process. Petitioner argues his  
3 re-arrest and his detention violates his due process rights; he requests release.

4 115. This Court should hold that Petitioner's detention has become unlawful and the  
5 Constitution therefore does, at this time, require that Petitioner be released.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully requests and prays for this Court:

8 116. Assume jurisdiction over this matter;

9 117. Issue a declaration that Petitioner's ongoing detention violates the Due Process  
10 Clause of the Fifth Amendment and the Eighth Amendment;

11 118. Grant Petitioner a Writ of Habeas Corpus directing the Respondents to  
12 immediately release Petitioner from custody;

13 119. Enter preliminary and permanent injunctive relief enjoining Respondents from  
14 further unlawful detention of Petitioner;

15 120. Issue a Writ of Habeas Corpus and order Petitioner's release within twenty ("20")  
16 days, unless the Respondents schedule a hearing before an immigration judge where it  
17 holds proper jurisdiction and where: (1) to continue detention, the government must  
18 establish by clear and convincing evidence that Petitioner presents a risk of flight or  
19 danger, even after consideration of alternatives to detention that could mitigate any risk  
20 that Petitioner's release would present; and (2) if the government cannot meet its  
21 burden, the immigration judge order Petitioner's release on appropriate conditions of  
22 supervision, taking into consideration Petitioner's ability to pay a bond;

23 121. Issue an Order that Respondents shall not transfer Petitioner to another detention  
24 center outside of this judicial district, pending further order of the court. *See* 28 U.S.C.

1 § 1651(a) (establishing the All Writs Act which empowers the federal courts to "issue  
2 all writs necessary or appropriate in aid of their respective jurisdictions...."); *see also*  
3 *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (emphasizing that federal courts  
4 have the power to "to preserve the court's jurisdiction or maintain the status quo by  
5 injunction pending review of an agency's action");

6 **122.** Issue a declaration that Petitioner's ongoing detention violates the Due Process  
7 Clause of the Fifth Amendment and the Eighth Amendment;

8 **123.** Award Petitioner his costs in this action as provided for by the Equal Access to  
9 Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any  
10 other basis justified under law, 28 U.S.C. § 2412, other statute; and

11 **124.** Grant such further relief as this Court deems just and proper.  
12

13 **Respectfully submitted on this 7th day of July, 2026.**  
14

15   
16

17 Juan Osornio-Galvan

18 Alien No. 236 – 508 – 952

19 Central Valley Annex

20 254 Taylor Avenue

21 McFarland, CA 93250  
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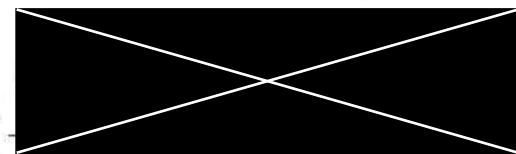
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7 **ACKNOWLEDGEMENT AND VERIFICATION**

8 Under penalty of perjury, the undersigned declares that he is the named Petitioner in the  
9 foregoing petition. I have read the foregoing petition and its contents. The statements in the  
10 petition are true and correct to the best of my knowledge, except as to any statements alleged  
11 on information and belief, and as to those statements, I believe them to be true.

12  
13 **DATED this 7th day of July, 2026.**

14 

15  
16 Petitioner, *Pro Se*

17 Juan Osornio-Galvan

18 Alien No. 

19 Central Valley Annex

20 254 Taylor Avenue

21 McFarland, CA 93250