

1 Christine Brito, Esq. (CA Bar. No.316536)
2 Law Office of Christine Brito
3 3419 E. Chapman Ave. #355
4 Orange, CA 92869
5 (714)912-5026
6 Christineb@britoesq.com
7 *Attorney for Petitioner*
8 Gamaliel Rodriguez Pastrana

6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 Gamaliel Rodriguez Pastrana,

10 Plaintiff,

11 v.

12 FERETI SEMAIA, Warden of the
13 Adelanto Detention Center; EARNESTO
14 SANTACRUZ, Current or Acting Field
15 Office Director, Los Angeles Field Office,
16 U.S. Immigration and Customs
17 Enforcement; TODD M. LYONS, Acting
18 Director of U.S. Immigration and Customs
19 Enforcement; MARKWAYNE MULLIN,
20 Secretary of the U.S. Department Of
21 Homeland Security; and TODD
22 BLANCHE, Attorney General of the
23 United States, in their official capacities,

24 Defendant.

Case No. 2:26-cv-3880

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

21 **INTRODUCTION**

22
23 1. Petitioner, "Gamaliel Rodriguez Pastrana" or "Petitioner," by and through his
24 undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for
25 declaratory and injunctive relief to compel his immediate release to prevent imminent deportation
26 by the U.S. Department of Homeland Security (DHS), halt him from being transferred out of the
27 jurisdiction of Central District of California, or put on a plane. DHS has communicated their
28 position and commitment to enforcing Petitioner's final order of removal immediately. He is

1 currently at the Desert View Annex Detention Facility since April 9, 2026, without first being
2 provided a due process hearing to determine whether his OSUP revocation was justified.

3 2. Petitioner is a 37-year-old Honduran national, who entered the United States 12 years
4 ago or about July 4, 2012, without inspection. Petitioner immediately fell prey to a human
5 trafficking scheme where he was held hostage along with a large group of other trafficking
6 victims in Arizona. After he escaped his traffickers, he served as a key witness in a human
7 smuggling federal case in Arizona. Unfortunately, Petitioner was unjustly charged in the human
8 smuggling scheme after it was initially dismissed. After being released from federal criminal
9 custody, he was transferred to ICE custody and detained for a few months. Petitioner was granted
10 a \$7,500 bond and released from ICE custody in 2012. There is no evidence that ICE placed
11 Petitioner under any OSUP agreement when he was released under bond in 212.

12 3. Petitioner was placed in removal proceedings where he filed an I-589 Application for
13 Asylum, Withholding of Removal, and protection under CAT. He appeared at all his hearings in
14 immigration court. Petitioner attended all of court hearings.

15 4. On or about September 1, 2016, his relief was denied resulting in a final order of
16 removal. Petitioner did not have the financial resources to hire counsel to file an appeal on his
17 behalf.

18 5. On or about March 12, 2025, Petitioner was summoned to the Department of
19 Homeland Security, U.S. Immigrant and Customs Enforcement Office in Los Angeles after
20 receiving correspondence called "Notice to Obligor to Deliver Alien." Petitioner presented
21 himself at that check-in and did not abscond. Herein Counsel presented evidence of Petitioner's
22 equities in the U.S., and his application for collateral relief before USCIS. Given the evidence, an
23 ICE officer notified Petitioner and Counsel that he would be placed on the "4x4" Order of
24 Supervision Program (OSUP), which included in-person ICE check-ins, home visits, telephone
25 calls, and biometric collection using a mandatory phone application installed on his cell phone.
26 Petitioner had been complying with all the requirements of OSUP monthly since March 2025.
27 Recently Petitioner had also been given a GPS ankle monitor in January 2026. At the most recent
28

1 ICE check-in on April 9, 2026, Petitioner was abruptly redetained, and his OSUP was unlawfully
2 revoked.

3 **6. On April 10, 2026, herein Counsel has been informed of Petitioner's imminent**
4 **deportation. Petitioner's Deportation officer has affirmed that because of Petitioner's**
5 **"prior order of removal, he will be removed as soon as possible."**

6 7. Petitioner has various forms of collateral relief pending before USCIS. Petitioner has
7 Filed both a T Nonimmigrant Visa (T-Visa) and U Nonimmigrant Visa (U-Visa), including
8 inadmissibility waivers. The application for the T-Visa has a receipt date of March 10, 2025. The
9 U-Visa has a receipt date of August 29, 2025. Given Petitioner's procedural posture, Petitioner
10 may also file a Motion to Reopen in Immigration Court with his pending collateral relief to
11 rescind the removal order.

12 8. Petitioner has many positive equities as a father to six children all under 18 years old.
13 On or about October 25, 2021, Petitioner was awarded sole legal and physical custody of all three
14 of his eldest children from Honduras by the Superior Court of California, Los Angeles. Their
15 mother died in Honduras from cancer. Additionally, Petitioner has three other U.S. citizen
16 children. Petitioner is married and stepfather to three more children from his spouse's prior
17 relationships. Petitioner has been the sole financial provider for his large family of eight since
18 2022 when his wife suffered a work-related injury.

19 9. Petitioner has not been subject to any new arrests aside from his federal criminal case
20 in 2012. Petitioner has not been given information about changes in circumstances justified by
21 ICE's abrupt decision to revoke his liberty and place him back into immigration detention.

22 10. Petitioner now files the instant petition for writ of habeas corpus pursuant to 28 U.S.C.
23 § 2241. Petitioner challenges his unlawful revocation of OSUP on April 9, 2026, which violates
24 both the OSUP regulations and his procedural due process rights under the Fifth Amendment.

25 11. The Department of Homeland Security will be enforcing Petitioner's order of removal
26 from 2016 immediately. This Court can remedy Petitioner's unconstitutional violations and order
27 his immediate release from ICE

28 12. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the

1 instant petition for a writ of habeas corpus. Petitioner requests the relief of immediate release.

2 **JURISDICTION**

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

5 14. A district court may grant a writ of habeas corpus when the petitioner “is in custody in
6 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).
7 “[D]istrict courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to
8 immigration detention that are sufficiently independent of the merits of [a] removal order.”
9 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d
10 1196, 1211–12 (9th Cir. 2011)). Pertinent here, the Supreme Court specifically directed that
11 federal courts have jurisdiction to review a constitutional challenge to a non-citizen’s detention.
12 *See Demore v. Kim*, 538 U.S. 510, 517(2003); 28 U.S.C. § 2241 *et. seq.*, the Declaratory
13 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

14 **VENUE**

15 15. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e) because
16 Respondents are officers or employees, acting in their official capacity; because a substantial part
17 of the events or omissions giving rise to his claims occurred in the Central District; and because
18 Petitioner is detained at Desert View Annex Detention Facility in Adelanto, California, which is
19 within the jurisdiction of this District.

20 **REQUIREMENTS OF 28 U.S.C. § 2243**

21 16. The Court must grant the petition for writ of habeas corpus or issue an order to show
22 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. §
23 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days
24 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis
25 added).

26 17. Courts have long recognized the significance of the habeas statute in protecting
27 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
28 important writ known to the constitutional law of England, affording as it does a swift and

1 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
2 (1963) (emphasis added).

3 18. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
4 courts to give petitions for habeas corpus ‘special, preferential consideration to ensure expeditious
5 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
6 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
7 more concerned with efficient trial management than with the vindication of constitutional
8 rights.” *Id.*

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 19. For habeas claims, exhaustion of administrative remedies is prudential, not
11 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion
12 requirement if “administrative remedies are inadequate or not efficacious, pursuit of
13 administrative remedies would be a futile gesture, irreparable injury will result, or the
14 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
15 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should
16 be waived because administrative remedies are (1) futile and (2) his continued detention results in
17 irreparable harm.

18 20. Petitioner is subject to mandatory detention, because of a prior order of removal. Thus,
19 it would be futile for Petitioner to seek a bond hearing from an Immigration Judge, because he is
20 not eligible to seek bond. Even if he did not have a prior order of removal, his request would also
21 be summarily denied based on the current interpretation of the BIA’s recent decisions in
22 *Maldonado Bautista v. Santacruz* Class action. See No. D.C. 5:25-cv-01873-SSS-BFM (9th Cir.
23 2026); *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and continued adherence to *Matter of*
24 *YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025).

25 Further, no statutory exhaustion requirements apply to claim of unlawful custody in
26 violation of his due process rights, and there are no administrative remedies that he needs to
27 exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940
28 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction

1 to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D.
2 Cal. 2000) (same).

3 **PARTIES**

4 21. Petitioner is a detainee at Desert View Annex Detention Facility. He is in custody, and
5 under the direct control of Respondents and their agents.

6 22. Respondent FERETI SEMAIA is the Warden of the Desert View Annex Detention
7 Facility, and he has immediate physical custody of Petitioner pursuant to the facility’s contract
8 with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of
9 Petitioner. Respondent SEMAIA is the immediate legal custodian of Petitioner.

10 23. Respondent EARNESTO SANTACRUZ is sued in his official capacity as the Acting
11 Director of the Los Angeles Field Office of U.S. Immigration and Customs Enforcement, which
12 oversees the Adelanto Detention Facility. Respondent EARNESTO SANTACRUZ is a legal
13 custodian of Petitioner and has authority to release him.

14 24. Respondent TODD M. LYONS is the Acting Director of ICE and is named in his
15 official capacity. Among other things, ICE is responsible for the administration and enforcement
16 of the immigration laws, including the removal of noncitizens. In his official capacity as head of
17 ICE, Respondent Lyons is the legal custodian of Petitioner.

18 25. Respondent MARKWAYNE MULLIN is the Secretary of the DHS and is named in
19 his official capacity. DHS is the federal agency encompassing ICE, which is responsible for the
20 administration and enforcement of the INA and all other laws relating to the immigration of
21 noncitizens. In his capacity as Secretary, Respondent MULLIN has responsibility for the
22 administration and enforcement of the immigration and naturalization laws pursuant to section
23 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002);
24 see also 8 U.S.C. § 1103(a). Respondent MULLIN is the ultimate legal custodian of Petitioner.

25 26. Respondent TODD BLANCHE is the Acting Attorney General of the United States
26 and the most senior official in the U.S. Department of Justice (DOJ) and is named in his official
27 capacity. He has the authority to interpret the immigration laws and adjudicate removal cases.
28

1 The Attorney General delegates this responsibility to the Executive Office for Immigration
2 Review (EOIR), which administers the immigration courts and the BIA.

3 **STATEMENT OF FACTS**

4 27. Mr. Rodriguez is a 36-year-old father to six minor children, and three minor
5 stepchildren. He is of Honduran nationality born on [REDACTED] Mr. Rodriguez fled Honduras
6 in January 2012. He was forced to leave behind his three eldest children in Honduras under the
7 care of their mother Emma after he was facing personal persecution. Mr. Rodriguez did not arrive
8 at the U.S. border until July 4, 2012, at or near Tucson, Arizona. Unbeknownst to Mr. Rodriguez,
9 his then-partner unexpectedly died from late-diagnosed cancer in Honduras on or about July 6,
10 2012, leaving his three eldest children orphaned in Honduras.

11 28. Upon arrival in the U.S. in July 2012, Mr. Rodriguez immediately fell prey to an
12 organized and lucrative scheme of human trafficking where he wound up being harbored and
13 transported by interconnected smugglers in Arizona at or near Mesa, Arizona. Mr. Rodriguez was
14 initially harbored against his will in a locked room along with another migrant victim named
15 [REDACTED] for over one week under the control of a female smuggler. Mr.
16 Rodriguez's smugglers demanded a debt peonage in exchange for his life. The smuggler made
17 threats against his life, including his family relatives in the United States until they paid a large
18 amount for his release from their illegal custody. When the smugglers did not receive the
19 payment, they transferred him to another smuggler at an unknown location in Arizona where
20 more migrants were also being illegally harbored. He was isolated and denied basic necessities.

21 29. During the second week of being harbored, he escaped from the smuggler's private
22 home, along with the other migrant named [REDACTED] While running away from the
23 smugglers on a public highway, a Sheriff from the Maricopa County Sheriff Department
24 discovered both men. Mr. Rodriguez and [REDACTED] were given opportunities to be interviewed in-
25 depth at the Maricopa County Sheriff Station regarding their human trafficking experiences. A
26 car pursuit was initiated between the Sheriff's Department and the smugglers identified by Mr.
27 Rodriguez and [REDACTED] Mr. Rodriguez provided an approximate location of the smuggler's
28

1 home and details of the other illegal held migrants at that home. An arrest was made of the
2 smugglers, including the confirmation and discovery of the other migrants being harbored.

3 30. Unfortunately, constitutional violations ensued against Mr. Rodriguez where he was
4 wrongfully named as a co-defendant in an indictment involving human smuggling felony charges
5 along with about 15 other co-defendants. Initially, the indictment was vacated. However, there
6 was an intervening indictment causing Mr. Rodriguez to be charged for human smuggling
7 individually and jointly with at least 15 other co-defendants on or about July 30, 2012. Mr.
8 Rodriguez denies hiring any defense counsel and does not recall any relationship with any
9 criminal defense counsel during his criminal hearings. Thereafter, he was presented with a plea
10 deal under questionable circumstances, including being under the influence of heavy pain
11 medication following an emergency oral surgery while in criminal custody and reporting witness
12 intimidation. Mr. Rodriguez was coerced into signing the plea agreement on September 18, 2012.
13 He was convicted for solicitation to commit human smuggling, a class 6 felony in Arizona. Mr.
14 Rodriguez's imposition of sentencing was suspended pending the completion of his probation
15 requirements. Mr. Rodriguez successfully completed his probation, and a final judgment was
16 signed by a judge in 2013.

17 31. Petitioner was released from criminal custody in September 2012, but
18 automatically transferred to ICE custody. He was released from ICE Custody in December 2012
19 after being granted an ICE bond for \$7,500 for his release. Petitioner was then placed in removal
20 proceedings, where he filed for defensive relief in the form of I-589, Application for Asylum,
21 Withholding of Removal, and CAT in Los Angeles, California in 2013. Petitioner appeared at all
22 his removal proceedings at the Los Angeles Immigration Court with his former counsel. That
23 relief was denied on or about September 1, 2016. Mr. Rodriguez was ordered removed, but did
24 not depart from the United States. Petitioner firmly believes he was a victim of ineffective
25 assistance of counsel. Petitioner's former immigration attorney was disbarred and has faced
26 disciplinary actions since 2002.

27 32. Petitioner went on to start a new relationship with Ms. Cuervo in Los Angeles,
28

1 California. Mr. Rodriguez had two U.S. citizen children with her. Unfortunately, Mr. Rodriguez
2 fell victim to severe domestic violence by Ms. Cuervo. [REDACTED]

3 [REDACTED] Mr. Rodriguez filed various
4 police reports with Los Angeles County Sheriff's Department between 2017 until 2019. He was
5 granted a criminal protective order in at least one incident. Mr. Rodriguez fought for the legal
6 custody of his minor children, and it was granted.

7 33. On March 4, 2019, Petitioner's eldest three Honduran children arrived in U.S. as
8 unaccompanied minors. They were placed in the transitional foster care in conjunction with the
9 Office of Refugee Resettlement (ORR). Petitioner was authorized to sponsor his three children
10 from ORR, and they began living with him on or about November 25, 2019, after the intervention
11 of numerous transitional physical health and mental health services for his children, including
12 psychological services.

13 34. On or about October 25, 2021, Petitioner was awarded sole legal and physical
14 custody of all three of his eldest children from Honduras by the Superior Court of California, Los
15 Angeles. Similarly, their judge made Special Immigrant Findings of abandonment and neglect on
16 behalf of their mother's involuntary death. Individual I-360, Petitions for Special Immigrant
17 Juvenile Status, were filed in 2021. Today, they have been granted deferred action by USCIS as
18 SIJ beneficiaries until 2026 and 2027, respectively.

19 35. Petitioner's daughter R [REDACTED] has had a long history of psychiatric symptoms
20 including Major Depressive Disorder and Suicidal Ideation as a young minor. [REDACTED]

21 [REDACTED]
22 [REDACTED] Currently, she is only [REDACTED] years old and institutionalized
23 due to her psychiatric condition without a definite discharge date. Petitioner has been the sole
24 caretaker authorized for her care when she is not institutionalized for her safety and others.

25 Petitioner's son G [REDACTED] [REDACTED] is also receiving mental health services from
26 Los Angeles County including wraparound services. Petitioner has undoubtedly prioritized the
27 well-being of his children at the expense of his immigration case since 2019.

28 36. Lastly, Petitioner met his current spouse Ms. Granados around 2018. Since then

1 they have legally married in Huntington Park, California on May 29, 2021. They have one five-
2 year-old U.S. citizen child together. Petitioner has fathered his wife's daughter from her previous
3 relationship since they assumed their relationship.

4 37. Petitioner filed his application for a T-Visa to seek retribution for his past harm and
5 traumatic trafficking conditions he survived and witnessed firsthand in Arizona. He cooperated
6 with local, state, or federal investigations against his smugglers, but was wrongfully convicted.
7 Mr. Rodriguez has no other criminal history. To provide for his family, he has spent the entirety
8 of his life working in the autobody industry.

9 38. On Thursday, April 9, 2026, a routine ICE Check-in, Petitioner was re-detained by
10 ICE and had his OSUP revoked. Herein counsel discovered he is currently at Desert View Annex
11 despite the ICE detainee locator system not reflecting his current place of detention.

12 39. On Friday, April 10, 2026, Petitioner was informed that he is being processed for
13 removal as soon as possible.

14 40. Petitioner risks imminent transfer to another ICE facility where he will be deported
15 and placed on a plane to Honduras.

16 41. If Petitioner is deported, he will automatically lose his pending T-Visa, because of an
17 intrinsic physical presence requirement to keep the collateral relief active with USCIS.

18 **LEGAL FRAMEWORK**

19 ***Statutory Framework***

20
21 42. Petitioner's final order of removal triggers mandatory detention under INA § 241(a)
22 for a 90-day "removal period," during which ICE must remove the noncitizen. Detention is
23 generally mandatory, though release may be possible after 180 days if removal is not likely in the
24 foreseeable future

25 ***Right to a Hearing Prior to Re-incarceration***

26
27 43. In Petitioner's particular circumstances, the Due Process Clause of the Constitution
28

1 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation
2 hearing before a neutral decision maker to determine whether circumstances have materially
3 changed since his release from custody via bond in 2012.

4
5 44. The statute and regulations grant ICE the ability to unilaterally revoke any
6 noncitizen's immigration bond determination or parole, and re-arrest the noncitizen at any time. 8
7 U.S.C. §1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language
8 granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter*
9 *of Sugay*, 17 I&N Dec. at 640, the BIA has recognized an implicit limitation on ICE's authority to
10 re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been
11 made by an immigration judge, no change should be made by [the DHS] absent a change of
12 circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where
13 the prior bond determination was made by an immigration judge *and* where the previous release
14 decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The
15 Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
16 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir.
17 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

18
19 45. ICE has further limited its authority as described in *Sugay*, and "generally only
20 arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*,
21 280 F.Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second
22 Supp. Br. at 1, Dkt. No. 90) (emphasis added). A material change often includes factors like new
23 criminal convictions, pending serious felony charges (e.g., luring, child molestation), or failure to
24 appear at hearings. Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen
25 who had been previously released on bond only after a material change in circumstances. *See*
26 *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.
27
28

1 46. ICE's power to re-arrest a noncitizen who is at liberty following a release from
2 custody is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d
3 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always
4 constrained by the requirements of due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778,
5 782 (1973) (Due Process requires pre-deprivation hearing before revocation of probation);
6 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release
7 from custody since 2012 and ties to his family and community provide him with a protected
8 liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

10 47. Federal district courts in California have repeatedly recognized that the demands of
11 due process and the limitations on DHS's authority to revoke a noncitizen's release from custody
12 set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
13 noncitizen on ICE's supervision, like *before* ICE re-detains him.

15 48. The case of *Phommavongsa v. Chestnut*, No. 1:25-CV-01852-JLT-CDB (HC), 2026
16 WL 114468, at *7 (E.D. Cal. Jan. 15, 2026),^[1] is instructive. In that case, Mr. Phommavongsa, a
17 Laotian man with a final order of removal, had been subject to release on an OSUP for 18 years
18 when ICE redetained him at his check-in appointment. *Id.* at *2. While detained, an immigration
19 judge granted Mr. Phommavongsa's motion to reopen. *Id.* Upon reopening, DHS asserted that
20 statutory authority governing Mr. Phommavongsa's detention shifted from § 1231 to mandatory
21 detention pursuant to § 1226(c), based on his criminal history. *Id.* at *3. The Court held that,
22 considering Mr. Phommavongsa's 18 years out on OSUP, had a "he has an underlying,
23 continuing liberty interest from re-detention," such that he was entitled to a pre-deprivation bond
24 hearing under due process, and ordered his release from custody. *Id.* at *7, *8-10.

27
28 ^[1] *Report and recommendation adopted as modified*, No. 1:25-CV-01852 JLT CDB (HC), 2026
WL 258412 (E.D. Cal. Jan. 30, 2026).

1 49. Courts in this Circuit have found that noncitizens previously released retain a
2 weighty liberty interest that requires predeprivation process under the due process clause, even
3 for noncitizens with convictions that trigger mandatory detention. *See e.g., Duong v. Kaiser*, 800
4 F. Supp. 3d 1030, 1039, 1044 (N.D. Cal. 2025) (“Other courts in this district have found that
5 individuals subject to detention under section 1226(c) have a protected interest in remaining at
6 liberty even though section 1226(c) detention is mandatory.”) (citing cases) (enjoining the
7 government from arresting, detaining, or removing noncitizen without notice and a hearing to
8 determine whether a material change of circumstances justifies his re-detention). *See c.f., Prior v.*
9 *Andrews*, No. 1:25-CV-01131-JLT-EPG (HC), 2026 WL 698801, at *2 (E.D. Cal. Mar. 12, 2026)
10 (distinguishing *Phommavongsa* in a case involving an initial detention under § 1226(c), while
11 recognizing that release and a predeprivation hearing is an appropriate remedy for a noncitizen
12 who was, among other reasons, was previously released on an order of supervision); *See, also*
13 *e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F.
14 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at
15 *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
16 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
17 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained,
18 and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-
19 04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted
20 preventing re-arrest at plaintiff’s ICE interview when he had been on bond for more than five
21 years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal.
22 Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

23
24
25
26 ***Protected Liberty Interest in His Conditional Release***

27 50. In Petitioner’s particular circumstances, the Fifth Amendment’s Due Process Clause
28

1 provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of
2 law.” “It is well established that the Fifth Amendment entitles aliens to due process of law in
3 deportation proceedings,” *Reno v. Flores*, 507 U.S. 292, 306 (1993), and “[a] statute permitting
4 indefinite detention of an alien would raise a serious constitutional problem,” *Zadvydas v. Davis*,
5 533 U.S. 678, 690 (2001). In *Zadvydas v. Davis*, the Supreme Court held that a detention period
6 less than six months is presumptively reasonable as to aliens detained pursuant to 8 U.S.C. §
7 1226(a)(6). 533 U.S. 678 (2001). Beyond that six-month period, the alien must “provide[] good
8 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
9 future.” *Id.* at 701. As to aliens detained pursuant to 8 U.S.C. §§ 1225(b)(1) and (b)(2), the
10 Supreme Court has held that no such 6 month time limit is proscribed, whether implicit or
11 explicit. *Jennings v. Rodriguez*, 583 U.S. 281, 30001 (2018). In *Demore v. Kim*, the Supreme
12 Court noted that shorter detention periods during removal proceedings lasting roughly between a
13 month and a half to five months are a “constitutionally permissible part of [the removal] process.”
14 538 U.S. 510, 530 (2003).

17 51. Several circuit and district courts have found that unreasonably long detention periods
18 with no allowance for a bond hearing may violate the due process clause. See, e.g., *Rodriguez v.*
19 *Marin* (“Rodriguez IV”), 909 F.3d 252, 256 (9th Cir. 2018) (the Ninth Circuit asserted “grave
20 doubts that any statute that allows for arbitrary prolonged detention without any process is
21 constitutional....”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 235 (3d Cir. 2011) (detention of an
22 alien for a period of nearly three years without further inquiry into whether it was necessary to
23 ensure his appearance at the removal proceedings or to prevent a risk of danger to the community,
24 was unreasonable, and, therefore, a violation of the Due Process Clause”); *German Santos v.*
25 *Warden Pike*, 965 F.3d 203 (3d Cir. 2020) (reversing and remanding to district court to order
26 bond hearing while detained under § 27 1226(c)); *Diep v. Wofford*, 1:24-cv-01238-SKO, 2025
27
28

1 WL 604744 (E.D. Cal Feb. 25, 2025) (ordering bond hearing for noncitizen detained under 8
2 U.S.C. § 1226(c) for 13 months); *A.E. v. Andrews*, 1:2528 3 1 cv-00107-KES-SKO, 2025 WL
3 1424382 (E.D. Cal. May 16, 2025) (ordering bond hearing for noncitizen detained under 8
4 U.S.C. § 1225(b) for 20 months). However, these cases involved detention periods substantially
5 longer than 6 months.
6

7 **52. Here, Petitioner has only been detained for less than 48 hours, however, ICE has**
8 **communicated that they are going to remove/deport him as soon as possible. ICE has all the**
9 **power to enforce that removal order and have him deported within hours.**

10 53. Here, Petitioner's family has communicated to herein counsel of his recent detention.
11 Nearly 48 hours, Petitioner's detention status is still however void from the public eye using the
12 ICE detainee locator system. Had DHS not responded to an email communication on Friday April
13 10, 2026, requesting Petitioner's whereabouts, he may have been deported expeditiously and in
14 violation of his constitutional rights. The Department has maintained a duly signed G-28 on file
15 from herein Counsel from March 2025 in relation to All Matters Before ERO, yet the Department
16 failed to notify counsel of his detention. This act is a clear example of Petitioner being denied
17 access to Counsel. Not a single court or judge would have noticed that Petitioner is in ICE
18 custody, except for ICE alone. These failures allow ICE to unilaterally deprive Petitioner of his
19 liberty and access to Counsel. While Petitioner does have a criminal record, ICE has had this
20 information *prior to* his last immigration bond and release in 2012. No new arrests or criminal
21 conduct has ever occurred on Petitioner's behalf to justify the unlawful revocation of OSUP.
22

23 54. As a result of Petitioner's illegal detention *ab initio*, both counsel and
24 Petitioner have been harmed by substantial limitations to effectuate legal representation. Thus,
25 Petitioner's continued detention violates due process without a bond hearing constitutes a
26
27
28

1 violation of due process. Unlike *Denmore*, the detention of Petitioner should not have been made
2 permissible from the get-go. *Demore*, 538 U.S. at 531.

3
4 **CLAIMS FOR RELIEF**

5 **COUNT ONE**

6 **Violation of Fifth Amendment Right to Due Process**

7 55. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein,
8 the allegations in all the preceding paragraphs.

9 56. The Due Process Clause of the Fifth Amendment forbids the government from
10 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

11 57. Petitioner has a vested liberty interest in his lawful conditional release. Due Process
12 does not permit the government to strip him of that liberty without a hearing before this Court.
13 *See Morrissey*, 408 U.S. at 487-488.

14 58. The Court must therefore order that ICE release him from his current unlawful
15 custody.

16 59. Prior to any re-arrest, the government must provide him with a hearing before a
17 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
18 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
19 that is a danger to the community or a flight risk, such that his reincarceration is warranted.
20 During any custody determination hearing that occurs, this Court or, alternatively, a neutral
21 adjudicator must consider alternatives to detention when determining whether ‘s re-incarceration
22 is warranted.
23
24

25 **PRAYER FOR RELIEF**

26 Wherefore, Petitioner respectfully requests this Court to grant the following:
27

- 28 (1) Assume jurisdiction over this matter;

- (2) Declare that ICE's April 9, 2026, apprehension and detention of Petitioner was an unlawful exercise of authority, because the ICE unlawfully revoked his OSUP;
- (3) Order ICE to immediately release Petitioner from his unlawful detention;
- (4) Allow Petitioner an opportunity to file a Motion to Reopen in Immigration Court to present evidence of his collateral relief and positive equities
- (5) Declare that DHS adjudicate Petitioner's T-Visa, U-Visa, and a pending I-765 Application for Work Authorization under his OSUP compliance outside of processing times due to the substantial delays by the Government. Proper Adjudication could avoid Petitioner losing his collateral relief all together under the Mandamus Act (28 U.S.C. Section 1361) and often the Administrative Procedure Act (APA);
- (6) Enjoin from re-arresting unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful;
- (7) Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful – i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;
- (8) Order ICE to not transfer to another detention center out of this District;
- (9) Order ICE to return all of Petitioner's possessions such as his valid identification cards and place him in the same position he was prior to his arrest;
- (10) Award reasonable costs and attorney fees; and
- (11) Grant such further relief as the Court deems just and proper.

Dated: April 10, 2026

//

//

Respectfully submitted,

Christine Brito

Christine Brito, Esq. (CA Bar. No.316536)
Law Office of Christine Brito
3419 E. Chapman Ave. #355
Orange, CA 92869
(714)912-5026
Christineb@britoesq.com
Attorney for Petitioner
Christine Brito

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

I represent Petitioner, Gamaliel Rodriguez Pastrana, and submit this verification on his behalf. I have discussed with the Petitioner the events described in the Petition. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on April 10, 2026, in Orange, CA.

Christine Brito

Christine Brito, Esq. (CA Bar. No.316536)
Law Office of Christine Brito
3419 E. Chapman Ave. #355
Orange, CA 92869
(714) 912-5026
Christineb@britoesq.com
Attorney for Petitioner
Gamaliel Rodriguez Pastrana

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 10, 2026, I served a copy of this Petition for Writ of Habeas Corpus by email to the following individual:

David M. Harris
Chief of the Civil Division
U.S. Attorney's Office
300 N. Los Angeles St. Ste 7516
Los Angeles, CA 90012-3341
Email: David.M.Harris@usdoj.gov

Christine Brito

Christine Brito, Esq. (CA Bar. No.316536)
Law Office of Christine Brito
3419 E. Chapman Ave. #355
Orange, CA 92869
(714)912-5026
Christineb@britoesq.com
Attorney for Petitioner
Gamaliel Rodriguez Pastrana