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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO

Fabricio J. TREJO SALGADO,
Petitioner,

v.

Todd Blanche, Acting Attorney General of the United States, Department of Justice;

Markwayne Mullin, Secretary of Homeland Security;

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

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

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

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

Respondents.

Case No. '26CV4409 BJC SBC

Agency No. [redacted]

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

INTRODUCTION

1. Petitioner, Fabricio Josue Trejo Salgado, (A[redacted]) (hereinafter "Petitioner" or "Fabricio"), a 19-year-old national of Honduras, has been detained in violation of his due process rights since his re-detention on July 3, 2026.

2. Fabricio's first and only entry to the United States was on November 3, 2024, when he was 17 years old. He came to the United States as an unaccompanied minor, and entered the United States without inspection or admission.

3. Following his entry without inspection or admission at or near Texas and he turned himself into immigration authorities. He was detained for two days near the border and transferred to the the custody of the Office of Refugee Resettlement ("ORR") in Orlando, Florida.[1] About two weeks later, he was released into the custody of his brother. The Department of Homeland Security failed to initiate removal proceedings against him at that time or afterward.

4. Therefore, Petitioner files this petition for immediate release. Petitioner asks this Court to find that his continued detention violates due process and that he must be released immediately back to the care and custody of a family member in Florida; that he may not be transferred during the pendency of this petition; and that this court make an order to show cause. Petitioner requests Respondents be required to

[1] Typical ORR release paperwork states minors are released "pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008."

provide a response within three days or alternatively timing pursuant to Chief Judge Order No. 144.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

8. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction. Petitioner is not contesting the commencement or adjudication of removal proceedings against him, nor is he raising an issue with respect to the execution of removal. Petitioner does challenge his re-detention. The petition is independent of the removal proceedings and all questions related to the commencement of removal proceedings or any part of the removal process. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) "does not prohibit challenges to

unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g) and 1252(b)(9).

VENUE

9. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center in the County of San Diego, which is within the jurisdiction of this District. Further, a substantial part of the events or omissions giving rise to his claims occurred in this District (notably, ICE officers who accepted the transfer of a 19-year-old from the East Coast to the West Coast) and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

Petitioner

12. Petitioner, Fabricio, is a national of Honduras who is in custody at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

13. Respondent Todd Blanche, Acting U.S. Attorney General is sued in their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, they have the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Blanche is a legal custodian of Petitioner.

14. Respondent Markwayne Mullin, Secretary of U.S. Department of Homeland Security ("DHS") is sued in their official capacity as the Secretary of the DHS. In this capacity, Respondent Secretary is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Mullin is a legal custodian of Petitioner.

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

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

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

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

STATEMENT OF FACTS

19. Petitioner, Fabricio, a 19-year-old national of Honduras, has lived in the United States since his last entry on November 3, 2024. He came to the United States alone, as an unaccompanied minor. He crossed the U.S.-Mexico border near Texas without inspection or admission. He was 17 years old at the time. After a few days, ICE transferred him to ORR custody.

20. About two weeks later, ORR released Fabricio to the custody of his brother who lives in Miami, Florida. He continues to live in Miami, Florida with his brother when at liberty.

21. On July 3, 2026, while Fabricio was driving on his way to work in Miami, Florida, when he was stopped by immigration officers, arrested, and taken into custody.

22. Confoundingly, DHS detained Fabricio for 13 days before he was issued a Notice to Appear ("NTA"). Ex. A, NTA. Eventually, ICE transferred 19-year-old Fabricio to the other side of the country, away from all family and his support system, to the Otay Mesa Detention Center, where he remains today. *Id.*

23. DHS has placed Fabricio in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. §1182(a)(7)(A)(i)(I), as someone who entered the United States without inspection and is present without admission. Ex. A.

24. Fabricio is eligible to petition to be a Special Immigrant Juvenile given he is under the age of 21, unmarried, and lived in the care and custody of his brother in the United States when at liberty. *See* 8 C.F.R. § 204.11(b).

25. Therefore, Fabricio requests this court issue a habeas order requiring his immediate release given the reasoning below.

LEGAL FRAMEWORK

26. The Immigration and Nationality Act ("INA") prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

27. Immigration detention "has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

28. Someone like Fabricio who was previously released from custody has been deemed, to be neither a flight risk nor a danger. 8 C.F.R 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they "would not pose a danger to property or persons," and are "likely to appear for any future proceeding"); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding").

29. In cases of individuals previously released by DHS, re-detention under section 1226(a) requires an individualized determination of a material change in circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances."

(citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec. 637, 640 (BIA 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance.").

30. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). These due process rights are both substantive and procedural.

31. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

32. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

33. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 31 (2003).

34. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis added). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

35. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated, has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he

fails to live up to the parole conditions." *Id.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

36. This reasoning applies with equal if not greater force to people who were granted release on their own recognizance from civil immigration detention and were apprehended before their removal order became final, like Petitioner. Noncitizens living in the United States, like Petitioner, have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. "Given the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing *Morrissey*, 408 U.S. at 487).

37. Moreover, even should Petitioner's detention be deemed permissible, he remains eligible for a bond hearing for the same reasons provided in *Maldonado Bautista*[2], that Section 1226(a) governs the detention of noncitizens "inside the United States" and "present in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

CLAIM FOR RELIEF

[2] The U.S. Court of Appeals for the Ninth Circuit granted an administrative stay of the *Maldonado Bautista* decision "insofar as the district court's judgment extends beyond the Central District of California." *Maldonado Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 26-1044, ECF No. 5 (9th Cir. March 6, 2026)

CLAIM ONE

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

38. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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

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

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

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

42. Many courts in this district have joined a number of district courts to recognize that noncitizens have a significant liberty interest in both "continued freedom after release on own recognizance," *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in "freedom from imprisonment" after "the government grants a [noncitizen] parole into the country," *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Miguel v. Bondi et al.*, No. 3:26-cv-01636-JLS-SBC (S.D. Cal. Mar. 27, 2026); *Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct.

15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

43. Petitioner is not a flight risk or danger to the community, as evidenced by his complete lack of criminal history since entering the United States as an unaccompanied minor. On the contrary, he is eligible for relief from removal as a Special Immigrant Juvenile. Accordingly, Petitioner is detained in violation of the Due Process Clause of the Fifth Amendment.

CLAIM TWO

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

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

45. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the

government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

46. Petitioner's re-detention without a pre-deprivation hearing violated due process. Over a year and a half after his release in November 2024, Respondents re-detained Petitioner with no notice, no explanation of the justification for his re-detention, and no opportunity to contest his re-detention in front of a neutral adjudicator before being taken into custody.

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

48. Prior to his re-detention in July of 2026, Petitioner had no notice of Respondents' intention to re-detain him and no opportunity to contest that action.

Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community before re-detaining him. *See e.g.*, *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852, *11 (N.D. Ca. Sep. 16, 2025).

49. The government has no legitimate interest in detaining Petitioner without a hearing before his re-detention. *See e.g.*, *Peters v. Wofford*, 2025 WL 2299801, *7 (E.D. Ca. Aug. 8, 2025) (finding that "the government's asserted interest is hinged on mere speculation about [the noncitizen's] risk of flight or dangerousness" given that noncitizen was complying with terms of his probation when detained); *Noori v. LaRose*, 807 F. Supp. 3d 1146, 1165 (S.D. Cal. 2025) ("Respondents did not provide Petitioner individualized notice and reasoning prior to his arrest and detention on June 12, 2025 and have presented no legitimate reason for why those decisions were made. Any governmental interest of efficient administration of immigration laws . . . does not outweigh these first two factors."). Bond hearings are a routine part of immigration court proceedings, imposing a minimal cost to the government. *See Doe v. Becerra*, --- F.Supp.3d ---, 2025 WL 691664, *6 (E.D. Ca. March 3, 2025). Nothing in Petitioner's record suggests that he would abscond or endanger the community before a bond hearing could be carried out. *See, e.g.*, *Jorge M.F. v. Wilkinson*, 2021 WL 783561

*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, *3 (N.D. Cal. Aug. 23, 2020) (finding that "the government's concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and his continued employment during the pandemic as an essential agricultural worker"). In fact, the government has not sufficiently demonstrated the changed circumstances that required his detention after being released from ORR custody for over a year and a half and has had no issues with law enforcement at all since living in the United States. There is no reason to think that his compliance will change if he is released pending a pre-deprivation custody hearing.

PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;
2) Issue an order preventing Respondents from transferring Petitioner away from the Otay Mesa Detention Center, the closest detention center to counsel's office;
3) Issue an order to show cause and require a response within three days from Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. § 2243;
4) Issue a writ of habeas corpus requiring Respondents to immediately release Petitioner because he is re-detained in violation of his due process rights, and that

Respondent must release him to family either in New York (where his aunt lives) or Miami, Florida, where his brother lives, without a monitoring device such an ankle monitor or wrist watch, and that his removal proceedings must be transferred to the immigration court nearest his home;

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

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

Dated: July 31, 2026

Respectfully submitted,

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

LIST OF EXHIBITS

EXHIBIT A: Notice to Appear

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

I represent Petitioner, Fabricio Trejo Salgado, 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 31st day of July, 2026.

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