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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 Fernando Ramirez Castillo,
12 Petitioner,

13 vs.

14 Warden, Adelanto ICE Processing
15 Ctr; Dir LA Field Ofc ERO;
16 Acting Dir ICE; Sec DHS; US AG,

17 Respondents

No.: 5:25-cv-3476 MWF (Ex)
PETITIONER'S TRAVERSE TO
RESPONDENTS' ANSWER

18 INTRODUCTION

19 In its 12/22/2025 Order the Court required Respondents'
20 Response within 23 days. Respondents submitted their response
21 within the time allowed. Respondents did not submit a motion to
22 dismiss, thus, indicating that they do not believe this matter
23 can be decided without the Court reaching the merits of the
24 petition.

25 In this respect, Petitioner, through counsel, respectfully
26 submits this Traverse to Respondents' answer to his petition for
27 habeas corpus.
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TRAVERSE TO RESPONDENTS' ANSWER

A. RE: Respondents' Statement of Facts

1. Petitioner is a native and citizen of Mexico. *Petitioner does not dispute.*

2. On or about 01/14/2001, Petitioner entered the United States without inspection at or near Calexico, California. *Not dispute.*

3. On 01/20/2010, Petitioner was detained by Respondents. Then on 02/08/2010, an Immigration Judge granted Petitioner a \$5,000 bond to be released from custody and Respondents released him. This information is new to Petitioner's Counsel. *Petitioner does not dispute. However, Respondents do not indicate that this bond was ever cancelled or revoked.*

4. On or about 01/20/2010, Respondents served Petitioner with a Notice to Appear ("NTA") (Form I-862) charging Petitioner with being present in the United States without having been admitted or paroled. *Not dispute.*

5. On 03/03/2003, Petitioner was convicted of corporal injury to a spouse/co-habitant pursuant to PC §273.5(a) and sentenced to 3 days in county jail. *Petitioner disputes. As noted in paragraph 35 of the Petition for Habeas Corpus, Petitioner was convicted of misdemeanor spousal/co-habitant battery pursuant to PC 242-243(e) (1).*

6. On 11/02/2009, Petitioner was convicted of presenting a false I.D. to a peace officer pursuant to PC §148.9(a) and sentenced to 5 days county jail. *Not dispute.*

7. On 06/11/2007, Petitioner was convicted of corporal injury to a child pursuant to PC 273(d) (a) and sentenced to 25 days

1 county jail and probation. *Petitioner does not dispute, but*
2 *would like to clarify. Petitioner was convicted on 06/18/2007,*
3 *pursuant to PC 273D(a).*

4 8. On 09/13/2012, Petitioner was "arrested and charged" for PC
5 §§262(a)(1) and 273.5(a). The charges were later dropped for
6 lack of sufficient evidence. *Petitioner does not dispute, but*
7 *would like to clarify. Petitioner was arrested, but never*
8 *charged. He was detained only and released due to insufficient*
9 *evidence.*

10 9. On 09/15/2012, Petitioner appeared before an immigration
11 judge and pleaded to the NTA, admitting and conceding the
12 factual allegations and charge. *Not dispute.*

13 10. On 09/18/2012, Respondents re-detained Petitioner. *Not*
14 *dispute.*

15 11. On 10/18/2012, Petitioner was [again] granted a bond by a
16 Los Angeles immigration judge in the amount of \$7,000. This
17 information is new to Petitioner's Counsel. *Petitioner does not*
18 *dispute. However, Respondents do not indicate that this bond*
19 *was ever cancelled or revoked.*

20 12. On 06/27/2016, the Immigration Judge granted Petitioner
21 Deferral of Removal to Mexico under the Convention Against
22 Torture ("CAT"). *Not dispute. To clarify, no appeal was taken*
23 *by Respondents.*

24 13. On 12/17/2025, Officers from Respondents' ICE Field Office
25 of the Enforcement and Removal Operations ("ERO") assigned to
26 the Los Angeles Non-detained Unit conducted a records check of
27 the Dept. of Homeland Security ("DHS"), Board of Immigration
28 Appeals ("BIA") and 9th Circuit databases and found no stay of

1 removal in place. *Petitioner cannot agree with nor dispute the*
2 *actions taken by the officers, he is not privy to their*
3 *activities.* However, it is curious to note that the officers
4 did not check the immigration court database. Where the order
5 granting protection under CAT would be found. Moreover, a grant
6 of protection under CAT comes with a stay of removal.

7 14. On 12/17/2015, Respondents served Petitioner with a Notice
8 of Revocation of Release signed by a supervisory
9 deportation/detention officer. As noted in Respondents'
10 exhibits, Petitioner does not speak English and this notice was
11 printed only in English. *Thus, Petitioner cannot agree with or*
12 *deny.*

13 15. The Notice of Revocation advised Petitioner that he must
14 make reasonable efforts to secure travel documents, etc. *Again,*
15 *Petitioner cannot agree with or deny, in that this Notice was*
16 *only in English.* It must also be noted that it is extremely
17 difficult for Petitioner to pursue acquiring travel documents
18 while being detained and under the custody and control of
19 Respondents.

20 16. Respondents consider Petitioner to be a priority for
21 removal based on his criminal and immigration history and
22 intends to remove him to a third country. *Petitioner cannot*
23 *agree with or dispute.*

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1 B. The DHS 2025 Directive Ending Bond Hearings for
2 Illegal Entrants Could Not and Did Not Unilaterally
3 Revoke or Cancel Petitioner's Two Previously Granted
4 Bonds For Release from Custody.

5 A Petitioner who has been granted bond by an Immigration
6 Judge for release from custody and who such bond has been posted
7 on his behalf has been granted release from custody. See gen. 8
8 CFR §1003.19. If ICE re-detains a non-citizen who was released
9 on bond, ICE is required to inform the Immigration Court with
10 administrative control over where the non-citizen is detained,
11 in writing informing the court that the detention occurred,
12 where the non-citizen is housed and their address. 8 CFR
13 §1003.19(g). This has not been done. In addition, while the
14 Attorney General has the authority to revoke the bond at any
15 time [INA §236(b); 8 USC 1226(b)], here the Attorney General has
16 not done so, twice. Thus, his bonds remains in effect and his
17 re-detention is in violation of the orders of two immigration
18 judges granting him release from custody.
19

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21 C. The DHS Directive Ending Bond Hearings for Illegal
22 Entrants Could Not and Did Not Apply to Petitioner.

23
24 The 07/08/2025, DHS directive relating to "ending bond
25 hearings for Illegal Entrants" was directed at those persons who
26 had entered the United States without inspection and were either
27
28

1 detained immediately or at any time afterward who would be
2 requesting a bond for release in the first instance.¹

3 On page ID #79 of Respondents' Answer to the Petition,
4 (Form I-213 dated 12/17/2025) Respondents state: "Mandatory
5 detention is required under the 2025 DHS ICE Directive ending
6 bond hearings illegal entrants."
7

8 Even by this language the Directive did not apply to
9 Petitioner since he had already had two bond hearings by October
10 of 2012. Moreover, he was granted bond both times by an
11 immigration judge for release from custody.
12

13 Indeed, Respondents did not even follow this directive when
14 detaining Petitioner. Under the sub-title "Re-detention" the
15 07/08/2025 directive states: "This change in legal
16 interpretation may, however, warrant re-detention of a
17 previously released alien in a given case. Until additional
18 guidance is issued, ERO and HSI should consult with OPLA prior
19 to rearresting an alien on this basis."
20

21 Again, the I-213 (pg ID #79) of Respondents' Answer states
22 that "[m]andatory detention is required under the ... directive.
23 In addition, there is not indication that any officer of
24 Respondents consulted with OPLA (Office of the Principle Legal
25 Advisor) before rearresting Petitioner.
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¹ "Interim Guidance Regarding Detention Authority for Applicants for Admission" dated 07/08/2025.

1 D. On 12/18/2025, the 07/08/2025 Directive Was Vacated
2 by District Court Judge Sunshine Suzanne Sykes.

3
4 On 12/18/2025, just one day after Respondents detained
5 Petitioner, District Court Judge Sunshine Suzanne Sykes, vacated
6 the 07/08/2025, DHS Directive (on a class-action basis). See
7 Document 94, Case: Maldonado-Bautista v. Santacruz, Jr 5:250cv-
8 01452 (C.D. Cal 2025).

9
10 In that this Order vacated the 07/08/2025 Directive and
11 nullified the Board of Immigration Appeals decision in Matter of
12 Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025), which basically held
13 that unlawful entrants were not eligible for bond hearings (and
14 that Petitioner has two post bonds that have not been cancelled
15 or revoked), Respondents had no authority to hold Petitioner and
16 should have released him immediately.
17

18 E. Respondents Manufactured Excuses to Detain
19 Petitioner.

20 In the Form I-213 (pg ID #79 Respondents' Answer), the
21 officer states:

22 Illegal entry, under 8 USC 1325, is a federal
23 misdemeanor that evidences a refusal to respect U.S.
24 law - combined with Subject's other criminal history.
25 Given the subject's lack of significant community ties
26 and elevated flight risk, having been a prior bond
27 release a new bond release would undermine both
28 statutory mandates and recent ICE directives. Subject
has shown through his criminal record that he is no
longer suitable for the Alternative to Detention
program.

1 First, while 8 USC 1325 may be a federal misdemeanor, as
2 Respondents have stated, Petitioner entered the United States
3 without admission or parole on or about 01/14/2001. This means
4 that Petitioner entered the United States 25 years ago. As
5 noted by Respondents, Petitioner was detained (prior to this
6 time) twice before. In 25 years and two prior detentions,
7 Respondents never charged nor prosecuted Petitioner for the
8 criminal violation of illegal entry.

9 Second, yes Petitioner has the criminal convictions that he
10 included in his Petition and Respondents list in various places
11 in their Answer. However, at the time Petitioner was granted a
12 \$7000 bond for release on 10/18/2012, the immigration judge knew
13 of all of his criminal convictions. Moreover, in order for
14 Petitioner to be granted release on bond, he had to establish to
15 the satisfaction of the immigration judge that he was a) not a
16 flight risk and b) not a danger to the community. 8 CFR
17 \$1236.1(c)(8).

18 Third, Respondents state that another reason for detaining
19 him on 12/17/2025, is that he does not have significant
20 community ties. Respondents ignore that Petitioner has lived in
21 the United States and his community for 25 years. In addition,
22 Petitioner has a United States citizen son and owns a successful
23 cleaning services business: [REDACTED]
24 (California active business [REDACTED]). Respondents merely
25 had to ask Petitioner simple questions and do a simple internet
26 search to find this information.

27 Fourth, Respondents state that Petitioner is an "elevated
28 flight risk" due to having been released on bond before.

1 Respondents ignore that Petitioner was released on bond twice
2 before and did not flee. Moreover, he regularly appeared at all
3 his ICE check-ins for 9 ½ years after having been granted
4 protection under CAT by an immigration judge. It is difficult
5 to understand after all of this, he is suddenly an "elevated
6 flight risk" due to factors that had not made him a flight risk
7 for nearly a decade.

8 Lastly, Respondents state that Petitioner has shown that
9 due to his criminal convictions that he is "no longer suitable
10 for "Alternative to Detention Program." Again, on 10/18/2012,
11 when an immigration judge granted Petitioner release on bond, he
12 had to show that he was not a flight risk or a danger to the
13 community. He appeared for his immigration court hearings and
14 on 06/27/2016, the immigration judge granted his deferral of
15 removal under CAT. After this decision he was required to
16 appear for regular check-ins with Respondents, which he did,
17 without fail, for 9 ½ years until 12/17/2025, when he was re-
18 detained.

19 Based on all the information available (or easily
20 obtainable) to Respondents on 12/17/2025, contradicts their
21 reasoning for re-detaining Petitioner. Thus, their reasons
22 appear manufactured.

23 F. Respondents Do Not Have the Unilateral Authority to
24 Designate a Third Country for Removal

25 Respondents state Petitioner does not bring up that his
26 removal is not reasonably foreseeable. However, Respondents
27 just issued Petitioner a "Notice of Custody Review" notice
28 indicating that the interview will take place on 03/17/2026, two

1 months from now. Moreover, it is an internal review for
2 administrative release from custody. So, Respondents actually
3 indicate that they do not believe that Petitioner's removal is
4 reasonably foreseeable.² In addition, Respondents indicate that
5 once a third country is identified for removal that Petitioner
6 can raise fear of being sent there and that then her case will
7 be referred to USCIS for an interview. However, this action is
8 in direct contradiction of the regulations.

9 An immigration judge may upon the upon the immigration
10 judge's own motion at any time, **or upon motion of DHS**
11 **or the alien, reopen or reconsider any case in which**
12 **the judge has rendered a decision, unless jurisdiction**
13 **is vested with the Board of Immigration Appeals..." 8**
14 **CFR §1003.23(b)(1)** [Emphasis added].

15 (a) "any case in which the judge has rendered a decision..." In
16 allegations 4-5, Respondents state, and Petitioner admits, that
17 an immigration judge rendered a decision.

18 (b) "unless jurisdiction is vested with the Board of
19 Immigration Appeals." In allegation 6 Respondents state, and
20 Petitioner admits, that no appeal was taken, meaning that
21 jurisdiction never vested with the Board of Immigration Appeals.
22 Thus, jurisdiction remains with the immigration judge.

23 (c) Petitioner's immigration court case is "any case in which
24 the judge has rendered a decision." So, Respondents are
25 required to file a motion to reopen with the immigration court
26 to obtain a new and/or alternative order of removal for her.

27 There is no lawful provision that grants Respondents the
28 authority to ignore the statute or regulations as written and

² Petitioner informed Counsel by telephone conference of the Custody Review Notice on 01/20/2026. A copy was not available to Counsel at the time of this writing.

1 unilaterally come up with their own rules. See Federiso v.
2 Holder, 605 F.3d 695, 698 (9th Cir. 2010).

3 G. Petitioner Is Not Required to Wait Six Months
4 before Petitioning Habeas Corpus Becomes Viable

5 In their Answer Respondents repeatedly point to Zadvyas v.
6 Davis [533 U.S. 678 (2001)] indicating that Petitioner must wait
7 for a minimum of 6 months before his Petition for Habeas Corpus
8 even becomes viable. The Supreme Court in that decision
9 indicated that, for the sake of uniform administration in the
10 federal courts, "...six months was a presumptively reasonable
11 period of detention pending removal." However, just four (4)
12 years later the Supreme Court rejected this argument:

13 We also reject the Government's argument that, under
14 Zadvyas, §1231(a)(6) 'authorizes detention until it
15 approaches constitutional limits.'... Zadvyas did not
16 hold that the statute authorizes detention until it
17 approaches constitutional limits; it held that, *since*
18 interpreting the statute to authorize indefinite
19 detention... would approach constitutional limits, the
20 statue should be read... **to authorize detention only for
a period consistent with the purpose of effectuating
removal.** 533 U.S. at 697-698. (Italics in
original) (Other emphasis added). Clark v. Martinez,
543 U.S. 371, 384 (2005).

21 Indeed, even the Zadvyas Court stated "...interpreting the
22 statute to avoid a serious constitutional threat, we conclude
23 that, once removal is no longer reasonably foreseeable,
24 continued detention is no longer authorized by statute."
25 Zadvyas, at 699. Thus, there is no presumption that six (6)
26 months is the time period Petitioner must wait before submitting
27 a petition for habeas corpus.
28

1 H. Respondents Have Indicated that They Do Not Believe
2 That Removing Petitioner is Reasonably Foreseeable

3 Again, it appears that Respondents themselves do not
4 believe that Petitioner's removal is "reasonably foreseeable."
5 On 01/20/2025, Petitioner informed Counsel that he had been
6 served with a "Notice to Alien of File Custody Review". (See fn
7 2).

8 The immigration judge entered the order of removal and the
9 grant of protection under CAT on 06/27/2016. Taking the
10 "removal period" to be 6 months (See Zadvydass supra), this
11 period would have ended on ended 12/24/2016. Petitioner was
12 taken into custody on 12/17/2025, and now the File Custody
13 Review is set for 03/17/2026. So, from the date of the
14 immigration judge's decision until the custody review interview
15 is more than 3,375 days, well over 180 days or 6 months. Thus,
16 Respondents are indicating that they do not believe that
17 Petitioner's removal is "reasonably foreseeable."

18 I. Petitioner's Has Pleaded a Sufficiently Factual Basis for
19 Relief And For Violations of the 5th Amendment

20 In their brief, Respondents argue Petitioner has not
21 pleaded sufficient facts to support his petition for habeas
22 relief.

23 First, the immigration judge entered an order on
24 06/27/2016, protecting Petitioner from removal to Mexico under
25 CAT. Second, as seen above, Respondents do not have the
26 unilateral right to just up and remove Petitioner to a third
27 country. They must first move to reopen her immigration court
28 case and get a new order from an immigration judge. See section

1 F above. Respondents based their decision to detain Petitioner
2 first on manufactured reasons; second, Respondents did not
3 follow the instructions in the Directive; third, the 07/08/2025,
4 Directive has been vacated by Court order; fourth, Petitioner
5 has presented sufficient facts to support his petition; fifth,
6 Respondents lack the legal authority to hold Petitioner; sixth,
7 his continued detention is a direct violation of his Fifth
8 Amendment rights to due process.

9 CONCLUSION

10 For the foregoing reasons, Petitioner respectfully requests
11 that this Court grant the Petition for Writ of Habeas Corpus or
12 in the alternative order an evidentiary hearing on the issues
13 raised.

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15 Respectfully submitted,

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17 s/Andrew J. Vazquez

18 January 21, 2026

19 Andrew J. Vazquez,
20 Attorney for Petitioner
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To All ICE Employees July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 235(c).

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(i), (ii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 235(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 235(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.