

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ALBERTO SOLAR CARMONA,
Petitioner,

Case No. 4:26-cv-00019-CDL-CHW
28 U.S.C. § 2241

v.

WARDEN, STEWART DETENTION CENTER,
ALEJANDRO MAYORKAS, Secretary,
U.S. Department of Homeland Security,
PATRICK J. LECHLEITNER, Acting
Director, U.S. Immigration and
Customs Enforcement,
Respondents.

EMERGENCY MOTION FOR ORDER REQUIRING PETITIONER'S IMMEDIATE RETURN
TO UNITED STATES JURISDICTION AND FOR CONTEMPT SANCTIONS

TO: The Honorable Charles H. Weigle, United States Magistrate Judge

Petitioner Alberto Solar Carmona, proceeding pro se from Mexico, respectfully moves this Court for an emergency order requiring Respondents to immediately return Petitioner to United States jurisdiction. Petitioner was unlawfully removed to Mexico on February 2, 2026, in direct violation of this Court's jurisdiction and during this Court's ordered briefing schedule.

This removal violated:

- This Court's jurisdiction under 28 U.S.C. § 2241
- Petitioner's Fifth Amendment Due Process rights
- Petitioner's statutory right to judicial review under 8 U.S.C. § 1252
- This Court's January 22, 2026 Order establishing briefing schedule through February 2026
- Federal Rules of Civil Procedure requiring respect for court jurisdiction

Petitioner respectfully requests that this Court:

1. Issue an emergency order requiring Petitioner's immediate return to U.S. jurisdiction
 2. Find Respondents in contempt of this Court's jurisdiction
 3. Order Respondents to show cause why they removed Petitioner during pending proceedings
 4. Award such other relief as justice requires
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I. EMERGENCY NATURE OF THIS MOTION

THIS IS AN EMERGENCY.

On February 2, 2026, Respondents removed Petitioner to Mexico during the pendency of these habeas corpus proceedings and during this Court's ordered briefing schedule.

This removal:

- Violated this Court's jurisdiction
- Mooted Petitioner's habeas petition
- Denied Petitioner the judicial review this Court had ordered
- Separated Petitioner from his wife and three United States citizen children
- Occurred BEFORE Respondents' response deadline of February 13, 2026
- Occurred during the 21-day response period this Court explicitly ordered

Without immediate relief:

- Petitioner's constitutional right to habeas corpus is nullified
- This Court's jurisdiction is rendered meaningless
- Petitioner's three U.S. citizen children continue suffering without their father
- Respondents are rewarded for violating this Court's jurisdiction
- Irreparable harm to Petitioner and his family deepens daily

Petitioner respectfully requests that this Court act immediately to vindicate its jurisdiction and order Petitioner's return.

II. CHRONOLOGY OF EVENTS

July 2024

Petitioner convicted of two DWI offenses that occurred in the same week.

July 2025

State court sentenced Petitioner to one year of probation and required rehabilitation assessment. Court determined probation supervision was appropriate, demonstrating Petitioner was not a danger to community.

July 2025 - September 2025

Petitioner maintained PERFECT probation compliance:

- Zero missed appointments
- Zero violations
- Full cooperation with probation officer
- Completed all requirements

September 24, 2025

ICE arrested Petitioner WHILE HE WAS ATTENDING HIS SCHEDULED PROBATION APPOINTMENT in Clinton, North Carolina. The fact that Petitioner was present at this mandatory appointment proves he:

- Is not a flight risk
- Follows court orders
- Complies with legal obligations
- Should not have been detained

December 29, 2025

Immigration Judge at Stewart Detention Center denied Petitioner's application for Cancellation of Removal and Asylum. Judge ordered removal to Mexico.

The denial was based solely on two DWI convictions from the same week in July 2024, despite Petitioner meeting all other statutory requirements:

- ✓ Continuous presence for 30 years (far exceeding 10-year requirement)
- ✓ Good moral character (passed this element)
- ✓ Three United States citizen children (qualifying relatives)
- X Judge found DWI convictions precluded relief despite:
 - State court determined probation appropriate (not prison)
 - Perfect probation compliance
 - Extensive rehabilitation
 - 30 years of contributions to community

Immigration Judge also stated that Petitioner failed to prove "exceptional and extremely unusual hardship," claiming "children can work" - ignoring that forcing an 18-year-old honor student to abandon college to support her siblings is not ordinary hardship.

January 5, 2026

Petitioner filed habeas corpus petition in this Court (Case No. 4:26-cv-00019-CDL-CHW).

January 22, 2026

THIS COURT ISSUED ORDER accepting jurisdiction and establishing briefing schedule:

"The court has received petitioner's application for habeas corpus on January 5th 2026. Petitioner has now paid the required fee. Having initially reviewed petitioner's application, the court finds good cause to extend the time for a response. Accordingly, respondents shall have 21 days to file a comprehensive response to said application. Within 14 days thereafter, petitioner should file any desired reply. The court will consider whether a hearing is warranted once briefing is complete."

This Order:

- ✓ Accepted the Court's jurisdiction over the case
- ✓ Found "good cause" to extend response time
- ✓ Ordered Respondents to file "comprehensive response" within 21 days
- ✓ Established briefing schedule extending through February 2026

✓ Contemplated potential evidentiary hearing

January 27, 2026

Petitioner's wife mailed Notice of Appeal and Emergency Motion to Stay Removal to Board of Immigration Appeals.

January 28, 2026

Deadline to file Notice of Appeal to BIA.

January 31, 2026

Notice of Appeal and Emergency Motion to Stay delivered to BIA (three days late due to postal delivery timing).

February 2, 2026 - THE UNLAWFUL REMOVAL

Respondents removed Petitioner to Mexico despite:

- This Court's active jurisdiction under its January 22, 2026 Order
- Briefing schedule ordered by this Court extending through February 2026
- Respondents' own response deadline of February 13, 2026 (11 days away)
- Pending Notice of Appeal to BIA (delivered January 31)
- Pending Emergency Motion to Stay Removal

February 3, 2026

Petitioner's wife learned of removal. This emergency motion filed immediately.

III. JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 2241 to hear habeas corpus petitions filed by persons in custody pursuant to the authority of the United States.

This Court accepted jurisdiction on January 22, 2026, when it issued its Order finding "good cause" and establishing a comprehensive briefing schedule.

The Court retains jurisdiction despite Petitioner's removal. The Supreme Court has held that federal courts retain jurisdiction over habeas petitions even after the petitioner is removed from the United States. See *Munaf v. Geren*, 553 U.S. 674 (2008); *United States v. Salerno*, 481 U.S. 739 (1987).

Moreover, when removal occurs in violation of a court's jurisdiction, the court has authority to order the individual's return. See *Nken v. Holder*, 556 U.S. 418 (2009).

IV. LEGAL VIOLATIONS COMMITTED BY RESPONDENTS

Respondents' removal of Petitioner on February 2, 2026 violated multiple federal constitutional provisions, statutes, and this Court's jurisdiction.

A. VIOLATION OF THIS COURT'S JURISDICTION

1. Direct Violation of January 22, 2026 Court Order

On January 22, 2026, this Court issued an Order that:

- Accepted jurisdiction over Petitioner's habeas corpus petition
- Found "good cause" warranting extended briefing
- ORDERED Respondents to file comprehensive response within 21 days
- Established briefing schedule through February 2026
- Contemplated potential evidentiary hearing

This Order created a MANDATORY briefing schedule. Respondents' deadline to respond was February 13, 2026 - eleven days AFTER they removed Petitioner.

By removing Petitioner on February 2, 2026 - during the 21-day response period this Court explicitly ordered - Respondents:

- Violated this Court's January 22 Order
- Rendered this Court's briefing schedule meaningless
- Mooted Petitioner's habeas petition
- Acted in contempt of this Court's jurisdiction
- Denied Petitioner the judicial review this Court had ordered

2. Federal Courts' Authority Over Habeas Proceedings

When a federal court accepts jurisdiction over a habeas petition and orders briefing, the executive branch cannot simply remove the petitioner and moot the case. This would render federal habeas jurisdiction meaningless and allow the executive to circumvent judicial review whenever it wished.

The separation of powers requires that once a federal court accepts jurisdiction and orders proceedings, the executive branch must respect that jurisdiction. Respondents' removal of Petitioner during court-ordered briefing violates this fundamental principle.

3. Contempt of Court

Respondents' conduct constitutes contempt of this Court's January 22, 2026 Order. The Court ordered Respondents to file a "comprehensive response" by February 13. Instead of complying, Respondents removed Petitioner on February 2, making it impossible for:

- Respondents to file meaningful response
- Petitioner to file reply
- Court to hold evidentiary hearing
- Court to adjudicate the merits

This is direct contempt of the Court's jurisdiction and order.

B. VIOLATION OF FIFTH AMENDMENT DUE PROCESS RIGHTS

The Fifth Amendment provides: "No person shall ... be deprived of life, liberty, or property, without due process of law."

1. Denial of Meaningful Judicial Review

Petitioner had a constitutional right to meaningful judicial review of his removal order. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *INS v. St. Cyr*, 533 U.S. 289 (2001).

By removing Petitioner DURING pending habeas proceedings and BEFORE this Court could adjudicate his claims, Respondents denied Petitioner any meaningful judicial review. This violates the Due Process Clause.

The Supreme Court has repeatedly held that aliens within the United States - even those ordered removed - have due process rights that include the right to judicial review. See *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982); *Reno v. Flores*, 507 U.S. 292 (1993).

Petitioner exercised his right to judicial review by filing a habeas petition. This Court accepted jurisdiction and ordered briefing. Respondents' removal of Petitioner during this process denied him the due process the Constitution guarantees.

2. No Notice or Opportunity to Seek Emergency Relief

Respondents removed Petitioner on a SUNDAY (February 2, 2026) - when courts are closed and emergency relief is difficult to obtain.

Petitioner received no advance notice that removal was imminent, preventing him from:

- Seeking emergency stay from this Court
- Seeking emergency stay from BIA
- Notifying his wife and children
- Arranging affairs
- Consulting with any legal assistance

Removing someone on a Sunday during pending federal court proceedings, without notice, violates due process.

3. Arbitrary and Capricious Action

Respondents' decision to remove Petitioner during pending judicial proceedings - particularly during this Court's ordered briefing schedule - was arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706.

There was no emergency requiring Petitioner's immediate removal. He had been in detention since September 2025 (over 4 months). Respondents could have waited the additional 11 days until their response deadline, or could have sought guidance from this Court.

Instead, Respondents deliberately removed Petitioner during the Court's briefing period, demonstrating bad faith and arbitrary action.

C. VIOLATION OF STATUTORY RIGHT TO JUDICIAL REVIEW

1. 8 U.S.C. § 1252 - Judicial Review of Removal Orders

Congress has provided statutory authority for judicial review of removal orders under 8 U.S.C. § 1252. This includes:

- Review of constitutional claims (§ 1252(a)(2)(D))
- Habeas corpus review (§ 1252(e))
- Review of questions of law (§ 1252(a)(2)(D))

Petitioner's habeas petition raises constitutional claims (due process, arbitrary detention) and legal questions (whether Immigration Judge properly applied exceptional hardship standard, whether Judge properly weighed rehabilitation evidence, whether removal during probation compliance violates due process).

By removing Petitioner during pending judicial review, Respondents violated his statutory right to have these claims adjudicated.

2. Suspension Clause Violation

The Constitution's Suspension Clause (Art. I, § 9, cl. 2) protects the writ of habeas corpus: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

The Supreme Court has held this protection extends to aliens within the United States challenging their detention and removal. *INS v. St. Cyr*, 533 U.S. 289 (2001); *Boumediene v. Bush*, 553 U.S. 723 (2008).

By removing Petitioner during his pending habeas proceeding, Respondents effectively suspended the writ of habeas corpus as to Petitioner. There is no rebellion or invasion. The Constitution does not permit this.

D. VIOLATION OF PETITIONER'S LIBERTY INTEREST IN FAMILY UNITY

The Fifth Amendment protects Petitioner's liberty interest in family unity with his United States citizen wife and three United States citizen children.

The Supreme Court has recognized that family relationships are constitutionally protected liberty interests. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977); *Stanley v. Illinois*, 405 U.S. 645 (1972).

Petitioner's removal:

- Permanently separates him from wife of 20 years
- Separates him from three U.S. citizen children (ages 18, 15, 12)
- Occurs during children's critical developmental years
- Causes severe psychological and financial harm to U.S. citizen family members

This separation occurred WITHOUT meaningful judicial review and DURING pending court proceedings, violating Petitioner's and his family's protected liberty interests.

E. VIOLATION OF CHILDREN'S CONSTITUTIONAL RIGHTS

Petitioner's three United States citizen children have constitutional rights that were violated by Respondents' unlawful removal of their father:

1. Right to Parental Association

U.S. citizen children have a constitutionally protected liberty interest in the companionship and care of their parent. *Troxel v. Granville*, 530 U.S. 57 (2000); *Stanley v. Illinois*, 405 U.S. 645 (1972).

Respondents' removal of Petitioner during pending judicial review deprived these three U.S. citizen children of their constitutional right to their father without due process of law.

2. Constructive Exile of U.S. Citizens

The children face impossible choice:

- Remain in United States without father (current situation)
- Abandon United States citizenship and move to Mexico (constructive exile)

The Supreme Court has held that government cannot force U.S. citizens into constructive exile by removing their family members without due process. See *Barrera-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc).

F. VIOLATIONS OF FEDERAL REGULATIONS

1. 8 C.F.R. § 241.14 - Stays of Removal

Under 8 C.F.R. § 241.14(a), ICE must stay removal when:

- A motion to reopen or reconsider is pending
- An appeal is pending
- Federal court review is pending

Here, Petitioner had:

✓ Federal habeas petition pending with this Court

- ✓ Court-ordered briefing schedule through February 2026
- ✓ Notice of Appeal delivered to BIA (January 31)
- ✓ Emergency Motion to Stay Removal pending with BIA

Respondents violated 8 C.F.R. § 241.14 by removing Petitioner during these pending proceedings.

2. 8 C.F.R. § 1003.6 - Automatic Stay of Removal Upon Appeal

Under 8 C.F.R. § 1003.6, filing a timely Notice of Appeal to the BIA automatically stays removal. While Petitioner's appeal was three days late (delivered January 31 vs. January 28 deadline), he filed a Motion to Accept Late Appeal for excusable neglect.

More importantly, his Emergency Motion to Stay Removal was pending when Respondents removed him. Respondents should have waited for BIA to rule on the stay motion before executing removal.

3. ICE Directive 11061.1 - Enforcement Actions Near Protected Areas

ICE arrested Petitioner while he was attending his REQUIRED probation appointment - a protected area under ICE's own policies. ICE Directive 11061.1 designates probation offices as sensitive locations where enforcement actions require prior approval.

ICE's arrest of Petitioner at his probation appointment violated its own directive.

G. VIOLATION OF INTERNATIONAL LAW

Respondents' actions violated international human rights law:

1. International Covenant on Civil and Political Rights (ICCPR)

Article 23 protects the family as the "natural and fundamental group unit of society" entitled to protection. U.S. is a signatory.

2. Convention on the Rights of the Child

Article 9 requires that children not be separated from parents against their will except through judicial proceedings with full due process. Petitioner's three U.S. citizen children were separated from their father during pending judicial proceedings - before those proceedings could be completed.

H. ICE'S OWN POLICIES ACKNOWLEDGE AUTHORITY TO FACILITATE PETITIONER'S RETURN

Upon removing Petitioner on February 2, 2026, ICE provided Petitioner with Form I-71-041 "Notice to Removed Aliens Who May Be Seeking Judicial Review."

This form explicitly states:

"Absent extraordinary circumstances, if you are removed while a PFR is pending, ICE will facilitate your return to the United States under the following circumstances:

- (1) If your case is remanded by the court for further administrative consideration and your presence has been ordered by the court or deemed necessary by ICE to resolve your administrative removal proceedings; or
- (2) If the court's order has restored you to lawful permanent resident or other status permitting you to be physically present in the United States."

This ICE policy acknowledgement is significant for several reasons:

First, it demonstrates that ICE has established procedures for facilitating the return of removed aliens when courts order such relief. Respondents cannot now argue they lack authority to return Petitioner if this Court orders such relief.

Second, ICE removed Petitioner knowing that judicial review was pending - indeed, the form specifically addresses situations where "you are removed while a PFR [Petition for Review] is pending." Here, Petitioner had both a pending habeas corpus petition in this Court (with court-ordered briefing through February) AND a pending Notice of Appeal to the BIA. ICE was fully aware of these pending proceedings.

Third, the form instructs removed aliens on how to pursue judicial review and promises that ICE will facilitate return in appropriate circumstances. Yet ICE removed Petitioner in a manner designed to prevent meaningful judicial review:

- During this Court's ordered briefing schedule
- On a Sunday when courts are closed
- Without advance notice
- Before the government's own response deadline

Fourth, ICE's own policy recognizes that courts may "remand" cases or may "order" an alien's presence "necessary by ICE to resolve" proceedings. This Court has such authority here and should exercise it.

ICE cannot simultaneously: (1) maintain policies acknowledging authority to facilitate returns when courts order such relief, AND (2) remove individuals during pending court proceedings in a manner that circumvents judicial review. Such conduct violates due process and this Court's jurisdiction.

V. FACTUAL BACKGROUND: PETITIONER'S COMPELLING CASE FOR RELIEF

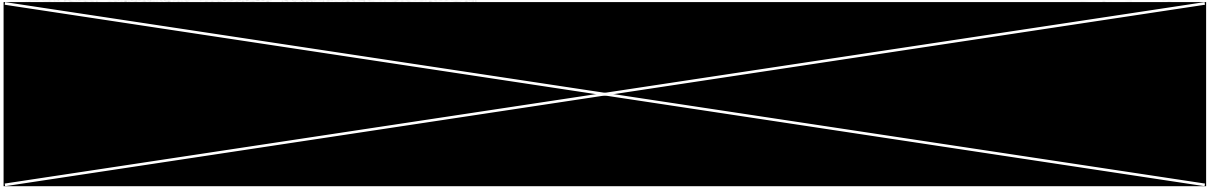
To understand the gravity of Respondents' violations, the Court must understand Petitioner's exceptionally strong case for relief - relief he was denied the opportunity to pursue due to Respondents' unlawful removal.

A. Petitioner's Presence and Family in the United States

Petitioner entered the United States in 1995 at age 9. He has been continuously present for 30 years - three times longer than the statutory requirement for Cancellation of Removal.

Petitioner has:

- Three United States citizen children:



- Wife of 20 years: Leticia Leon Santiago
 - DACA recipient since 2017
 - Bachelor's degree (graduated May 2024)
 - Agricultural Consultant for State of North Carolina
 - Board Director for 
- 30 years of continuous work history and tax payment
- Extensive community ties:
 - Volunteer soccer coach (2019, 2022) - parents trusted him with their children
 - Scheduled Toys For Tots volunteer
 - School volunteer at  School
 - Deep roots in  North Carolina (Sampson County)
- Perfect probation compliance since August 2025:
 - Zero missed appointments
 - Zero violations
 - Full cooperation with probation officer
 - Completing all rehabilitation requirements

B. The DWI Convictions and Rehabilitation

In July 2024, Petitioner was convicted of two DWI offenses that occurred in the same week.

CRITICAL FACTS:

- Both offenses occurred within the same week (single incident/period)
- No aggravated circumstances
- No injuries to others
- No pattern of repeat offenses

State Court's Determination:

In July 2025, the state court:

- ✓ Sentenced Petitioner to probation (NOT prison)
- ✓ Required rehabilitation assessment
- ✓ Determined that probation supervision was appropriate
- ✓ Found Petitioner was not a danger to the community
- ✓ Gave Petitioner opportunity to rehabilitate

Petitioner's Perfect Compliance:

From August 2025 through his arrest in September 2025, Petitioner had:

- ✓ ZERO missed probation appointments
- ✓ ZERO violations of probation conditions
- ✓ Full cooperation with probation officer
- ✓ Completion of all requirements
- ✓ Demonstration of rehabilitation

The Arrest:

On September 24, 2025, ICE arrested Petitioner WHILE HE WAS ATTENDING HIS REQUIRED PROBATION APPOINTMENT.

This proves:

- Petitioner is not a flight risk (he showed up to mandatory appointment)
- Petitioner follows court orders
- Petitioner complies with legal obligations
- Petitioner should not have been detained

C. Immigration Judge's Erroneous Denial

The Immigration Judge denied Cancellation of Removal despite Petitioner meeting the statutory requirements under 8 U.S.C. § 1229b(b):

REQUIREMENT #1: Continuous Physical Presence for 10+ Years

✓ PASSED: Petitioner has 30 years (1995-2025)

REQUIREMENT #2: Good Moral Character

✓ PASSED: Immigration Judge found Petitioner demonstrated good moral character

REQUIREMENT #3: No Disqualifying Convictions

✓ PASSED: DWI offenses are not aggravated felonies or bars to relief

REQUIREMENT #4: Exceptional and Extremely Unusual Hardship to U.S. Citizen Qualifying Relatives

X DENIED: Immigration Judge found hardship was not "exceptional and extremely unusual"

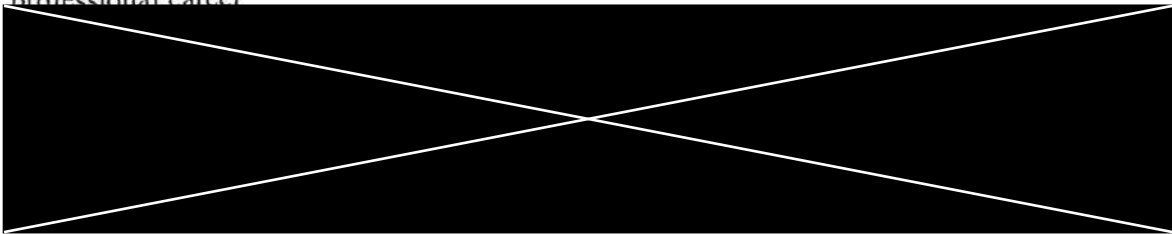
THE JUDGE'S ERRORS:

1. Hardship Finding Was Legally Erroneous

The Immigration Judge stated that Petitioner failed to prove exceptional and extremely unusual hardship, claiming "children can work."

This finding ignores:

- 18-year-old daughter (ranked #6 in county) forced to ABANDON COLLEGE to work full-time supporting younger siblings - destroying 12 years of straight-A achievement and her dreams of professional career



The Board of Immigration Appeals has recognized that hardship to multiple qualifying relatives, particularly involving:

- Educational destruction
- Financial devastation
- Psychological trauma during critical developmental periods
- Complete family separation

constitutes "exceptional and extremely unusual" hardship. See Matter of Recinas, 23 I&N Dec. 467 (BIA 2002); Matter of Monreal-Aguinaga, 23 I&N Dec. 56 (BIA 2001).

The Immigration Judge's statement that "children can work" as justification for denying relief shows a fundamental misunderstanding of the hardship standard. Forcing an 18-year-old honor student ranked #6 in her county to abandon college to support her siblings is NOT ordinary hardship that all families face - it is the destruction of her future.

2. Judge Failed to Properly Credit Rehabilitation

The Immigration Judge failed to properly weigh:

- Perfect probation compliance
- State court's determination that probation (not prison) was appropriate
- Arrest at probation appointment (proving not a flight risk)
- 30 years of contributions to community
- Extensive community service and trust

The Board has held that rehabilitation and community contributions are relevant factors in assessing good moral character and discretion. See Matter of Marin, 16 I&N Dec. 581 (BIA 1978).

3. Judge Gave Inadequate Weight to Length of Presence and Family Ties

Petitioner has been in United States for 30 years - since age 9. He has:

- No meaningful ties to Mexico
- Three U.S. citizen children who have never lived in Mexico
- Wife who is DACA recipient with professional career in U.S.
- Entire adult life spent in United States

The Judge's decision to remove someone after 30 years of presence, with three U.S. citizen children, perfect probation compliance, and extensive rehabilitation, based solely on two DWI offenses from the same week in 2024, constitutes abuse of discretion.

D. Petitioner Cannot Afford Attorney

Petitioner and his family cannot afford an attorney. His wife has been acting pro se on his behalf while:

- Working full-time as Agricultural Consultant
- Caring for three children alone
- Managing her husband's detention 350 miles away
- Dealing with financial strain of losing primary breadwinner
- Filing legal documents in both BIA and federal court

Despite these burdens, she has:

- ✓ Filed habeas corpus petition in this Court
- ✓ Filed Notice of Appeal to BIA
- ✓ Filed Emergency Motion to Stay Removal
- ✓ Filed Motion to Accept Late Appeal
- ✓ Now filing this Emergency Motion

She has done everything within her power as a pro se litigant to obtain judicial review for her husband.

Respondents cannot deny Petitioner judicial review because he cannot afford an attorney and his wife is proceeding pro se.

VI. LEGAL STANDARD FOR ORDERING PETITIONER'S RETURN

A. Court's Authority to Order Return

Federal courts have authority to order the return of individuals wrongfully removed during pending habeas proceedings. See *Nken v. Holder*, 556 U.S. 418 (2009); *Singh-Kaur v. INS*, 183 F.3d 1147 (9th Cir. 1999).

In *Singh-Kaur*, the Ninth Circuit held that when the government removes an alien during pending habeas proceedings, the court retains jurisdiction and can order the alien's return. 183 F.3d at 1149-50.

Similarly, in *Andrieu v. Ashcroft*, 253 F.3d 477 (9th Cir. 2001) (en banc), the Ninth Circuit held that a federal court can order an alien's return when removal occurred in violation of the court's jurisdiction or pending proceedings.

Other circuits have reached the same conclusion. See, e.g., *Martinez-Molina v. INS*, 96 F.3d 1023 (7th Cir. 1996); *Chmakov v. Blackman*, 266 F.3d 210 (3d Cir. 2001).

B. Standards for Ordering Return

Courts consider several factors in determining whether to order an individual's return:

1. Whether removal violated court's jurisdiction

Here: YES. Removal occurred during this Court's ordered briefing schedule, before Respondents' February 13 deadline.

2. Whether petitioner has meritorious claims

Here: YES. Petitioner has exceptionally strong claims:

- Immigration Judge erred in hardship analysis
- Immigration Judge failed to properly credit rehabilitation
- 30 years presence, 3 U.S. citizen children
- Perfect probation compliance
- Extensive community ties

3. Whether removal was in bad faith

Here: YES. Respondents removed Petitioner:

- During court-ordered briefing period
- On a Sunday when courts closed
- Without notice to Petitioner or his family
- Before their own response deadline
- Knowing habeas petition was pending
- Knowing appeal was pending with BIA

4. Whether irreparable harm results from removal

Here: YES.

- Three U.S. citizen children separated from father
- 18-year-old forced to abandon college
- 15-year-old suffering depression
- 12-year-old experiencing trauma
- Family facing financial devastation
- Judicial review rendered meaningless

5. Balance of equities

Here: Strongly favors Petitioner.

- Petitioner: Denied meaningful judicial review, separated from family, children suffering
- Government: Minimal burden to return someone wrongfully removed

ALL FACTORS FAVOR ORDERING PETITIONER'S RETURN.

C. Contempt Power

This Court has inherent authority to enforce its jurisdiction through contempt sanctions. See *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980).

When a party violates a court's order or jurisdiction, the court can:

- Issue contempt sanctions
- Order compliance with its jurisdiction
- Award attorney's fees (if Petitioner had attorney)
- Order remedial measures

Here, Respondents violated this Court's January 22, 2026 Order by removing Petitioner during the briefing period the Court established. Contempt sanctions are appropriate.

VII. ARGUMENT

A. Respondents' Removal of Petitioner During Court-Ordered Briefing Violated This Court's Jurisdiction

On January 22, 2026, this Court issued an Order accepting jurisdiction over Petitioner's habeas corpus petition and establishing a comprehensive briefing schedule:

"The court has received petitioner's application for habeas corpus on January 5th 2026. Petitioner has now paid the required fee. Having initially reviewed petitioner's application, the court finds good cause to extend the time for a response. Accordingly, respondents shall have 21 days to file a comprehensive response to said application. Within 14 days thereafter, petitioner should file any desired reply. The court will consider whether a hearing is warranted once briefing is complete."

This Order:

- ✓ Accepted jurisdiction
- ✓ Found "good cause"
- ✓ ORDERED Respondents to respond by February 13, 2026
- ✓ Established briefing schedule through February
- ✓ Contemplated evidentiary hearing

By removing Petitioner on February 2, 2026 - eleven days before their response deadline - Respondents:

- Violated this Court's Order
- Rendered briefing schedule meaningless
- Mooted Petitioner's habeas petition
- Denied Petitioner judicial review this Court had ordered
- Acted in contempt of this Court

Removal During Pending Federal Court Proceedings Is Unlawful

Federal courts have repeatedly held that removing an alien during pending habeas proceedings violates the court's jurisdiction and the petitioner's due process rights.

In *Singh-Kaur v. INS*, 183 F.3d 1147 (9th Cir. 1999), the INS removed an alien while her habeas petition was pending. The Ninth Circuit held:

- The court retained jurisdiction despite removal
- The removal violated the court's jurisdiction
- The court could order the alien's return

The court stated: "When the government removes an alien during pending habeas proceedings without court approval, it violates the court's jurisdiction and denies the alien meaningful judicial review." *Id.* at 1149.

Similarly, in *Andreu v. Ashcroft*, 253 F.3d 477 (9th Cir. 2001) (*en banc*), the Ninth Circuit held that removal during pending proceedings requires the court to retain jurisdiction and consider ordering the alien's return.

Here, Respondents removed Petitioner not just during "pending proceedings" but during a COURT-ORDERED BRIEFING SCHEDULE with a specific deadline (February 13) that had not yet passed.

This is a direct violation of this Court's jurisdiction.

B. Respondents' Actions Violated Petitioner's Due Process Rights

The Fifth Amendment guarantees Petitioner due process of law. This includes the right to meaningful judicial review of his removal order.

1. Right to Meaningful Judicial Review

The Supreme Court has held that aliens within the United States have a constitutional right to judicial review of removal orders. *INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner exercised this right by filing a habeas petition in this Court. The Court accepted jurisdiction and ordered briefing. By removing Petitioner before briefing could be completed, Respondents denied him meaningful judicial review.

This is not a case where Petitioner filed a last-minute habeas petition to delay removal. Petitioner filed on January 5, 2026 - nearly a month before his removal. This Court reviewed the petition and found "good cause" to order comprehensive briefing.

Respondents cannot circumvent this Court's jurisdiction by simply removing Petitioner before briefing is complete.

2. No Notice or Opportunity to Respond

Due process requires notice and opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Petitioner received no notice that Respondents intended to remove him during pending federal court proceedings. He had no opportunity to:

- Seek emergency stay from this Court
- Seek emergency stay from BIA
- Notify his wife and children
- Arrange affairs
- Respond to removal decision

Moreover, Respondents removed Petitioner on a SUNDAY - when courts are closed and emergency relief is nearly impossible to obtain.

This violates due process.

3. Arbitrary and Capricious Action

There was no emergency requiring Petitioner's immediate removal on February 2. He had been in detention since September 2025. Respondents could have:

- Waited until their February 13 response deadline
- Sought guidance from this Court
- Waited for BIA to rule on Emergency Stay Motion
- Given notice to Petitioner and his family

Instead, Respondents deliberately removed Petitioner during the Court's briefing period, on a Sunday, without notice. This demonstrates bad faith and arbitrary action in violation of the Administrative Procedure Act.

C. Petitioner Has Meritorious Claims Warranting This Court's Review

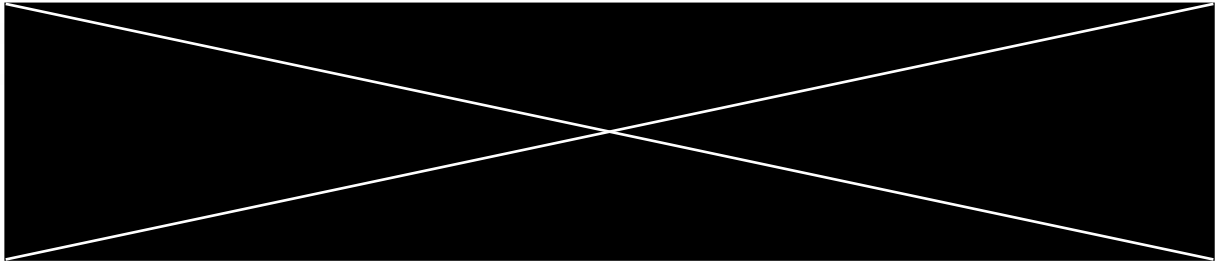
Petitioner's habeas petition raises substantial constitutional and legal claims that this Court must have opportunity to adjudicate:

1. Immigration Judge Abused Discretion in Hardship Analysis

The Immigration Judge found Petitioner failed to establish "exceptional and extremely unusual hardship" to his three U.S. citizen children, stating "children can work."

This finding is legally erroneous and constitutes abuse of discretion:

- The 18-year-old daughter was ranked #6 in her county and attending college. Forcing her to abandon college to work full-time supporting her siblings is not ordinary hardship - it destroys 12 years of academic achievement and her dreams of a professional career.



- Petitioner is the primary breadwinner. His removal causes financial devastation and possible homelessness for the family.

- All three children face loss of activities (soccer, Beta Club), educational decline, and psychological trauma.

The Board of Immigration Appeals has recognized that the combination of:

- Financial devastation
- Educational destruction
- Psychological trauma during critical developmental years
- Complete family separation

constitutes "exceptional and extremely unusual hardship." Matter of Recinas, 23 I&N Dec. 467 (BIA 2002).

The Immigration Judge's finding to the contrary is legal error reviewable by this Court.

2. Immigration Judge Failed to Properly Credit Rehabilitation

The Immigration Judge denied relief based on two DWI convictions from the same week in July 2024, but failed to properly weigh:

- ✓ State court determined probation (not prison) appropriate
- ✓ Perfect probation compliance from August 2025 - September 2025
- ✓ Arrested AT probation appointment (proving not a flight risk)
- ✓ 30 years of continuous work and tax payment

- ✓ 20-year marriage and dedication to family
- ✓ Raising three exceptional U.S. citizen children (straight-A students)
- ✓ Extensive community service (soccer coach, Toys For Tots, school volunteer)
- ✓ Community trust (parents trusted him with their children)

The Board has held that rehabilitation and community contributions are critical factors in assessing good moral character and discretion. *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978).

The Immigration Judge's failure to properly weigh this evidence constitutes abuse of discretion reviewable by this Court.

3. Denial Violates Equal Protection

Petitioner's denial raises equal protection concerns. Other individuals with similar or worse criminal histories have been granted Cancellation of Removal when they demonstrated:

- Long-term presence
- U.S. citizen children
- Rehabilitation
- Hardship

The Immigration Judge's statement that "children can work" suggests the Judge devalued the hardship to Petitioner's children compared to hardship in other cases, potentially due to impermissible factors.

4. Constitutional Challenges to Removal

Petitioner's removal violates:

- His Fifth Amendment due process rights (family unity)
- His children's constitutional rights (parental association)
- The Suspension Clause (denial of habeas corpus)

These constitutional claims are reviewable by this Court under 8 U.S.C. § 1252(a)(2)(D).

D. Respondents Acted in Bad Faith

Respondents' conduct demonstrates bad faith:

THEY KNEW FEDERAL COURT PROCEEDINGS WERE PENDING

Respondents had notice of this Court's January 22, 2026 Order. They knew briefing was ongoing. They knew their response deadline was February 13.

THEY REMOVED PETITIONER BEFORE THEIR OWN DEADLINE

Rather than file their response and let the Court adjudicate, Respondents removed Petitioner eleven days before their deadline - rendering briefing impossible and mooted the case.

THEY REMOVED ON A SUNDAY

Respondents chose a Sunday for removal - when courts are closed and emergency relief is nearly impossible to obtain.

THEY GAVE NO NOTICE

Respondents gave no advance notice to Petitioner, his wife, or this Court that removal was imminent.

THEY IGNORED PENDING BIA PROCEEDINGS

Respondents removed Petitioner despite:

- Notice of Appeal delivered to BIA (January 31)
- Emergency Motion to Stay Removal pending with BIA
- Motion to Accept Late Appeal to be filed

This conduct demonstrates bad faith effort to circumvent judicial review.

E. Irreparable Harm to Petitioner and His U.S. Citizen Family

Every day Petitioner remains in Mexico causes irreparable harm:

TO PETITIONER:

- Denied meaningful judicial review
- Separated from wife and children
- Unable to pursue meritorious claims
- Health conditions

TO THREE U.S. CITIZEN CHILDREN:

- 18-year-old daughter: Abandoned college (was ranked #6 in county), now working full-time to support siblings, dreams of professional career destroyed

TO WIFE:

- Primary breadwinner gone
- Facing financial devastation and possible homelessness
- Sole caretaker of three children while working full-time
- Acting pro se in complex legal proceedings

TO FAMILY UNIT:

- Complete destruction of family
- Children growing up without father during critical years
- Years of separation that cannot be recovered
- Permanent damage to parent-child relationships

This harm is IRREPARABLE and worsens every day.

F. Balance of Equities Strongly Favors Petitioner

HARM TO PETITIONER IF RETURN NOT ORDERED:

- Denied constitutional right to judicial review
- Permanent separation from family (children ages 18, 15, 12 will grow up without father)
- Children suffer irreparable educational, financial, and psychological harm
- Meritorious claims never adjudicated
- Respondents rewarded for violating Court's jurisdiction

BURDEN TO GOVERNMENT IF RETURN ORDERED:

- Minimal: Transport Petitioner back to U.S. detention or supervised release
- Government can continue removal proceedings if Petitioner loses habeas petition
- Government's own misconduct created this situation

PUBLIC INTEREST:

- Vindicating federal court jurisdiction
- Ensuring meaningful judicial review
- Protecting constitutional rights
- Preventing executive branch from circumventing courts
- Protecting U.S. citizen children's rights

The balance of equities overwhelmingly favors ordering Petitioner's return.

G. This Court Should Find Respondents in Contempt

Respondents' removal of Petitioner during this Court's ordered briefing period constitutes contempt of this Court's January 22, 2026 Order.

The Court ordered Respondents to file a "comprehensive response" by February 13. Instead, Respondents removed Petitioner on February 2, making such response impossible and mooted the case.

This is direct contempt of the Court's jurisdiction.

The Court should:

- Find Respondents in contempt
- Order Respondents to show cause why they removed Petitioner during court-ordered briefing
- Order remedial sanctions including Petitioner's immediate return
- Order Respondents to pay costs (if Petitioner had attorney to pay)

VIII. REQUESTED RELIEF

Petitioner respectfully requests that this Court:

1. ISSUE IMMEDIATE ORDER requiring Respondents to return Petitioner to United States jurisdiction within 7 days;
 2. FIND RESPONDENTS IN CONTEMPT of this Court's January 22, 2026 Order for removing Petitioner during court-ordered briefing period;
 3. ORDER RESPONDENTS TO SHOW CAUSE why they removed Petitioner:
 - a. During this Court's ordered briefing schedule
 - b. Before their own response deadline of February 13, 2026
 - c. Without notice to Petitioner or this Court
 - d. On a Sunday when courts were closed
 - e. Despite knowing federal habeas proceedings were pending
 4. ORDER STAY OF REMOVAL upon Petitioner's return, pending this Court's adjudication of habeas petition;
 5. ORDER RESPONDENTS TO FILE RESPONSE to habeas petition as originally ordered;
 6. SCHEDULE EVIDENTIARY HEARING on Petitioner's habeas claims;
 7. ORDER THAT PETITIONER BE RELEASED on supervised release or reasonable bond upon return, given:
 - Not a flight risk (arrested at probation appointment)
 - Not a danger (state court determined probation appropriate)
 - Strong community ties (30 years presence)
 - Three U.S. citizen children and wife in U.S.
 - Perfect probation compliance
 8. GRANT SUCH OTHER RELIEF as the Court deems just and appropriate.
-

IX. CONCLUSION

Respondents removed Petitioner to Mexico on February 2, 2026:

- During this Court's jurisdiction
- During court-ordered briefing schedule
- Before Respondents' own response deadline (February 13)
- Without notice to Petitioner or Court
- On a Sunday when courts closed
- In violation of Petitioner's constitutional rights
- In violation of federal statutes
- In bad faith

This removal:

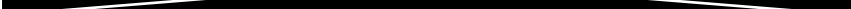
- Violated this Court's January 22, 2026 Order

- Denied Petitioner meaningful judicial review
- Separated three U.S. citizen children from their father
- Mooted meritorious habeas claims
- Constitutes contempt of this Court

Petitioner has:

- ✓ 30 years continuous presence (since age 9)
- ✓ Three U.S. citizen children
- ✓ Good moral character
- ✓ Perfect probation compliance
- ✓ Extensive community ties and contributions
- ✓ Strong rehabilitation
- ✓ Meritorious claims of Immigration Judge error

Petitioner's three U.S. citizen children are suffering irreparable harm:

- 18-year-old: Abandoned college to work full-time, dreams destroyed
- 
- 

JUSTICE REQUIRES PETITIONER'S IMMEDIATE RETURN.

This Court must vindicate its jurisdiction, protect Petitioner's constitutional rights, and ensure meaningful judicial review. Respondents cannot circumvent federal court jurisdiction by removing individuals during pending proceedings.

Petitioner respectfully requests that this Court:

- Order his immediate return to U.S. jurisdiction
- Find Respondents in contempt
- Order Respondents to show cause
- Adjudicate his meritorious habeas claims

Time is of the essence. Every day causes irreparable harm to three U.S. citizen children.

Respectfully submitted this 5th day of February, 2026.

SIGNATURE OF PETITIONER

I, Alberto Solar Carmona, declare under penalty of perjury that I have read this Emergency Motion for Order Requiring Petitioner's Immediate Return to United States Jurisdiction and that all statements in this motion are true and correct to the best of my knowledge. I am filing this motion personally from Mexico where I was unlawfully removed on February 4, 2026 during pending federal court proceedings.

I hereby request that the Court order my immediate return to United States jurisdiction so that I may pursue my habeas corpus petition and have meaningful judicial review of my removal order.

Signed by:

Alberto S. Carmona

Alberto S. Carmona

A-Number: 

Petitioner (Pro Se)

Mexico City, Mexico
PHONE NUMBER

PERMANENT U.S. ADDRESS:



Date: 2/5/2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Emergency Motion for Order Requiring Petitioner's Immediate Return to United States Jurisdiction and for Contempt Sanctions was served on:

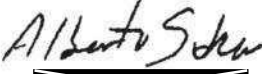
U.S. Department of Homeland Security
Office of Chief Counsel
Stewart Detention Center
P.O. Box 2068
Lumpkin, GA 31815
Fax: (404) 893-1950

U.S. Attorney's Office
Middle District of Georgia
P.O. Box 2568
Columbus, GA 31902-2568
Fax: (706) 649-7717

on this 5th day of February, 2026, by the following methods:

- ☐ Facsimile transmission
- ☐ First-class mail, postage prepaid
- ☐ Email (if available)

Signed by:




Alberto Solar Carmona, Pro Se
(Assisted by Leticia Leon Santiago)

OR



Leticia Leon Santiago
Authorized Representative for Alberto Solar Carmona
Acting under his written authorization

