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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **POUYA GOLESTANEH,**
10 **Petitioners,**

11 **vs.**

12 **CHRISTOPHER LAROSE, warden of**
13 **Otay Mesa Detention Center;**
14 **PATRICK DIVVER, San Diego Field**
15 **Office Director, Immigration and**
16 **Customs Enforcement and Removal**
17 **Operations (“ICE/ERO”);**
18 **TODD LYONS, Acting Director of**
19 **Immigration Customs Enforcement**
20 **(“ICE”);**
21 **MARKWAYNE MULLIN, Secretary of**
22 **the Department of Homeland Security**
23 **(“DHS”);**
24 **ACTING Attorney General of the United**
25 **States,**
26 **U.S. DEPARTMENT OF HOMELAND**
27 **SECURITY;**
28 **U.S. IMMIGRATION AND CUSTOMS**
ENFORCEMENT;

Respondents.

Case No.: 26-cv-03588-DMS-SBC

TRAVERSE TO PETITION FOR
WRIT OF HABEUS CORPUS

INTRODUCTION

Respondents' only argument against the petition is their contention that 8 U.S.C. § 1231(a) mandates detention for 90 days. They assert that Mr. Golestaneh has not been detained for 90 days so he does not qualify for Habeas Relief. ECF 4 p. 1. Respondents do not address the process they employed to initially arrest and detain Petitioner. Apparently, they believe that 8 U.S.C. § 1231(a) allows them to detain anyone with a removal order at any time, in any place and in any manner. Nothing in 8 U.S.C. § 1231(a) gives them this right and nothing in that section strips Mr. Golestaneh of the right to due process that he has earned by living in this country, with Respondents' permission, for over a decade.

MR. GOLESTANEH HAS THE RIGHT TO DUE PROCESS

The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural. As set out in the Petition, Respondents violated the Due Process rights of Petitioner when they arrested him without a warrant, and did not first provide him with the opportunity, before a neutral arbiter, to contest Respondents' desire to detain him.

1 The government lawfully permitted him to enter the country by issuing him
2 a Visa and then granting him a green card. The government made a series of
3 decisions not to detain Petitioner when it processed his I-485 application, took his
4 biometrics, processed his I-751, and advised him to appear for multiple hearings
5 over a period of years. These repeated interactions with Petitioner—each of which
6 resulted in the decision not to detain him—created a liberty interest on Petitioner’s
7 part that he would remain free unless he violated the conditions of release.
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9 Moreover, Congress itself made clear that Petitioner is not to be detained. It did so
10 by statute when it allowed those who have overstayed visas and marrying
11 American Citizens to adjust status while remaining in the United States. This
12 indicates that an immigrant adjusting status who entered with inspection, like
13 Petitioner, need not return to another country to adjust. *Id.* This creates a liberty
14 interest on Petitioner’s part.
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19 **RESPONDENTS VIOLATED MR. GOLESTANEH’S RIGHTS TO DUE**
20 **PROCESS BY THE WAY THEY DETAINED HIM.**
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22 Respondents did not provide Mr. Golestaneh any notice that they were going
23 to detain him. They did not establish that he had suddenly become a flight risk or a
24 danger to the community. Most importantly, Respondents were not even looking
25 for Mr. Golestaneh. There is no evidence that a warrant had been issued or that
26 Respondents had gone to Petitioner’s home looking for him. They just happened
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1 upon him when he entered Camp Pendleton and elected to immediately take him
2 into custody regardless of the circumstances or the process. This was a clear
3 violation of his rights to Due Process.
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5 **RESPONDENTS HAD NO WARRANT FOR MR. GOLESTANEH AND NO**
6 **EXCEPTIONS EXISTED FOR A WARRANTLESS ARREST.**
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8 Respondents have failed to justify the warrantless nature of
9 Petitioner's arrest. Section 287.8(c)(2)(ii) of Title 8 of the Code of Federal
10 Regulations provides: "A warrant of arrest shall be obtained except when the
11 designated immigration officer has reason to believe that the person is likely to
12 escape before a warrant can be obtained." Respondents offer no evidence that the
13 arresting officers had "reason to believe" that Petitioner was "likely to escape"
14 before a warrant could be obtained. Petitioner's longtime residence, employment
15 and family ties belie any suggestion that the arresting officers had "reason to
16 believe that [Petitioner was] likely to escape before a warrant [could] be obtained."
17 See also 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an
18 alien may be arrested and detained pending the decision on whether the alien is to
19 be removed from the United States.") (emphasis added). Due process requires that
20 a person be afforded notice and an opportunity to be heard "at a meaningful time
21 and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).
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1 An alien, such as Petitioner, who builds a substantial life in the United
2 States over a period of many years after entering develops a constitutionally
3 protected liberty interest in remaining out of custody. See, e.g., *Ramirez-Serna v.*
4 *Mullin*, 2026 WL 1514337, at *6-7 (C.D. Cal. May 28, 2026) (“*Ramirez-Serna*”);
5 see also *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (“Even
6 individuals who face significant constraints on their liberty or over whose liberties
7 the government wields significant discretion retain a protected interest in their
8 liberty.”). As in *Ramirez-Serna*, the warrantless arrest and hearingless detention
9 here violated federal due process. The most appropriate remedy for this violation
10 would be to return Petitioner to the previous status quo by releasing him from
11 detention. See *Ramirez-Serna*, at 7; *Maciel v. Noem*, 2026 WL 496948, at *5 (E.D.
12 Cal. Feb. 23, 2026); see also *Moctezuma v. Henkey*, 2026 WL 18809, at *5 (D.
13 Idaho Jan. 2, 2026) (collecting cases and noting respondents’ “refusal to abandon
14 their unlawful policy”); *Domingo v. Kaiser*, 2025 WL 1940179, at *3 (N.D. Cal.
15 July 14, 2025) (even if the alien received a “prompt post-detention bond hearing
16 under 8 U.S.C. § 1226(a) and was released at that point, he will have already
17 suffered the harm . . . that is, his potentially erroneous detention”).
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25 CONCLUSION

26 Based on the foregoing, the Court should:
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1 1. Issue a writ of habeas corpus requiring Petitioner's immediate
2 release and prohibiting his re-detention unless the government provides seven
3 days' notice and a hearing before a neutral arbiter in which it proves by clear and
4 convincing evidence that Petitioner is a danger or flight risk;

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6 2. Declare that Petitioner's arrest and detention violates the Due
7 Process Clause of the Fifth Amendment;

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9 3, Enjoin Respondents from transferring Petitioner outside this
10 District or deporting Petitioner pending these proceedings;

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12 4. Enjoin Respondents from enrolling Petitioner in an Alternative to
13 Detention program and specifically prohibit an ankle monitor upon his release;

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15 5. Order Respondents to return any documents confiscated from
16 Petitioner upon his arrest and detention;

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18 and

19 6. Grant such further relief as the Court deems just and proper.
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22 Dated: June 29, 2026

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CERTIFICATE OF SERVICE

I, Brian J. McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On June 29, 2026, I served a copy of this

PETITIONER'S TRAVERSE TO PETITION FOR HABEAS CORPUS
by the method and to the parties listed below:

On June 29, 2026, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

- **Antonio Estrada**

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