

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Miguel Angel Tercero Briones v. Christopher J. LaRose, Senior
Warden, Otay Mesa Detention Center, et al.**

Tercero Briones v. LaRose · No. 3:25-cv-03421-RBM-AHG · Decided January 2, 2026

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 MIGUEL ANGEL TERCERO BRIONES, Case No.: 3:25-cv-03421-RBM-
AHG 12 Petitioner, ORDER GRANTING HABEAS 13 v. PETITION 14 CHRISTOPHER J.
LaROSE, Senior Warden [Doc. 1] Otay Mesa Detention Center, et al., 15 Respondents. 16 17 18
Pending before the Court is Petitioner Miguel Angel Tercero Briones’s 19 (“Petitioner”) Verified
Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 20 U.S.C. § 2241 challenging the
lawfulness of his detention by the United States Department 21 of Homeland Security (“DHS”).

(Doc. 1.) For the reasons set forth below, the Petition is 22 GRANTED. 23 I. BACKGROUND 24
Petitioner is a citizen of Honduras who entered the United States in 1991 without 25 inspection.
(Doc. 1 ¶ 21.)¹ Although Petitioner was detained upon entry, the former 26 27 1 The Court cites
the paragraph numbers of the Petition and the CM/ECF electronic 28 1 Immigration and
Naturalization Service (“INS”) released him on his own recognizance and 2 commenced removal
proceedings.

(Id. ¶ 22.) An immigration judge denied Petitioner’s 3 asylum application in March 1992 and
Petitioner appealed the denial. (Id. ¶ 23.)² The INS 4 approved an advanced parole travel
document for Petitioner in June 1995 which allowed 5 him to depart the United States to visit his
sick child. (Id. ¶ 24.)

In July 1995, Petitioner 6 re-entered using his advanced parole document and has not departed
since. (Id.) The Board 7 of Immigration Appeals (“BIA”) denied his appeal in February 1999 and
Petitioner was 8 placed on an Order of Supervision in May 1999. (Id. ¶ 25.)

In or around 2001, Petitioner 9 was granted Temporary Protected Status (“TPS”). (Id.) 10 From
May 1999 to October 2025, Petitioner reported to his check-ins as directed in 11 his Order of
Supervision and complied with all the conditions of his release. (Id. ¶ 26.) He 12 has also been
regularly employed with a valid work authorization and has no criminal 13 record.

(Id. ¶ 27.) Additionally, “Petitioner is the beneficiary of an approved Form I-130, 14 Petition for
Alien Relative, filed by his United States citizen daughter.” (Id. ¶ 28.) 15 Petitioner alleges that he
is not subject to any apparent ground of inadmissibility and 16 therefore qualifies for a

“straightforward adjustment of status” based on the approved Form 17 I-130 and an “old, approved labor certification.” (Id.)

As a result, Petitioner filed a Motion 18 to Reopen with the BIA on September 2, 2025, which remains pending. (Id. ¶ 29.) 19 On October 16, 2025, Petitioner was detained while attending his annual check-in 20 with DHS. (Id. ¶ 30.) He was informed that he was detained “because his TPS had 21 expired.” (Id.) Petitioner remains in custody at the Otay Mesa Detention Center.

(Id.) 22 II. LEGAL STANDARD 23 A writ of habeas corpus is “available to every individual detained within the United 24 States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 25 2). “The essence of habeas corpus is an attack by a person in custody upon the legality of 26 27 2 The Petition contains a duplicate paragraph numbered 23.

(See Doc. 1 ¶ 23.) The Court 28 1 that custody, and... the traditional function of the writ is to secure release from illegal 2 custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “Writs of habeas corpus may 3 be granted by the Supreme Court, any justice thereof, the district courts and any circuit 4 judge within their respective jurisdictions.” 28 U.S.C. § 2241(a).

The petitioner bears the 5 burden of demonstrating that “[h]e is in custody in violation of the Constitution or laws or 6 treaties of the United States.” Id. § 2241(c)(3). 7 III. DISCUSSION 8 Petitioner claims his current detention violates the Administrative Procedure Act and 9 the Fifth Amendment’s Due Process Clause. (Doc. 1 ¶¶ 1, 30–47.) Respondents argue 10 that: (1) Petitioner’s claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 11 § 1252(b)(9); (2) Petitioner’s detention is within the six-month presumptively reasonable 12 detention period under *Zadvydas*; and (3) even if ICE failed to comply with the regulatory 13 requirements, Petitioner cannot show prejudice from such violations.

(Doc. 5 at 3–12.) 14 Respondents’ arguments are similar to those recently addressed by the undersigned. 15 As a threshold matter, this Court has consistently rejected Respondents’ argument that 16 similarly situated petitioners’ claims are jurisdictionally barred under 8 U.S.C. § 1252(g) 17 and § 1252(b)(9). See *Rasakhamdee v. Noem*, Case No.: 3:25-cv-02816-RBM-DEB, 2025 18 WL 3102037 at *2 (S.D.

Cal. Nov. 6, 2025) (finding § 1252(g) did not bar the Court 19 exercising jurisdiction over the petitioner’s claims where he challenged the legality of his 20 detention, not the legitimacy of his order of removal); *Ghafouri v. Noem*, No. 3:25-cv- 21 02675-RBM-BLM, 2025 WL 3085726, at *3 (S.D. Cal. Nov. 4, 2025) (same); *Alatorre 22 Rodriguez v. LaRose*, Case No.: 3-25-cv-02940-RBM-JLB, 2025 WL 3456475, at *2–5 23 (S.D.

Cal. Dec. 2, 2025) (holding § 1252(g) and § 1252(b)(9) did not bar jurisdiction where 24 the petitioner challenged the legality of his continued detention rather than the decision to 25 commence removal proceedings or any act to execute a removal order). 26 This Court has also

granted several habeas petitions filed by similarly situated 27 petitioners based on ICE's failure to follow its own regulations in revoking the petitioner's 28 release.

For example, in *Rasakhamdee*, the Court concluded that ICE failed to follow its 1 regulations because: (1) the petitioner did not receive adequate notice of the reasons for the 2 revocation of his release; and (2) ICE did not conduct the required interview when it had 3 over six weeks to do so. 2025 WL 3102037, at *4–5; see also *Ghafouri*, 2025 WL 4 3085726, at *4–5.

The Court reached the same conclusion in *Touch v. Noem*, where the 5 petitioner was differently situated than the petitioner in *Rasakhamdee*. Case No.: 3:25-cv- 6 03118-RBM-AHG, 2025 WL 3278019 at *3, *6 (S.D. Cal. Nov. 25, 2025), adopted, Case 7 No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3296280 (S.D. Cal. Nov. 26, 2025).

Although 8 Respondents had obtained travel documents for the petitioner's removal and provided 9 adequate notice, the Court nonetheless found that ICE failed to comply with the required 10 procedures when it failed "to provide [the petitioner] with an informal interview in the 11 month since he was taken into custody." *Id.* at *6. 12 The Court has also rejected Respondents' arguments concerning prejudice and held 13 that petitioners were "prejudiced by ICE's failure to comply with its own regulations" 14 where they were deprived of "due process protections when [ICE] failed to provide [them] 15 with sufficient notice or a prompt interview to respond to the reasons for revocation of his 16 release." *Rasakhamdee*, 2025 WL 3102037, at *5; see also *Ghafouri*, 2025 WL 3085726, 17 at *6 ("ICE deprived [the petitioner] of his due process rights and prejudiced his interests 18 by failing to afford him the procedural safeguards the regulations were designed to 19 protect."); *Touch*, 2025 WL 3296280, at *1 n.1 (finding the petitioner was prejudiced 20 because "ICE violated regulations intended to provide due process protections.").

21 In this case, it is undisputed that Respondents did not provide Petitioner with a notice 22 of revocation or an informal interview. (See Doc. 5-1, Declaration of Daniel Negrin 23 ["Negrin Decl."] ¶ 12.) The Court therefore adopts its reasoning in the cases discussed 24 above and applies it here.

For those same reasons, ICE's failure to comply with its 25 regulations in revoking Petitioner's release violated Petitioner's due process rights and 26 rendered his detention unlawful. 27 // 28 // I
IV. CONCLUSION 2 Based on the foregoing reasons, the Court finds Petitioner's detention is unlawful 3 GRANTS the Petition. Respondents are ORDERED to immediately release 4 // Petitioner from custody, subject to his preexisting Order of Supervision.

5 IT IS SO ORDERED. 6 // DATE: January 2, 2026 Cet Bernucls, Moitingys D ON. RUTH BERMUDEZ! MONTENEGRO UNITED STATES DISTRICT JUDGE 9 10 11 12 13 14 15 16
17 18 19 20 21 22 23 24 25 26 27 28

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