

1 RICHARD S. STERGER, ESQ.
2 Sterger Law Group, P.C.
3 300 W. Grand Ave., Suite 200
4 Escondido, California 92025
5 Telephone: (760) 260-8158
6 rick@stergerlawgroup.com

7 Attorney for Petitioner
8
9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 OSMAN FRANCISCO PEREZ-LOPEZ,
13

14 Petitioner,
15

16 v.
17

18 JEREMY CASEY; ET AL.,
19

20 Respondents.
21
22
23
24
25
26
27
28

Case No.: 26-cv-1317-TWR-BLM

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN IN SUPPORT
OF PETITION FOR WRIT OF HABEAS
CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS

**PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Osman Francisco Perez-Lopez, by and through counsel, respectfully submits this Traverse to Respondent's Return in Support of Petition For Writ of Habeas Corpus.

INTRODUCTION

This case presents a straightforward constitutional question: whether the government may re-detain a noncitizen who was previously released on immigration bond without revoking that bond, without identifying any change in circumstances, and without providing any individualized determination supporting renewed detention.

The answer is no.

Petitioner was detained and released on bond by an Immigration Judge in 2014 following an individualized custody determination. That bond determination reflected the government's conclusion that Petitioner was neither a flight risk nor a danger to the community. Petitioner posted the bond ordered by the Immigration Judge and was released from custody.

Petitioner remained free under that bond for eleven years. During that time, he lived and worked in the community, complied with the requirements governing his immigration case, and continued pursuing immigration relief through the lawful processes established by the immigration courts.

Despite the continued existence of that bond determination, ICE re-arrested Petitioner on December 17, 2025, while he was traveling to work and returned him to detention. Respondents have not revoked the bond, have not alleged that Petitioner violated its conditions, and have not identified any changed circumstances that would justify renewed detention.

Instead, Respondents argue that Petitioner should be treated as subject to mandatory detention under 8 U.S.C. § 1225(b) because he originally entered the United States without being admitted or paroled. But Respondents acknowledge that courts in the Southern District of California have repeatedly rejected that position in materially indistinguishable cases.

Respondents further concede that the facts here are not materially distinguishable from those

1 prior decisions and that those decisions would control the outcome if the Court adheres to them.

2 The government's desire to preserve its disagreement for purposes of appeal does not
3 provide lawful authority to detain Petitioner in the meantime. The question before the Court is
4 therefore not whether Petitioner is eligible for a new custody determination. The question is
5 whether Respondents have lawful authority to detain Petitioner despite the existing
6 immigration bond order that authorized his release.

7 The government's desire to preserve its disagreement for purposes of appeal does not
8 supply lawful authority to detain Petitioner in the meantime. The only question before the
9 Court is whether Respondents may detain Petitioner despite the existing immigration bond
10 order that authorized his release. Because Respondents do not contend that the bond was
11 revoked or that any changed circumstances justify renewed detention, they have not established
12 lawful authority for Petitioner's continued custody.

13 Respondents' return effectively confirms that the legal issue presented here has already
14 been resolved by multiple decisions in this District. Respondents acknowledge that courts in the
15 Southern District of California have repeatedly concluded that detention in circumstances like
16 those presented here is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), and further
17 concede that the facts of this case are not materially distinguishable from those prior decisions.
18 Respondents cite no intervening binding authority from the Ninth Circuit or the Supreme Court
19 requiring a different result. Instead, the government merely preserves its disagreement for
20 purposes of appeal. But the government's desire to preserve appellate arguments does not
21 supply lawful authority to detain Petitioner in the meantime.

22 LEGAL STANDARD

23 Under 28 U.S.C. § 2241, a writ of habeas corpus may be granted to any petitioner who
24 demonstrates that he is "in custody in violation of the Constitution or laws or treaties of the
25 United States." 28 U.S.C. § 2241(c)(3). The writ is available to every individual detained
26 within the United States. See *Rasul v. Bush*, 542 U.S. 466, 473 (2004).

27 The traditional function of habeas corpus is to test the legality of detention and to secure
28 release from unlawful custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Where the

1 government cannot demonstrate lawful authority for continued detention, the writ must issue
2 and the appropriate remedy is release.

3 ARGUMENT

4 I.RESPONDENTS' RETURN DOES NOT ESTABLISH LAWFUL AUTHORITY FOR 5 PETITIONER'S DETENTION

6 Respondents' abbreviated return does not dispute the central facts alleged in the
7 petition. Respondents do not contend that Petitioner violated the conditions of his bond, that the
8 bond was revoked, or that any change in circumstances occurred that would justify renewed
9 detention.

10 Instead, Respondents argue that Petitioner should be treated as subject to mandatory
11 detention under 8 U.S.C. § 1225(b) because he originally entered the United States without
12 being admitted or paroled. Respondents rely primarily on *Matter of Yajure Hurtado*, 29 I. & N.
13 Dec. 216 (BIA 2025), and several district court decisions from outside this District.

14 Indeed, Respondents expressly acknowledge that the facts of this case are "not
15 materially distinguishable" from prior decisions of courts in this District that have rejected the
16 government's position and granted habeas relief. Respondents further concede that this Court's
17 prior decisions would control the result if the Court adheres to those rulings.

18 Respondents cite no intervening binding authority from the Ninth Circuit or the
19 Supreme Court requiring a different outcome. Instead, the government simply preserves its
20 disagreement with those decisions for purposes of appeal.

21 But the government's desire to preserve appellate arguments does not supply lawful
22 authority to detain Petitioner in the meantime. Where Respondents concede that the facts of this
23 case are materially indistinguishable from cases in which courts in this District have already
24 granted habeas relief, the return fails to establish lawful authority for Petitioner's continued
25 detention.

26 II.PETITIONER'S RE-DETENTION VIOLATES THE DUE PROCESS CLAUSE

27 The Fifth Amendment provides that no person shall be deprived of liberty without due
28 process of law. Freedom from physical restraint lies at the core of the liberty protected by the
Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). These protections apply to

1 noncitizens present within the United States. Id. at 693.

2 Petitioner was previously detained and released on bond after an Immigration Judge
3 determined that he was neither a flight risk nor a danger to the community. That bond
4 determination governed Petitioner's custody status and permitted him to live and work in the
5 community for eleven years.

6 Despite the continued existence of that bond determination, ICE re-arrested Petitioner
7 and returned him to detention without revoking the bond and without identifying any changed
8 circumstances that would justify renewed detention.

9 Once the government has made an individualized determination that detention is
10 unnecessary and has released an individual pursuant to a bond order, the Due Process Clause
11 prohibits the government from arbitrarily disregarding that determination and returning the
12 individual to custody without lawful process.

13 Because Respondents have neither revoked the bond nor identified any changed
14 circumstances justifying renewed detention, Petitioner's current detention is unsupported by
15 any lawful custody determination and therefore violates the Due Process Clause.

16 **III.RE-DETENTION WITHOUT REVOCATION OR CHANGED CIRCUMSTANCES**
17 **IS ARBITRARY**

18 Immigration detention is civil in nature and is permissible only to ensure appearance at
19 removal proceedings or to protect the community from danger. *Zadvydas*, 533 U.S. at 690. A
20 prior release determination necessarily reflects the government's conclusion that detention is
21 not required to achieve those purposes. For that reason, courts have consistently held that the
22 government may not re-arrest a previously released noncitizen absent a material change in
23 circumstances. See *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021); *Saravia v.*
24 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).

25 Respondents identify no such change here. They do not contend that Petitioner violated
26 the conditions of his bond. They do not assert that the bond was revoked. And they do not
27 identify any new facts that would support renewed detention. Instead, Petitioner was arrested
28 while living and working in the community pursuant to the same bond order that had governed

1 his custody status for more than thirteen years. Detention under these circumstances is arbitrary
2 and incompatible with due process.

3 **IV. PETITIONER'S EXTENDED COMPLIANCE CONFIRMS THAT DETENTION IS**
4 **UNJUSTIFIED**

5 Petitioner's history further demonstrates that renewed detention is unwarranted.
6 For almost eleven years after being released on bond, Petitioner lived in the community,
7 maintained employment, and pursued immigration relief through the lawful process established
8 by the immigration courts.

9 During that time, Petitioner appeared as required and complied with the legal process
10 governing his case. His proceedings were eventually placed on the immigration court's inactive
11 docket. Petitioner's lengthy period of compliance confirms the correctness of the original
12 custody determination and underscores the absence of any legitimate justification for renewed
13 detention.

14 Respondents have identified no change in circumstances that would justify revisiting
15 the prior custody determination. The undisputed record therefore confirms that Petitioner's
16 detention is unsupported by any lawful basis.

17 **V. BECAUSE RESPONDENTS LACK AUTHORITY TO DETAIN PETITIONER,**
18 **RELEASE IS THE PROPER REMEDY**

19 The purpose of habeas corpus is to determine whether a person's detention is lawful.
20 When the government cannot demonstrate lawful authority for custody, the writ must issue.
21 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

22 Here, Respondents have not shown that Petitioner violated his bond conditions, that the
23 bond was revoked, or that any change in circumstances occurred that would justify renewed
24 detention. Because Respondents lack lawful authority to detain Petitioner despite the existing
25 bond determination, Petitioner's continued custody violates the Constitution.

26 The proper remedy is release.

27 ///

28 ///

CONCLUSION

Respondents have failed to demonstrate any lawful basis for detaining Petitioner despite the outstanding bond order that authorized his release. Respondents do not contend that Petitioner violated the conditions of his bond, that the bond was revoked, or that any change in circumstances occurred that would justify renewed detention. Instead, Respondents rely on a legal argument that courts in this District have repeatedly rejected and concede that the facts of this case are not materially distinguishable from those prior decisions.

Under these circumstances, Respondents have not established lawful authority for Petitioner's continued detention. Because habeas corpus exists to remedy unlawful custody, the writ must issue.

For these reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Petitioner released from ICE custody.

Respectfully submitted this 10th day of March 2026,

/s/ Richard S. Sterger, Esq.

Sterger Law Group, P.C.
300 W. Grand Ave., Suite 200
Escondido, California 92025
CA Bar #: 335832
Attorney for Petitioner