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Attorney for Petitioner
ROSANIO TOMAS-LEIVA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROSANIO TOMAS-LEIVA,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; DANIEL A. BRIGHTMAN, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); DAVID J. VENTURELLA, Senior Official Performing Duties of Director of Immigration Customs Enforcement ("ICE"); U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

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CASE NO.:3:26-cv-04056-JO-BJW

PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN

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PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN

INTRODUCTION

Petitioner respectfully submits this Traverse in response to Respondents' Return. The Petition presents a narrow constitutional question arising from Respondents' decision to detain Petitioner after he had remained at liberty for nearly eight years under an Order of Release on Recognizance. During that period, Petitioner complied with the conditions of his release, appeared as required in his immigration proceedings, committed no crimes, and remained continuously available to immigration authorities. His prior removal proceedings were ultimately reopened and dismissed pursuant to a joint motion based on prosecutorial discretion.

The Petition therefore asks whether Respondents may withdraw that previously granted liberty without identifying a violation of Petitioner's release conditions, a materially changed circumstance, or an individualized factual basis showing that detention has become necessary. The Court's Minute Order focused the Return on that precise inquiry, directing Respondents to "identify and address any individualized concerns regarding Petitioner's danger to the community or flight risk, including the factual basis for any such concerns."

The Return does not provide the individualized factual showing the Court directed Respondents to provide. Respondents devote most of their submission to their position that Petitioner falls within a statutory category subject to mandatory detention. That argument preserves Respondents' legal position, but it does not explain why this Petitioner, after nearly eight years of successful compliance in the community, now presents a danger or a risk of flight. The Return identifies no violation of release, no failure to appear, no criminal conduct after Petitioner's release, and no materially changed circumstance that would account for the decision to detain him in 2026.

The material facts thus leave the constitutional question presented by the Petition unanswered. DHS previously exercised its custody authority and released Petitioner. Petitioner honored that determination for nearly eight years. When the Court directed Respondents to identify the individualized facts supporting his renewed detention, the Return supplied no facts demonstrating present dangerousness or flight risk. Because Respondents have not provided the individualized

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justification the Court requested, the writ should issue and Petitioner should be restored to the conditions of release under which he successfully remained at liberty.

I. THE RETURN DOES NOT PROVIDE THE INDIVIDUALIZED FACTUAL SHOWING REQUESTED BY THE COURT

The Court's Minute Order did more than establish a briefing schedule. It identified the factual inquiry necessary to resolve the Petition and required Respondents to address it directly. Specifically, the Court ordered the Return to identify any individualized concerns that Petitioner presents a danger to the community or a risk of flight and to state the factual basis for those concerns. Measured against that directive, the Return is notable for what it does not identify. Respondents do not contend that Petitioner violated any condition of his Order of Release on Recognizance. They do not identify a missed hearing, a reporting violation, an attempt to abscond, or any criminal conduct occurring during the nearly eight years Petitioner lived in the community. Nor do they identify a development in Petitioner's circumstances that would explain why the custody determination DHS made in 2018 became inadequate in 2026.

Instead, the Return principally addresses Respondents' interpretation of the Immigration and Nationality Act and their view that Petitioner is subject to mandatory detention. That legal position does not supply the individualized factual explanation the Court requested. Even if Respondents maintain that the statute authorizes detention, the Court separately required them to identify the facts showing that this Petitioner's continued detention is supported by concerns regarding danger or flight risk. The Return does not identify those facts.

That omission is consequential because the Petition challenges the withdrawal of liberty that DHS itself had previously granted and that Petitioner had maintained through years of compliance. The individualized facts supporting that change, if any existed, were uniquely within Respondents' knowledge and control. The Court afforded Respondents an opportunity to present them. The Return offers no factual basis from which the Court could conclude that Petitioner presently poses either a danger to the community or a risk of flight.

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II. THE RETURN LEAVES THE CENTRAL FACTUAL ALLEGATIONS OF THE PETITION UNDISPUTED

The Petition rests on a straightforward sequence of events. DHS initially detained Petitioner, exercised its custody authority, and released him on recognizance. Petitioner then remained in the community for nearly eight years without violating his release conditions or engaging in conduct that caused DHS to revoke his release. His immigration proceedings continued, and those proceedings were later reopened and dismissed pursuant to a joint motion. Respondents thereafter detained him again without first identifying a violation of release, a material change in circumstances, or an individualized determination that he had become dangerous or likely to flee.

The Return does not materially dispute that sequence. It does not identify evidence that Petitioner failed to appear, disregarded a reporting obligation, or committed a crime. It likewise does not identify any new fact arising after Petitioner's release that altered the considerations underlying DHS's original custody determination. The Return therefore leaves intact the central factual premise of the Petition: Petitioner's liberty was withdrawn after years of successful compliance without an identified event or individualized circumstance demonstrating that detention had become necessary.

That undisputed history is especially significant because Petitioner's claim does not depend on an assertion that DHS lacks any detention authority in all circumstances. It challenges the manner in which that authority was exercised here. DHS had already determined that Petitioner could safely remain at liberty and Petitioner then confirmed the soundness of that determination through nearly eight years of conduct. In response to the Court's request for the facts supporting a different conclusion now, Respondents identify none.

III. RESPONDENTS' GENERAL STATUTORY POSITION DOES NOT ANSWER THE QUESTION PRESENTED

Respondents devote a substantial portion of the Return to defending their position that Petitioner is subject to mandatory detention under the INA. Those arguments preserve Respondents' legal position, but they do not answer the question before the Court. The Court specifically directed Respondents to identify any individualized concerns regarding Petitioner's danger to the community

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or risk of flight and to provide the factual basis for those concerns. Yet the Return identifies no violation of Petitioner's release conditions, no failure to appear, no criminal conduct following his release, and no materially changed circumstance explaining why the custody determination DHS made in 2018 no longer applies. Nor does it identify individualized facts demonstrating that Petitioner presently poses either a danger to the community or a risk of flight. Whatever the scope of Respondents' asserted statutory authority, the Return does not provide the individualized factual showing this Court requested.

Nor does the issuance of a new Notice to Appear itself provide the missing explanation. Petitioner's manner of entry, immigration history, and prior custody posture were known when DHS released him. The Return does not identify a new fact arising from the Notice to Appear that bears on danger or flight risk, and it does not explain why the commencement of new proceedings erased the significance of nearly eight years of compliance. The legal mechanism used to place Petitioner in proceedings therefore does not supply the individualized factual basis requested by the Court.

IV. THE CONCLUSORY REFERENCE TO LIMITED COOPERATION DOES NOT ESTABLISH DANGER OR FLIGHT RISK

The Return briefly characterizes Petitioner's conduct at the time of arrest as reflecting "limited cooperation." Even taken at face value, that characterization does not provide the individualized factual showing the Court requested. The Return does not describe resistance, obstruction, attempted flight, threats, violence, or any other conduct bearing on present dangerousness or a likelihood that Petitioner would abscond if released.

More importantly, the Return does not connect that conclusory characterization to the decision to continue detaining Petitioner. It does not explain how the circumstances of the arrest outweigh Petitioner's nearly eight-year record of compliance, or why they demonstrate that the conditions under which he previously remained at liberty would no longer be adequate. Without the underlying facts or a reasoned connection to danger or flight risk, the reference does not furnish a basis for denying the writ.

Petitioner does not ask the Court to resolve a collateral factual dispute about the arrest. The narrower point is sufficient: the Return does not identify facts from the arrest that establish danger

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or flight risk, and it does not explain why the arrest altered the custody determination DHS had maintained for nearly eight years.

V. THE APPROPRIATE REMEDY IS RESTORATION OF PETITIONER'S PRIOR RELEASE

The constitutional deficiency identified in the Petition is the withdrawal of Petitioner's previously granted liberty without an individualized factual justification or adequate process. The Court's Minute Order provided Respondents an opportunity to demonstrate that continued detention was supported by individualized concerns regarding danger or flight risk. Because the Return identifies no such concerns and no facts supporting them, there is no basis in this record to continue Petitioner's detention while requiring him to pursue a new discretionary custody determination.

Restoring Petitioner to his prior conditions of release is a narrow remedy that returns the parties to the position they occupied before the challenged detention. It does not prevent DHS from enforcing lawful conditions of release or from acting upon future evidence of noncompliance or materially changed circumstances. It simply recognizes that, on the record before the Court, Respondents have not identified an individualized factual basis for withdrawing the liberty Petitioner successfully maintained for nearly eight years.

CONCLUSION

The Court directed Respondents to identify and address any individualized concerns that Petitioner presents a danger to the community or a risk of flight, including the factual basis for those concerns. The Return does not provide that showing. It identifies no violation of Petitioner's release conditions, no failure to appear, no criminal conduct after his release, and no materially changed circumstance explaining why DHS's prior custody determination should no longer govern. Instead, Respondents principally rely on their general statutory position, which does not answer the individualized factual inquiry posed by the Court.

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Petitioner respectfully requests that the Court grant the Petition, issue the writ, and direct Respondents to immediately release Petitioner under the same conditions of release previously imposed by DHS.

Date: July 21, 2026

STERGER LAW GROUP, P.C.

/s/ Richard S. Sterger, Esq.
By: _____
Richard S. Sterger, Esq.
Attorney for Petitioner
ROSANIO TOMAS-LEIVA

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