Community Legal Centers
Alexander Lubarsky, ESQ. SBN 182691
2615 Middlefield Road
Redwood City, CA 94062
Telephone: (408)272-3145

Attorney for: Petitioner

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Diego Garcia Reyes, [redacted]

Petitioner,

v. | UNDER 28 U.S.C. § 2241

WARDEN/FACILITTY DIRECTOR, in his/her official capacity, |Mesa Verde ICE Processing Center

Respondent.

Case No.:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 (IMMIGRATION DETENTION)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 (PRE-FINAL-ORDER IMMIGRATION DETENTION)

I. INTRODUCTION

This Memorandum of Points and Authorities supports Petitioner's request for habeas relief under 28 U.S.C. § 2241. Petitioner is detained pursuant to INA § 236(a) despite having no felony criminal convictions and no disqualifying criminal history, no final order of removal, and several forms of relief available to Petitioner which have been filed or which are in the process of being filed with the Executive Office for Immigration Review ("EOIR"). An Immigration Judge declined to exercise bond authority based on a mistaken belief that a federal habeas order was required, resulting in detention by default rather than by lawful decision. Ninth Circuit precedent establishes that such detention is

arbitrary, unauthorized, and unconstitutional, warranting immediate release or, at minimum, a prompt and lawful custody determination.

II. STATEMENT OF RELEVANT FACTS (SUMMARY)

Petitioner is a native and citizen of Mexico who has resided in the United States for nearly fifteen years and may present various forms of relief to removal as described above . He has no final order of removal and no felony criminal convictions or any other criminal convictions which would render him ineligible for release per INA Section 236(c).

Petitioner suffered an arrest for driving under the influence and being in possession of a firearm without a serial number and for vandalism (all charges/arrests appear to stem from the same singe incident where no one was harmed). On or about June 27, 2026, Petitioner was taken into ICE custody and transferred to the Mesa Verde ICE Processing Center, where he remains.

There are currently no master, merit or bond hearings scheduled for Petitioner. Counsel for Petitioner has enquired and has been told that Petitioner has 'yet to be processed into the system'. He has therefore remains detained by default, not by lawful exercise of discretion.

III. LEGAL STANDARDS

Federal district courts possess jurisdiction under 28 U.S.C. § 2241 to review the lawfulness and constitutionality of immigration detention and to order release where detention is unauthorized or arbitrary. Immigration detention is civil, not punitive, and is constitutional only so long as it bears a reasonable relation to a legitimate regulatory purpose the Bakersfield custodian with immediate custody authority over Petitioner.

IV. ARGUMENT

A. Habeas Relief Under § 2241 Is Proper and May Include an Order of Release (Nadarajah v. Gonzales, 443 F.3d 1069)

The Ninth Circuit squarely recognizes that § 2241 is the proper vehicle to challenge unlawful immigration detention and that release is an appropriate remedy where detention violates due process. In *Nadarajah*, the court ordered release because detention had lost its lawful basis. Here, Petitioner's detention is likewise unlawful: it persists without a lawful custody determination under § 236(a) and without any evidentiary findings. Habeas relief is therefore appropriate to order release.

B. Immigration Detention Is Civil and Must Be Reasonably Related to a Legitimate Regulatory Purpose (Nadarajah v. Gonzales, 443 F.3d 1069)

Nadarajah establishes the governing constitutional principle: immigration detention is civil, not punitive, and becomes unconstitutional when it no longer bears a reasonable relation to a legitimate regulatory purpose. Petitioner presents no danger and no flight risk: he has no convictions, dismissed charges known to DHS, a pending asylum claim, long residence, and strong community ties. Continued detention under these circumstances serves no legitimate regulatory purpose and is therefore arbitrary and unconstitutional.

C. The Government Bears the Burden to Justify Detention by Clear and Convincing Evidence (Singh v. Holder, 638 F.3d 1196)

Under *Singh*, when liberty is at stake, the government bears the burden to justify continued detention and must do so by clear and convincing evidence that the detainee poses a flight risk or danger. Here, no such showing was made. The Immigration Judge did not review arrest records, made no findings, and declined to exercise authority. The government cannot satisfy its burden where no evidence has been presented and no findings exist. Detention without meeting the *Singh* standard violates due process.

D. Detention Is Unlawful Where There Is No Clear Statutory Authority—Regardless of Duration (Flores-Torres v. Mukasey, 548 F.3d 708)

Flores-Torres confirms that habeas relief is appropriate where detention lacks clear statutory authority, regardless of duration. The Ninth Circuit emphasized that courts need not rely on the length of detention; rather, the focus is whether the statute lawfully applies. If it does not, detention is unlawful from day one. Here, although DHS invokes § 236(a), the statute's discretionary framework was never lawfully applied because the Immigration Judge refused to exercise bond authority. Detention without lawful application of the governing statute is arbitrary and unauthorized, warranting immediate habeas relief.

E. Petitioner should be ordered immediately released with no requirement for a bond hearing before an immigration judge (VAN MARTINEZ VEGA, Petitioner, v. WARDEN, CALIFORNIA..., Slip Copy (2026)).

There has been no argument or evidence to suggest that Petitioner is a flight risk or danger. Hence, immediate release is the appropriate remedy for improper detention under 8 U.S.C. § 1225 where the respondent did not argue that the petitioner posed a danger to the community or flight risk) (citing *Maciel v. Noem*, No. 1:26-cv-01318-DC-CKD, 2026 WL 496948.

V. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

A. Grant the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241;

B. Order Petitioner's immediate release from ICE custody; or, in the alternative,

C. Order a prompt, meaningful bond hearing at which the government bears the burden of proof by clear and convincing evidence; and

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

Dated: 7/13/2026 Respectfully submitted,

By: /s/ *Alexander H. Lubarsky*

Alex Lubarsky, SBN 182691

Attorneys for Petitioner Tirah RAM