

1 Leah L. Chavarria, Esq.  
CA Bar # 297506  
2 2251 San Diego Ave., STE B-200  
San Diego, CA 92110  
3 leah@hurwitzholt.com  
*Pro Bono* Attorney for Petitioner

4  
5 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
6 **SAN DIEGO**

6 P.R.<sup>1</sup>,  
Petitioner,

Case No. '26CV3150 RBM JLB

7 v.

Agency No. 

8 Todd Blanche, Acting Attorney  
General of the United States,  
9 Department of Justice;

10 Markwayne Mullin, Secretary of  
Homeland Security;

11 Todd Lyons, Senior Official  
Performing the Duties of the Director  
12 of U.S. Immigration and Customs  
Enforcement;

13 Patrick Divver, Field Office Director of  
14 the San Diego Immigration and  
Customs Enforcement Office;

15 Jorge Velarde, Assistant Field Office  
Director of the Immigration and  
16 Customs Enforcement, Otay Mesa  
Detention Center;

17 Christopher J. LaRose; Senior Warden,  
18 Otay Mesa Detention Center;  
Respondents.

**PETITION FOR WRIT OF  
HABEAS CORPUS BY A  
PERSON IN FEDERAL  
CUSTODY UNDER  
28 U.S.C. § 2241 AND ORDER TO  
SHOW CAUSE**

19 \_\_\_\_\_

20 <sup>1</sup> Petitioner requests this petition move forward under this pseudonym and separately  
files a motion in that regard.

- 1 -

21 **PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER  
28 U.S.C. § 2241**

1 **INTRODUCTION**

2 1. Petitioner, P.R.  (hereinafter "Petitioner"), alleges he has  
3 experienced prolonged detention in violation of his due process rights and at great  
4 risk to his health and survival because he has experienced inadequate healthcare  
5 for his psychological conditions, diabetes, and other injuries sustained while  
6 detained and requests immediate release. Additionally, he requests this court make  
7 an order to show cause and that he may not be transferred during the pendency of  
8 this petition.

9 2. Petitioner prefers not to file a temporary restraining order given the clear legal  
10 precedent in this case substantiating Petitioner's claims, and would instead request  
11 Respondents be required to provide a response within three days or alternatively  
12 timing pursuant to Chief Judge Order No. 144. Depending on any health issues  
13 that may arise during this petition, a restraining order may become necessary.

14 **JURISDICTION**

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

17 4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
18 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States  
19 Constitution (Suspension Clause).

20 5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*

1 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs  
2 Act, 28 U.S.C. § 1651.

3 6. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of  
4 jurisdiction. Petitioner is not contesting the commencement or adjudication of  
5 removal proceedings against him, nor is he raising an issue with respect to the  
6 execution of removal. Petitioner does challenge his prolonged detention and  
7 adequate access to healthcare while detained. The petition is independent of the  
8 removal proceedings and all questions related to the commencement of removal  
9 proceedings or any part of the removal process. “[C]laims that are independent of  
10 or collateral to the removal process do not fall within the scope of § 1252(b)(9).”  
11 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section  
12 1252(g) “does not prohibit challenges to unlawful practices merely because they  
13 are in some fashion connected to removal orders.” *Ibarra-Perez v. United States*,  
14 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction  
15 by Sections 1252(g) and 1252(b)(9).

16 **VENUE**

17 7. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center  
18 (“OMDC”) in the County of San Diego, which is within the jurisdiction of this  
19 District. When he was not detained, he lives in San Diego, California, with his  
20 longtime partner. Further, a substantial part of the events or omissions giving rise

1 to his claims occurred in this District and no real property is involved in this  
2 action. 28 U.S.C. § 1391(e).

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

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

9 9. Courts have long recognized the significance of the habeas statute in protecting  
10 individuals from unlawful detention. The Great Writ has been referred to as  
11 “perhaps the most important writ known to the constitutional law of England,  
12 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
13 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

14 **PARTIES**

15 ***Petitioner***

16 10. Petitioner, P.R., is a Mexican national who is in custody at OMD, located at  
17 7488 Calzada De La Fuente, San Diego, CA 92154. He is in the custody, and  
18 under the direct control, of Respondents and their agents.

19 ***Respondents***

1 11. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney  
2 General of the United States and the senior official of the U.S. Department of  
3 Justice ("DOJ"). In that capacity, they have the authority to adjudicate removal  
4 cases and to oversee the Executive Office for Immigration Review ("EOIR"),  
5 which administers the immigration courts and the Board of Immigration Appeals.  
6 Respondent U.S. Attorney General is a legal custodian of Petitioner.

7 12. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of  
8 the DHS. In this capacity, Respondent Secretary is responsible for the  
9 implementation and enforcement of the Immigration and Nationality Act, and  
10 oversees U.S. Immigration and Customs Enforcement ("ICE"), the component  
11 agency responsible for Petitioner's detention and custody. Respondent Secretary is  
12 a legal custodian of Petitioner.

13 13. Respondent Todd Lyons is sued in his official capacity as the Senior Official  
14 Performing the Duties of the Director ICE. Respondent Lyons is the legal  
15 custodian of Petitioner.

16 14. Respondent Patrick Divver is sued in his official capacity as the Field Office  
17 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of  
18 Petitioner and has authority to release him.

19

20

21

1 15. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office  
2 Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a  
3 legal custodian of Petitioner and has direct authority to release him.

4 16. Respondent Christopher J. LaRose is sued in his official capacity as the Senior  
5 Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical  
6 custodian of Petitioner and has direct authority to release him.

7 **STATEMENT OF FACTS**

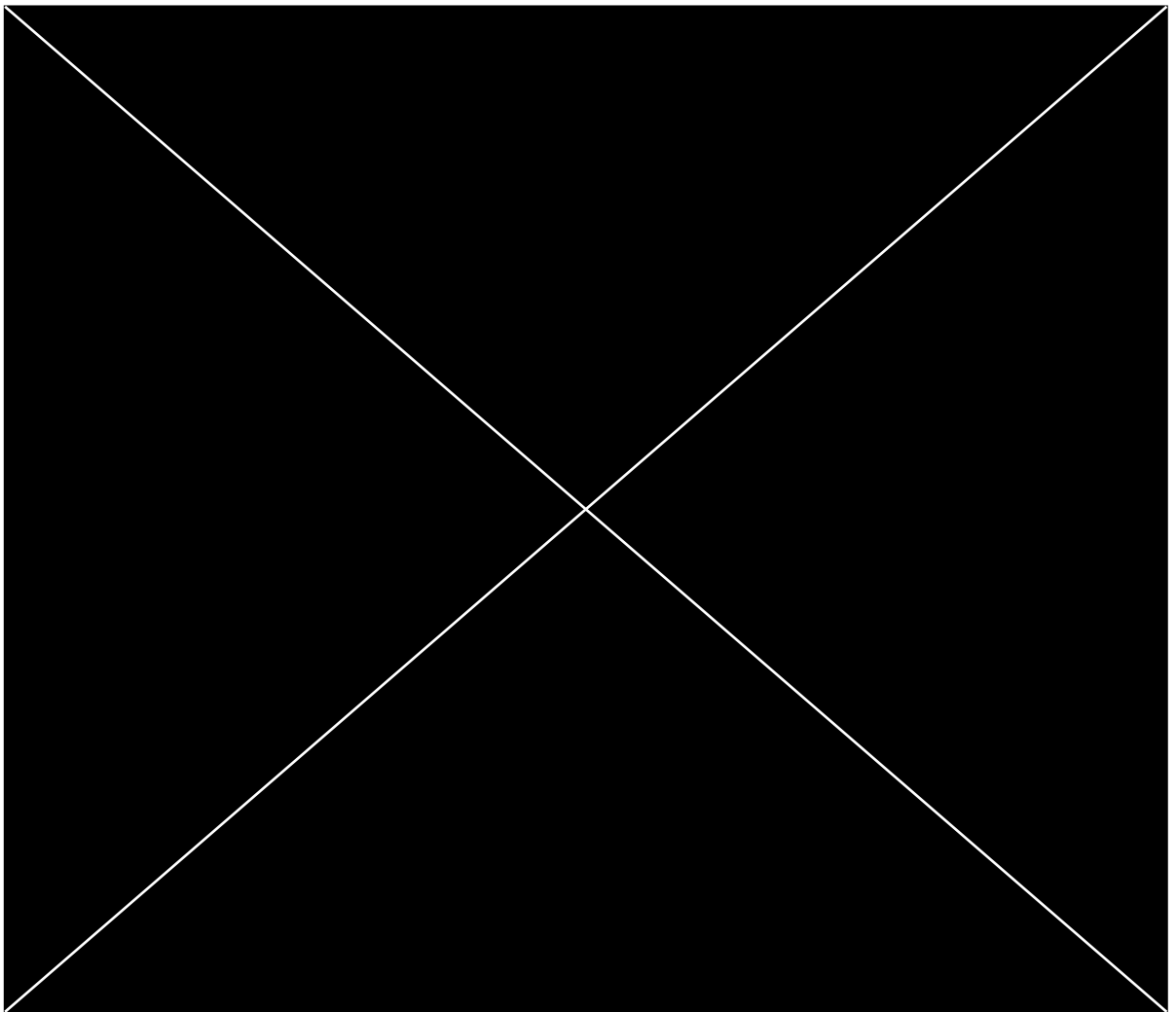
8 17. The following facts were ascertained from Counsel's review of Petitioner's  
9 records in his removal proceedings and while representing Petitioner before the  
10 Board of Immigration Appeals ("BIA").

11 18. Petitioner is a 56-year-old native and citizen of Mexico, with a long history of  
12 presence and significant ties in the United States. He is a father to two U.S. citizen  
13 daughters, [REDACTED] He is also beloved by his longtime partner and co-  
14 business operator and her two U.S. citizen children, [REDACTED]  
15 [REDACTED] have come to love Petitioner like a  
16 father and have been integral in supporting their mother and counsel in his defense  
17 while detained.

18 19. According to Petitioner, he first entered the United States between 1980 and 1985,  
19 when he was between 12 and 15 years old. An immigration judge ("IJ") granted  
20 him voluntary departure and he was removed to Mexico in approximately 1992.

1 He returned soon thereafter. On April 16, 2015, U.S. immigration officers located  
2 Petitioner's address in Fresno, California, arrested him there, and expeditiously  
3 removed him to Mexico. Petitioner attempted to reenter the United States  
4 unlawfully on April 20, 22, and 26 of that year, but was apprehended and  
5 processed for expedited removal each time.

6 20. According to testimony the Immigration Judge found credible in his removal  
7 proceedings, during his attempted entry to the United States on April 20, 2015, at



1 21

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18 22. Petitioner remained in the United States thereafter, working as a self-employed  
19 food truck operator to support himself and his family.

20

21

1 23.

2

3

4

5

6 24. As noted in Petitioner's immigration and criminal records, Petitioner has previous

7 criminal history. All but one of the arrests led to charges being filed. His only

8 conviction is for a violation of California Vehicle Code § 23152(B) (driving under

9 the influence of alcohol). On April 20, 2009, the criminal court sentenced him to

10 3 years of summary probation and 180 days custody, suspended. He has arrests

11 without charge for burglary (July 7, 1987), smuggling (June 12, 1991), public

12 intoxication (March 16, 2009) and lewd act with a child of 14-15 years (August

13 26, 2024). Therefore, Petitioner is not subject to mandatory detention.

14 25. On December 12, 2024, Immigration and Customs Enforcement ("ICE")

15 completed an "at-large administrative action" on Petitioner at his home,

16 presumably because of his August 26, 2024, arrest that resulted in no charges<sup>2</sup>.

17

18 <sup>2</sup> See Exhibit B, Fresno County District Attorney verification of no charges filed,  
19 dated September 5, 2024, suggesting that ICE must have known that the arrest quickly  
20 resulted in zero charges and therefore such an accusation should not result in a  
revocation of prior conditions of release. As Petitioner explains to me, and in looking  
over the records related to the charge, it appears to be the malicious act of an ex-

1 That same day, ICE served Petitioner a Notice to Appear (“NTA”), charging him  
2 as removable from the United States pursuant to INA § 212(a)(7)(A)(i)(I) (entry  
3 without valid entry documents), and took him into custody at the Otay Mesa  
4 Detention Center where he remains detained until today. Ex. C, NTA.

5 26. Petitioner, through prior counsel, complied with all filing deadlines to file his  
6 application for asylum and related relief, along with over 200 pages of evidence in  
7 support of his applications.

8 27. On October 23, 2025, Petitioner appeared with prior counsel Attorney Jordan  
9 Schweller for his individual hearing. The IJ appeared via video conference. On the  
10 record, it was discussed that Petitioner’s partner’s son,   
11 in the audience. All evidence from the record was admitted and no evidence  
12 received reduced weight in probative value. At the conclusion of the hearing, the  
13 IJ denied all of the Petitioner’s relief applications, finding him in relevant part  
14 barred from withholding of removal pursuant to 8 U.S.C. § 1231(b)(3)(B)(iii) for  
15 having committed a serious non-political crime, and ineligible for relief pursuant  
16 to the Convention Against Torture. The IJ additionally found some parts of  
17 Petitioner’s testimony to lack credibility but other parts to be credible. Notably,  
18 the IJ found his testimony relating to his torture to be credible.

19 \_\_\_\_\_  
20 partner. Even the now adult child and supposed victim has reached out to Petitioner in  
his support and is not the reporter of the alleged crime.

1 28. Through present *pro bono* Counsel, Petitioner timely filed a notice of appeal with  
2 the BIA, which on April 27, 2026, affirmed the decision of the IJ without opinion.  
3 Petitioner, through present counsel, appealed to the U.S. Court of Appeals for the  
4 Ninth Circuit (Case No. 26-3191) regarding the many issues addressed in  
5 Petitioner's appeal that are unresolved. Additionally, Petitioner qualifies to seek  
6 protection through a trafficking victim visa (*see* 8 CFR § 214.202) on account of  
7 his torture while being trafficked and his report to the FBI of such trafficking.  
8 Upon release from custody, Counsel will diligently work with Petitioner to file  
9 this additional application for relief. Counsel has been unable to file this  
10 application while Petitioner is in custody because in Counsel's experience, ICE  
11 does not present detainees for required biometrics appointments for U.S.  
12 Citizenship and Immigration Services applications and the application will be  
13 deemed abandoned if Petitioner is not presented for that appointment.

14 29. While in detention, Petitioner has suffered significant mental anguish and  
15 physical health issues exacerbated by inconsistent medical treatment. Petitioner  
16 has Type II diabetes, diagnosed before custody. Petitioner requested his medical  
17 records from medical department at OMDC and at various times was provided  
18 hundreds (if not thousands) of pages of records. All of Petitioner's OMDC  
19 medical records obtained up until March 2026 were reviewed by Dr. Deepa

20

21

1 Sannidhi, MD<sup>3</sup>, who provided a summary and conclusion on his medical  
2 treatment. Dr. Sannidhi found that Petitioner has “very ‘brittle’ diabetes” with  
3 “many highs and lows.” Ex. A, p. 11. Dr. Sannidhi notes concerns with  
4 inexplicable changes to his medication dosage, stating “an improved A1C in this  
5 case is not an indication that his blood sugars were improved because of how  
6 many highs and lows he was having, as A1C is an average of blood sugars over 3  
7 months and the many lows can bring the average down, falsely suggesting his  
8 diabetes is under control.” *Id.* A solution is a “continuous glucose monitor” which  
9 may not be easily obtained at OMDC. *Id.* Dr. Sannidhi is further concerned that  
10 his “basal insulin dose seems to be entirely static” despite his highs and lows and  
11 his lack of eating. *Id.* Dr. Sannidhi suggests that the dose should thus not be static.  
12 *Id.* Additionally, Dr. Sannidhi has concerns about his glaucoma treatment, given it  
13 appears he was not taken for a follow up as recommended by an ophthalmologist  
14 at UCSD. *Id.* Finally, Petitioner suffered multiple falls in March, which have  
15 resulted in an “overall worsening of his medical course” but “it does not appear  
16 the cause of the falls were investigated from a medical perspective other than to  
17 send him to the ER.” *Id.* Dr. Sannidhi concludes, “based on the medical records,

18 \_\_\_\_\_  
19 <sup>3</sup> Dr. Sannidhi is a board-certified family medicine physician, practicing obesity and  
20 lifestyle medicine at UC San Diego Health and Associate Clinical Professor,  
Department of Family Medicine and Public Health University of California, San  
Diego School of Medicine. Ex. A, pp. 13 – 23.

1 there appears to be a pattern where [Petitioner] has to go to the medical area  
2 repeatedly and the bureaucratic back and forth seems to cause some delays in his  
3 care.” *Id.* at pp. 11 – 12.

4 30. Counsel can verify a seemingly worsening medical condition for Petitioner at  
5 legal visits. Most recently, upon a legal visit on May 1, 2026, Petitioner  
6 complained about his eye and disclosed he has not yet been taken to the  
7 ophthalmologist. Additionally, his family calls counsel regularly with concerns  
8 about Petitioner’s worsening condition and Petitioner is frequently placed in  
9 isolation, preventing counsel from visiting him, and it is unclear as to why.

10 **CLAIMS FOR RELIEF**

11 **CLAIM ONE**

12 **Violation of the Fifth Amendment to the United States Constitution  
(Substantive Due Process – Detention)**

13 31. Petitioner incorporates by reference the allegations of fact set forth in the  
14 preceding paragraphs.

15 32. Petitioner’s arrest and detention was unlawful and on this basis his immediate  
16 release is required.

17 33. The Due Process Clause of the Fifth Amendment protects all “person[s]” from  
18 deprivation of liberty “without due process of law.” U.S. Const. amend.  
19 V. “Freedom from imprisonment—from government custody, detention, or other  
20

forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

34. Immigration detention is constitutionally permissible only when it furthers the government’s legitimate goals of ensuring the noncitizen’s appearance during removal proceedings and preventing danger to the community. *See id.* When the Government has previously decided to release a noncitizen and there is no evidence in the record of any changed circumstance sufficient to have caused the Government to reconsider its initial decision to release the noncitizen, courts have found the Government’s interest in re-detention is low. *Doe v. Chestnut*, No. 1:25-cv-01372CDB (HC), 2025 WL 3295154, at \*10 (E.D. Cal. Nov. 26, 2025) (citations omitted).

35. “[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

1 36. In immigration habeas corpus petition cases, courts regularly order release upon  
2 determining that detention violates substantive due process. *See, e.g., Lawson v.*  
3 *Gerlinski*, 332 F. Supp. 2d. 735, 744-45 (M.D. Pa. 2004) (concluding that  
4 petitioner's prolonged immigration detention violated substantive due process and  
5 ordering release); *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 752 (M.D. Pa. 2004)  
6 (same); *Nunez- Pimentel v. ICE*, No. 1:07-CV-1915, 2008 WL 2593806, at \*5  
7 (M.D. Pa. June 27, 2008) (same); *see also Ekeh v. Gonzales*, 197 F. App'x 637,  
8 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Bah v.*  
9 *Cangemi*, 489 F. Supp. 2d 905, 919 (D. Minn. 2007) (same); *Nguyen v. Fasano*,  
10 84 F. Supp. 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why  
11 petitioner should not be released pursuant to *Zadvydas*). Indeed, courts in this  
12 district have joined a number of district courts to recognize that noncitizens have a  
13 significant liberty interest in "continued freedom after release on own  
14 recognizance," *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14,  
15 at \*6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in "freedom from  
16 imprisonment" after "the government grants a [noncitizen] parole into the  
17 country," *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL 2770629, at  
18 \*3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Miguel v. Bondi et al.*,  
19 26-CV-1636 JLS (SBC) (S.D. Cal. Mar. 27, 2026) ("Petitioner has a protected  
20 liberty interest in remaining out of custody."); *Tunaca-Galindo v. U.S. Attorney*

1 *General et al.*, No. 3:26-cv-02226-LL-BJW (S.D. Cal. May 5, 2026) (immediate  
2 release granted when Petitioner was re-detained against his liberty interest;  
3 Petitioner had an appeal with the BIA pending on his denial of asylum); *Prieto-*  
4 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19,  
5 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.  
6 Cal. Nov. 17, 2025).

7 37. Moreover, there is ample detail that Petitioner's substantive due process rights are  
8 being violated. Because Petitioner's health condition is so volatile and he is not  
9 getting adequate medical care (*see generally* Ex. A), Petitioner's immediate  
10 release is necessary in light of his due process rights to liberty and access to  
11 adequate healthcare.

12 38. The possibility of death is not proportional to any interest the government may  
13 claim.<sup>4</sup> Any such risk can be sufficiently mitigated by less restrictive measures

14  
15 <sup>4</sup> Notably, deaths in immigration custody are at an all time high. See generally:

- 16 • According to ICE reporting, there were 29 deaths so far in fiscal year  
17 2026 and 24 deaths reported in fiscal year 2025. That is a substantial  
18 increase when compared with 12 deaths in fiscal year 2024, four  
19 deaths in fiscal year 2023, and three deaths in fiscal year 2022. *See*  
20 *Detainee Death Reporting*, accessible at:  
<https://www.ice.gov/detain/detainee-death-reporting>.
- Wendy Fry and Sergio Olmos, *Six people died in California ICE  
detention centers as Trump deportations soared*, Cal Matters, May 15,  
2026, accessible at: [https://calmatters.org/justice/2026/05/ice-](https://calmatters.org/justice/2026/05/ice-detention-centers-state-inspections/)  
[detention-centers-state-inspections/](https://calmatters.org/justice/2026/05/ice-detention-centers-state-inspections/).

1 than continued physical custody. *See Perez v. Wolf*, 445 F. Supp. 3d 275, 291, 295  
2 (N.D. Cal. 2020) (upholding IJ’s finding of dangerousness and nonetheless  
3 ordering release from immigration detention on conditions of release based on  
4 substantive due process claim); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020  
5 WL 1701724, at \*4 (N.D. Cal. Apr. 8, 2020) (holding that physical custody was  
6 “excessive in relation” to DHS’s undisputed interest in preventing flight risk and  
7 ordering release from immigration detention on conditions of release based on  
8 substantive due process claim).

9 39.If the Court finds that Petitioner’s continued detention is punitive and violates  
10 substantive due process, the proper remedy is to order immediate release. That  
11 remedy is well within the Court’s habeas power. The federal habeas statute directs  
12

- 
- 13 • Judd Legum, *ICE Has Stopped Paying Contractors for Detainee*  
14 *Medical Treatment*, Mother Jones, January 20, 2026, accessible at:  
<https://www.motherjones.com/politics/2026/01/ice-detainees-medical-treatment-denied-payments-contractors-va/>.
  - 15 • Senator Jon Ossoff, *Medical Neglect & Denial of Adequate Food or*  
16 *Water in U.S. Immigration Detention*, October 2025, accessible at:  
[https://www.ossoff.senate.gov/wp-content/uploads/2025/10/25.10.24\\_Sen.-Ossoff-Medical-Neglect-Denial-of-Adequate-Food-or-Water-in-U.S.-Immigration-Detention.pdf](https://www.ossoff.senate.gov/wp-content/uploads/2025/10/25.10.24_Sen.-Ossoff-Medical-Neglect-Denial-of-Adequate-Food-or-Water-in-U.S.-Immigration-Detention.pdf).
  - 17 • Disability Rights Center, *They Treat Us Like Dogs in Cages’: Inside*  
18 *the Adelanto ICE Processing Center*, July 17, 2025, accessible at:  
19 <https://www.disabilityrightsca.org/drc-advocacy/investigations/inside-the-adelanto-ice-processing-center>.
  - 20 •

1 district courts to “hear and determine the facts” of a habeas petition and to  
2 “dispose of the matter as law and justice require.” 28 U.S.C. § 2243; *see also*  
3 *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining that as far back as the  
4 nineteenth century, “the Court interpreted the predecessor of § 2243 as vesting a  
5 federal court ‘with the largest power to control and direct the form of judgment to  
6 be entered in cases brought up before it on habeas corpus’”) (quoting *In re*  
7 *Bonner*, 151 U.S. 242, 261 (1884)).

8 1. Additionally, Petitioner is not a flight risk or danger to the community, as  
9 evidenced by his nine years at liberty on parole without any criminal conviction or  
10 violation of law and ongoing interest in his access to relief and protection from  
11 future torture and continued contracted relationship with present Counsel.  
12 Accordingly, Petitioner is being detained in violation of the Due Process Clause of  
13 the Fifth Amendment.

## 14 CLAIM TWO

### 15 Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process – Detention)

16 1. As part of the liberty protected by the Due Process Clause, Petitioner has a  
17 weighty liberty interest in avoiding re-detention after his release. *See Young v.*  
18 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82  
19 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at 969–

1 70 (holding that a noncitizen has a protected liberty interest in remaining out of  
2 custody following an IJ's bond determination).

3 2. Accordingly, "[i]n the context of immigration detention, it is well-settled that due  
4 process requires adequate procedural protections to ensure that the government's  
5 asserted justification for physical confinement outweighs the individual's  
6 constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872  
7 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127 (Generally, "the Constitution  
8 requires some kind of a hearing *before* the State deprives a person of liberty or  
9 property."). In the immigration context, for such hearings to comply with due  
10 process, the government must bear the burden to demonstrate, by clear and  
11 convincing evidence, that the noncitizen poses a flight risk or danger to the  
12 community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also*  
13 *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

14 3. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*  
15 *Wofford*, 2025 WL 2996577, \* 4 (E.D. Ca. Oct. 24, 2025) (confirming that  
16 noncitizen with an outstanding removal order had a protected liberty interest due  
17 to his previous conditional release).

18 4. Prior to his re-detention in December of 2024, Petitioner had no notice of  
19 Respondents' intention to re-detain him and no opportunity to contest that action.  
20 Because the private interest in freedom from immigration detention is substantial,

1 due process requires the government to bear the burden of proving by clear and  
2 convincing evidence that Petitioner is a flight risk or danger to the community  
3 before re-detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852,  
4 \*11 (N.D. Ca. Sep. 16, 2025).

5 5. The government has no legitimate interest in detaining Petitioner without a pre-  
6 deprivation hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, \*7 (E.D. Ca.  
7 Aug. 8, 2025) (finding that “the government’s asserted interest is hinged on mere  
8 speculation about [the noncitizen’s] risk of flight or dangerousness” given that  
9 noncitizen was complying with terms of his probation when detained); *Noori v.*  
10 *LaRose*, 807 F. Supp. 3d 1146, 1164 (S.D. Cal. 2025) (“Petitioner is not an  
11 ‘arriving’ noncitizen but one that has [been] present in our country for over a year.  
12 This substantial amount of time indicates he is afforded the Fifth Amendment’s  
13 guaranteed due process before removal.”). Bond hearings are a routine part of  
14 immigration court proceedings, imposing a minimal cost to the government. *See*  
15 *Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, \*6 (E.D. Ca. March 3,  
16 2025). Nothing in Petitioner’s record suggests that he would abscond or endanger  
17 the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v.*  
18 *Wilkinson*, 2021 WL 783561 \*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*,  
19 2020 WL 5074312, \*3 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s  
20 concern that delay in scheduling a hearing could exacerbate flight risk or danger is

1 unsubstantiated in light of petitioner's strong family ties and his continued  
2 employment during the pandemic as an essential agricultural worker"). In fact,  
3 Petitioner is represented by counsel and has a demonstrated record of attendance  
4 when scheduled for hearings or immigration-related appointments. The  
5 government has not sufficiently demonstrated the changed circumstances that  
6 required his detention given that Petitioner had been released on parole and out of  
7 custody for almost 10 years waiting for proceedings to initiate and had no issues  
8 with law enforcement in the United States apart from an unsubstantiated claim  
9 against him in August 2024 that by September 5, 2024, had been deemed  
10 insufficient for charges to even be filed against him. There is no reason to think  
11 that his compliance will change if he is released pending a pre-deprivation custody  
12 hearing. Additionally, he is eligible for an affirmative application for T  
13 nonimmigrant status upon a release from custody and will file for such relief with  
14 the assistance of Counsel.

15 **COUNT THREE**

16 **Violation of 8 U.S.C. § 1231(a)(6)**  
17 **(Detention in Excess of Six Months)**

- 18 6. Petitioner incorporates the allegations in the paragraphs above as though fully set  
19 forth here.  
20

1 7. The Immigration and Nationality Act authorizes a post-removal-period detention  
2 of six months to allow the United States to effectuate removal. 8 U.S.C. §  
3 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678 (2001).

4 8. There is good reason to believe that there is no significant likelihood of  
5 Petitioner's removal in the reasonably foreseeable future. Petitioner has been  
6 detained since December 2024.

7 9. Respondents do not have evidence sufficient to demonstrate that Petitioner's  
8 removal is reasonably foreseeable.

9 10. Petitioner is being held in violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas v.*  
10 *Davis*, 533 U.S. 678 (2001).

11 **COUNT FOUR**  
12 **Violation of Due Process**  
13 **(Indefinite Detention)**

14 11. Petitioner incorporates the allegations in the paragraphs above as though fully set  
15 forth here.

16 12. Indefinite detention violates the Fifth Amendment's Due Process Clause.  
17 *Zadvydas v. Davis*, 533 U.S. at 682, 689.

18 13. There is no significant likelihood of Petitioner's removal in the reasonably  
19 foreseeable future.

1 14. Respondents do not have evidence sufficient to demonstrate that Petitioner's  
2 removal is reasonably foreseeable. Petitioner's detention in excess of six months  
3 without such evidence of imminent removal is a violation of Due Process.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner prays that this Court grant the following relief:

6 1) Assume jurisdiction over this matter;

7 2) Issue an order preventing Respondents from transferring Petitioner away from the  
8 Otay Mesa Detention Center, the closest detention center to counsel's office;

9 3) Issue an order to show cause and require a response within three days from  
10 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §  
11 2243 or another timeline so determined by the Court;

12 4) Declare that Petitioner's detention is unlawful;

13 5) Issue a writ of habeas corpus requiring Respondents to release Petitioner under the  
14 same conditions as before he was detained (parole without an ankle monitor) and  
15 that re-detention may not be in violation of the Constitution, any law, or any  
16 regulation; or that EOIR must provide a bond hearing before a fair, neutral, open-  
17 minded arbiter, where the DHS bears the burden by clear and convincing evidence  
18 and if the bond hearing is not fair and neutral, and the burden of proof incorrectly  
19 applied, that Petitioner be released immediately;

20

- 1 6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act  
2 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;  
3 and  
4 7) Grant any other and further relief that this Court deems just and proper.

5

6 Dated: May 20, 2026

Respectfully submitted,

7

/s/ Leah L. Chavarria

8

Leah L. Chavarria

*Pro bono Counsel for Petitioner*

9

10

11 **LIST OF EXHIBITS<sup>5</sup>**

12 EXHIBIT A: Declaration of Dr. Deepa Sannidhi with CV

13 EXHIBIT B: County of Fresno District Attorney Letter

14 EXHIBIT C: Notice to Appear

15

16

17

18

19

20 <sup>5</sup> Petitioner will request these documents be under seal given the sensitive nature of  
this case.

- 24 -

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

I represent Petitioner and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of May, 2026.

/s/ Leah L. Chavarria  
Leah L. Chavarria  
*Pro bono Counsel for Petitioner*