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**Application for Pro hac admission vice forthcoming*

Pro Bono Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Osmin Antonio AYALA,

Petitioner,

v.

Sergio ALBARRAN, in his official capacity,
San Francisco Field Officer Director,
Enforcement and Removal Operations, United
States Immigration and Customs Enforcement;

Markwayne MULLIN, in his official capacity,
Secretary, United States Department of
Homeland Security;

Todd BLANCHE, in his official capacity,
Attorney General of the United States,

Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

IMMIGRATION HABEAS CASE

INTRODUCTION AND FACTUAL ALLEGATIONS

1
2 1. Petitioner, Osmin Antonio Ayala (Mr. Ayala), hereby files this petition for writ of
3 habeas corpus and complaint for declaratory and injunctive relief, and accompanying *ex parte*
4 motion for a temporary restraining order, to prevent Respondents, the Department of Homeland
5 Security (“DHS”), from unlawfully detaining Mr. Ayala at a last-minute scheduled appointment
6 at the San Francisco Immigration and Customs Enforcement (“ICE”) Field Office on April 13,
7 2026, in violation of the Fifth Amendment to the U.S. Constitution.

8 2. Mr. Ayala is a married father of three children ages ten, thirteen and fifteen. He
9 and his family have lived in Oakland, California since July of 2021. He attends church in
10 Oakland and his children attend Oakland public schools. United States Citizenship and
11 Immigration Services (“USCIS”) has granted him deferred action status.

12 3. Mr. Ayala and his family fled El Salvador in July 2021 after [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] immediately fled to the United States. Mr. Ayala had
16 previously attempted to seek refuge in the United States in 2019.

17 4. In July of 2021, Mr. Ayala and his family were released after DHS determined
18 that release was an appropriate exercise of prosecutorial discretion. In November of 2021, the
19 family reported to ICE in San Francisco. Following that appointment, Mr. Ayala checked in
20 with ICE via phone and Smart LINK application as instructed. He has never failed to comply
21 with reporting requirements, nor has ICE ever alleged as such.

22 5. On May 9, 2022, Mr. Ayala applied for asylum with USCIS and later received
23 work authorization based on his pending application. On April 20, 2023, he applied for a U
24 nonimmigrant visa as a derivative on his wife’s application after she was the victim of a violent
25 crime. On March 20, 2025, USCIS determined that Mr. Ayala’s wife’s application for a U

1 Nonimmigrant Visa was bona fide.¹ USCIS further found that placing Mr. Ayala in deferred
2 action was warranted as a matter of discretion. The notice describes deferred action as an act of
3 administrative convenience by which the government officially designates some cases as lower
4 priorities for removal. Deferred action can be terminated by USCIS at any time if it determines
5 that it is no longer warranted. To date, USCIS has not terminated the March 20, 2025 grant of
6 deferred action to Mr. Ayala.

7 6. In mid-June 2025, Mr. Ayala received notice of an appointment at the San
8 Francisco ICE Field Office for June 25, 2025. He attended with counsel. ICE issued an Order of
9 Supervision alleging that he had been ordered removed on May 2, 2019 but was “being released
10 because the agency has not effected [his] deportation or removal during the period prescribed by
11 law.” Among other conditions, the Order of Supervision required Mr. Ayala to check-in with the
12 San Francisco ICE Field Office every 3 months. When counsel requested a copy of the
13 referenced 2019 order and any other final orders of removal, ICE indicated that they “did not
14 have his A-file” and therefore could not provide anything. Mr. Ayala was ordered to report to the
15 San Francisco ICE Field Office on September 25, 2025, which he did.

16 7. At the appointment on September 25, 2025, ICE provided Mr. Ayala Form M-488
17 which has detailed information about the Reasonable Fear Interview process which applies to
18 individuals subject to certain types of final orders of removal who fear return. Counsel again
19 asked for a copy of the final order of removal to which Mr. Ayala was allegedly subject. ICE
20 again stated that they did not have his A-file and therefore did not have a copy of the order. ICE
21
22

23 ¹ There is a statutory cap on the number of U Nonimmigrant Visas that can be issued each fiscal
24 year and the number of applications typically exceeds that cap. Under 8 U.S.C. §1184(p)(6),
25 USCIS may exercise discretion to grant deferred action and work authorization to bona fide
applicants.

1 confirmed that the Order of Supervision issued on June 25, 2025 was *not* being revoked and Mr.
2 Ayala was required to return to the ICE Field Office in three months, on October 27, 2025.

3 8. Mr. Ayala attended his next scheduled ICE check-in early, on October 21, 2025.
4 After conducting a brief interview, ICE provided Mr. Ayala a 1-page document titled “Notice of
5 Reinstatement/Decision to Reinstate Prior Order.” The document refers to a removal order
6 entered on July 25, 2019 but no copy of that order was attached or included or served on Mr.
7 Ayala or counsel at any point.²

8 9. On February 4, 2026, USCIS dismissed Mr. Ayala’s asylum application and
9 advised that his claim of fear would be considered by an asylum officer pursuant to the
10 reasonable fear screening process outlined at 8 C.F.R. §208.31. Shortly thereafter, Mr. Ayala
11 and counsel received notice of a reasonable fear interview scheduled for April 13, 2026 at the
12 San Francisco Asylum Office located at 75 Hawthorne Street, 7th Floor, San Francisco,
13 California 94105.

14 10. Subsequently, through the SmartLINK application, Mr. Ayala received notice of
15 an appointment with the ICE Field Office at 630 Sansome Street, San Francisco, California
16 94611 on April 13, 2026 at 8:00am. Confused as to where the scheduled reasonable fear
17 interview was to take place, counsel reached out to both the San Francisco ICE Field Office and
18 the San Francisco Asylum Office. The San Francisco Asylum Office confirmed via email that
19 the reasonable fear interview will take place on April 13, 2026 at 75 Hawthorne Street. To date,
20 the San Francisco ICE Field Office has not responded.

21
22 ² On November 18, 2025, counsel sent a letter to the San Francisco ICE Field Office noting that
23 ICE did not comply with 8 C.F.R. §241.8(a)(1) and requesting that any further documentation it
24 wished to serve on Mr. Ayala be provided to counsel. The letter was received one day later. To
25 date, neither counsel nor Mr. Ayala has been provided a copy of the prior removal order
allegedly being reinstated. Mr. Ayala contests that ICE has properly subjected him to
reinstatement.

1 11. The timing of the appointment with the San Francisco ICE Field Office strongly
2 indicates that ICE plans to take Mr. Ayala into custody on April 13, 2026.

3 12. Mr. Ayala contests that the purported Notice of Reinstatement issued on October
4 21, 2025 (after he had been living at liberty in the United States for over four years), was
5 properly issued. ICE has not provided evidence of its determination that he was subject to a prior
6 removal order and re-entered the United States without inspection as required by 8 C.F.R.
7 §241.8(a).

8 13. Moreover, Mr. Ayala is in deferred action status based on his bona fide U Visa
9 application.

10 14. The Fifth Amendment's Due Process Clause mandates that immigration detention
11 serve a legitimate purpose: to mitigate flight risk and/or prevent danger to the community.

12 Neither of these purposes would be served by detaining Mr. Ayala.

13 15. Due process requires that Mr. Ayala remain at liberty unless a neutral arbiter
14 determines, following a hearing in which the government bears the burden of proving by clear
15 and convincing evidence, that there has been a material change in circumstances warranting his
16 detention.

17 16. Accordingly, Mr. Ayala respectfully asks this Court to grant his petition and issue
18 a writ of habeas corpus or, in the alternative, to order Respondents to show cause *within three*
19 *days*, providing their reasons, if any, as to why his detention would be lawful. 28 U.S.C. § 2243.
20 He urges this Court to grant his petition and enjoin Respondents from detaining him. 28 U.S.C. §
21 2241.

22 **JURISDICTION AND VENUE**

23 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because
24 this Petition arises under the Due Process Clause of the Fifth Amendment to U.S. Constitution.

1 18. This Court may grant relief under the Habeas Corpus Act, 28 U.S.C. § 2241 et
2 seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; the All Writs Act, 28 U.S.C. §
3 1651; and the Court’s inherent equitable powers. *See Hilton v. Braunskill*, 481 U.S. 775 (1987)

4 19. Federal district courts have jurisdiction to hear habeas claims by noncitizens who
5 challenge the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001);
6 *Jennings v. Rodriguez*, 583 U.S. 281, 294-96 (2018).

7 20. The federal habeas statute codifies the common law writ of habeas corpus as it
8 existed in 1789. *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

9 21. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are
10 employees or officers of the United States, acting in their official capacity; because a substantial
11 part of the events or omissions giving rise to the claim occurred or will occur in the Northern
12 District of California; because one of the Respondents resides in this District; and because there
13 is no real property involved in this action.

14 **REQUIREMENTS UNDER 28 U.S.C. § 2243**

15 22. The Court must grant the petition for writ of habeas corpus or order Respondents
16 to show cause “forthwith,” unless Mr. Ayala is not entitled to relief. 28 U.S.C. § 2243. If an
17 order to show cause is issued, Respondents must file a return “within three days.” *Id.* “[F]or good
18 cause[,] additional time, not exceeding twenty days, is allowed.” *Id.*

19 23. Habeas corpus is “perhaps the most important writ known to constitutional law
20 affording as it does a swift and imperative remedy in all cases of illegal restraint or
21 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

24. Petitioner Mr. Ayala is a married father of three who resides in Oakland, California. He has no criminal history in the United States or anywhere else in the world. He is in lawful deferred action status based on a bona fide application for a U Visa.

25. Respondent Sergio Albarran is the San Francisco Field Officer Director or Official Acting in that Capacity, Enforcement and Removal Operations, United States Immigration and Customs Enforcement. He is sued in his official capacity.

26. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is sued in his official capacity.

27. Respondent Todd Blanche is the Attorney General of the United States. He is sued in his official capacity.

EXHAUSTION

28. The habeas statute “does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus.” *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (c itation omitted).

29. Exhaustion is also not required as a matter of prudence. Prudential exhaustion may be required if “(1) a agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) a dministrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (c itations omitted). N one of these factors weighs in favor of requiring exhaustion.

30. In fact, addressing Mr. Ayala’s challenge would not encourage bypassing the administrative proceedings, as there is no established process that would provide Mr. Ayala with a constitutionally adequate opportunity to challenge his re-detention pre-emptively.

1 31. Even if Mr. Ayala had an adequate administrative remedy to pursue, exhausting
2 his constitutional claim would be futile because the immigration agencies lack authority to rule
3 on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996).

4 **RELEVANT LEGAL FRAMEWORK**

5 **Constitutional Due Process**

6 32. The Due Process Clause of the U.S. Constitution imposes significant limits on
7 ICE's authority to re-detain noncitizens who have previously been released from immigration
8 custody. The government's discretion to detain noncitizens is always subject to due process
9 requirements. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Substantive due
10 process requires that a noncitizen's detention must reasonably relate to the permissible purposes
11 of immigration detention: preventing flight and protecting the community. *See Zadvydas v.*
12 *Davis*, 533 U.S. 678, 690-91. Procedural due process further mandates that any detention of a
13 noncitizen must be accompanied by robust procedural protections, such as a hearing before a
14 neutral decisionmaker to assess whether detention is justified. *Id.*; *see also Mathews v. Eldridge*,
15 424 U.S. 319, 333 (1976).

16 **a. Substantive Due Process Requirements.**

17 33. Substantive due process imposes additional limits on civil immigration detention
18 beyond those required by procedural due process. *See Reno v. Flores*, 507 U.S. 299302 (1993)
19 (holding that substantive due process "forbids the government to infringe certain 'fundamental'
20 liberty interests at all, no matter what process is provided, unless the infringement is narrowly
21 tailored to serve a compelling state interest.") (citations omitted). Substantive due process
22 prohibits civil detention that is punitive in purpose or effect. *See Jones v. Blanas*, 393 F.3d 918,
23 933-34 (9th Cir. 2004).

24 34. Even when civil detention is purportedly non-punitive, it may still be deemed
25

1 unconstitutionally punitive if it is "excessive in relation to [its non-punitive] purpose," or if it is
2 "employed to achieve objectives that could be accomplished in so many alternative and less
3 harsh methods." 393 F. 3d at 934 (citations omitted). The Supreme Court has recognized only
4 two permissible purposes for civil immigration detention: preventing flight and protecting the
5 community from danger. *See Zadvydas*, 533 U.S. at 690-91.

6 35. Therefore, when immigration detention is excessive in relation to the
7 government's permissible purposes, or when any risk could be sufficiently mitigated by
8 alternative and less harsh methods, such detention violates substantive due process. *See Jones*,
9 393 F.3d at 934-35; *Zadvydas*, 533 U.S. at 690-91; *see also Doe v. Becerra*, 732 F. Supp. 3d
10 1071, 1088-90 (N.D. Cal. 2024); *Doe v. Chestnut*, No. 1:24-cv-00943-EPG-HC, 2025 WL
11 3240400, at *22 (E.D. Cal. Nov. 20, 2025).

12 36. Given that Respondents previously released Mr. Ayala upon apprehension and
13 subsequently granted Mr. Ayala deferred action status on March 20, 2025, they have previously
14 determined that Mr. Ayala's detention is unwarranted and further, that they will not take action
15 in deporting him. Detaining him now would serve no lawful purpose. *See, e.g., Reno v. Am.-*
16 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484, 119 2 3 4 5 6 S.Ct. 936, 944 (1999)
17 (defining deferred action to mean that "no action will thereafter be taken to proceed against an
18 apparently deportable alien, even on grounds normally regarded as aggravated"); *Lee v. Holder*,
19 599 F.3d 973, 974-75 (9th Cir. 2010) (explaining that deferred action constitutes a form of
20 interim relief that temporarily prevents removal from the United States); *De Sousa v. Dir. of U.S.*
21 *Citizenship and Immigr. Servs.*, 755 F.Supp.3d 1266, 1268 (N.D. Cal. 2024) 7 8 9 10 11 12 13 14
22 15 (noting that deferred action is an interim benefit that "protects [recipients] against removal
23 from the United States"); *Sepulveda Ayala v. Bondi*, 2025 WL 2084400, *1, 7-9 (W.D. Wash.
24 2025) (granting preliminary injunction after finding that where petitioner had been issued a bona
25 fide determination notice in connection with his U-visa application and granted deferred action

1 and an employment authorization document, he had demonstrated a likelihood of success on his
2 habeas petition claim that his deferred action status made his continued detention unlawful).

3 **b. Procedural Due Process Requirements**

4 37. The threshold inquiry in any procedural due process claim is whether a protected
5 liberty interest exists. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460
6 (1989). It is well-established that all individuals within the United States, including noncitizens
7 subject to a final order of removal, possess a liberty interest in their physical freedom. *See*
8 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("the Due Process Clause applies to all 'persons'
9 within the United States, including aliens, whether their presence here is lawful, unlawful,
10 temporary, or permanent"); *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 ("This case
11 raises the question of whether a noncitizen released on an order of supervision is entitled to due
12 process when the government decides—in its discretion—to revoke that release. The Court
13 answers that question simply and forcefully: Yes.").

14 38. Mr. Ayala's liberty interest is strengthened by the fact that he has a bona fide
15 determination of eligibility for a U Visa and resulting deferred action status. He has applied for
16 and received his employment authorization document in conformance with USCIS procedures
17 and received assurances that he was eligible to secure that document. He has a liberty interest in
18 the benefits both assured and already granted by the agency pursuant to the statute and
19 regulations which authorize the bona fide determination and deferred action grant, and the actual
20 grant to Mr. Ayala.³

21 39. Mr. Ayala's liberty interest is further bolstered by the fact that CBP released him
22 in 2021, finding that prosecutorial discretion was warranted in his case and implicitly
23 determining that Mr. Ayala was not a danger to the community or a flight risk. Mr. Ayala's
24

25 ³ See n1.

1 conditional liberty was subsequently reinforced when ICE issued an Order of Supervision on
2 June 25, 2025, determining that his removal could not be effectuated with the statutory removal
3 period and he therefore should live freely, albeit subject to conditions as laid out in the Order of
4 Supervision.

5 40. Supreme Court precedent establishes that individuals whose physical freedom is
6 restricted in some way still retain a liberty interest that "is valuable and must be seen as within
7 the protection" of the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). In
8 *Young v. Harper*, 520 U.S. 143, 147-53 (1997), the Court held that individuals in a pre-parole
9 program designed to reduce prison overcrowding have a protected liberty interest requiring pre-
10 detention process. Courts in this Circuit have consistently applied the *Morrissey* line of cases to
11 the immigration context, holding that individuals on conditional release from ICE custody
12 possess a protected liberty interest in their continued release. *See, e.g., Guillermo M. R. v.*
13 *Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025) (finding that a petitioner who had been out
14 of immigration custody on conditional release had a "liberty interest in his continued release"
15 that is "arguably greater than the interest of parolees in *Morrissey*," given the civil context).

16 41. Once a protected liberty interest is established, courts determine the requisite
17 process by applying the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319,
18 335 (1976). This test considers three factors: (1) the private interest affected by the official
19 action; (2) the risk of an erroneous deprivation of that interest through the existing procedures
20 and the probable value of additional or substitute procedural safeguards; and (3) the
21 government's interest, including the function involved and the fiscal and administrative burdens
22 that additional or substitute procedural requirements would entail. *Haygood v. Younger*, 769 F.2d
23 1350, 1357 (9th Cir. 1985) (en banc) (citing *Mathews*, 424 U.S. at 335).

42. The degree of process due depends on the nature and importance of the interest at stake—the more significant the interest and the greater the risk of impairment, the more robust the procedural safeguards required to satisfy due process. *Haygood v. Younger*, at 1355-56 (citing *Morrissey*, 408 U.S. at 481-82).

43. Significantly, the Supreme Court has repeatedly held that the Constitution generally requires some form of hearing *before* the State deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

44. Post-deprivation process is sufficient to meet due process only in exceptional circumstances where post-deprivation remedies are the only ones the State could reasonably provide. 494 U.S. 113 at 128.

45. Applying these principles, courts in this Circuit have consistently held that due process requires a pre-detention hearing when DHS seeks to re-detain a noncitizen who has been on conditional release from immigration custody. *See, e.g., Guillermo M. R.*, 791 F. Supp. 3d at 1029, 1034; *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D.Cal. 2019); *Jorge M. F. v. Wilkinson*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Meneses v. Santacruz Jr.*, No. 2:25-cv-11206-MCS-PVC, 2025 WL 3481771 (C.D.23 Cal. Dec. 2, 2025); *Alvarenga Matute v. Wofford*, 8u9No. 1:25-cv-01206-KES-SKO (HC), 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025).

46. Courts in this Circuit have also found that deferred action status based on a bona fide U Visa application confers a constitutionally protected interest that cannot be taken away without due process. *See e.g., Sepulveda Ayala v. Bondi*, 794 F. Supp. 3d 901,914 (W.D. Wash. 2025).

PRAYER FOR RELIEF

Mr. Ayala respectfully requests that this Court:

- a. Assume jurisdiction over this matter;

b. Enjoin Respondents from detaining Mr. Ayala, unless and until a hearing can be held before a neutral adjudicator to determine whether his re-detention would be lawful because the government has shown, by clear and convincing evidence, that there has been a material change in circumstances such that he is a danger or a flight risk.

c. Award reasonable costs and attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and,

d. Grant such further relief as the Court deems just and proper.

Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Mr. Ayala because I am his attorney in the instant habeas petition. As his attorney, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATE: April 10, 2026

Respectfully submitted,

/s/ Christina Lee

Christina Lee

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**Application for pro hac vice
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Pro Bono Counsel for Mr. Ayala