Johnny Sinodis (CA Bar #290402)
Oona Cahill (CA Bar #354525)
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
jsin@vblaw.com

Attorneys for Petitioner-Plaintiff
John DOE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

John DOE,

Petitioner-Plaintiff,

v.

MOISES BECERRA, Acting Field Office Director of Sacramento Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Caleb VITELLO, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Tonya ANDREWS, Facility Administrator at Golden State Annex, McFarland, California;

Respondents-Defendants.

Case No. 25-260

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Petitioner, John Doe ("Mr. Doe" or "Petitioner"),[1] by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on January 28, 2025, without first being provided a due process hearing to determine whether his incarceration is justified. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that he is a flight risk or a danger to the community. DHS will not be able to do so.

2. [redacted]

3. [redacted].

4. On January 28, 2025, ICE, without notice or the opportunity for a due process hearing, unilaterally revoked Petitioner's bond and took him into custody during a routine check-in appointment in Sacramento, California. When Petitioner asked why he was being detained,

[1] Petitioner is contemporaneously filing a Motion to Proceed Anonymously and a Motion to Seal Certain Documents filed in support of his Petition and Complaint.

officers responded that "there is a new administration, a new president, and we can take this action." *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. L (Motion for Immediate Release From Custody dated Jan. 30, 2025).

5. [redacted]

6. The procedural irregularities in Petitioner's case are common in INTERPOL Red Notices, which Congress recognized in enacting a law specifically aimed at eliminating the harm spurious Red Notices pose to political dissidents fleeing authoritarian countries. In 2021, Congress enacted the Transnational Repression Accountability and Prevention (TRAP) Act, which provides in part: "It is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL's databases and processes, including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other unlawful character and in

violation of international human rights standards, including by making requests to harass or persecute political opponents, human rights defenders, or journalist." 22 U.S.C. § 263b(a). The TRAP Act includes several provisions aimed at countering the problem Congress recognized—namely, abuse of the INTERPOL process by member countries to continue persecuting dissidents who have fled the country, including through damaging their asylum claim in the United States. The Act mandates biannual reporting requirements, including on any incidents in which executive departments or agencies have relied on INTERPOL communications in contravention of existing law or policy to seek the detention of individuals or render judgments concerning their immigration status or requests for asylum. *Id.* § 263b(c)(2)(E).

7. INTERPOL's flawed and unreliable issuance process has also led multiple circuit courts, including the Ninth Circuit, to hold that "a Red Notice alone is not enough to establish probable cause" that a crime has occurred. *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 978 (9th Cir. 2022). As the Ninth Circuit has recognized, "a Red Notice is not independently vetted for factual and legal justification." *Id.* at 978 (internal citations omitted); *see also Barahona v. Garland*, 993 F.3d 1024, 1028 (8th Cir. 2021) ("[t]he parties did not cite, and we could not find, a case in which a court has found a Red Notice, alone, is sufficient to meet this [probable cause] standard.").

8. Because Red Notices cannot form the basis of a decision by a federal law enforcement agency to arrest or detain someone in the United States, ICE issued guidance in 2023 clarifying that its officers will not rely exclusively on a Red Notice to justify detention. Specifically, ICE Directive 15006.1 explained that:

> [A] Red Notice or Wanted Person Diffusion is not an international arrest warrant and conveys no legal authority to arrest, detain, or remove a person. Therefore, ICE personnel will not rely exclusively on Red Notices or Wanted Person Diffusions to justify enforcement actions or during immigration proceedings. If ICE personnel intend to rely on a Red Notice or a Wanted Person Diffusion to help inform whether an enforcement action should be taken or during immigration proceedings, they should do so sparingly, and only if the threshold criteria have been met, as outlined in this Directive.[2]

[2] *See* ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions, (Aug. 15, 2023) available at: https://www.ice.gov/doclib/foia/dro_policy_memos/15006.1_InterpolRedNoticesWpDiffusions.pdf

In this instance, ICE's detention of Petitioner based solely on an INTERPOL Red Notice is a blatant violation of its own policy.

9. To reiterate, when ICE re-detained Petitioner on January 28, 2025, without first providing him a due process hearing as to whether his re-arrest was lawful, ICE had known about the allegations [redacted] for at least eleven months and likely much longer, during which time Petitioner: (1) attended all Immigration Court hearings; (2) complied with all conditions of his release, including regularly checking in with ICE; (3) [redacted] and (4) sustained no criminal violations nor even a traffic ticket. At no point during that period of time did ICE move to re-detain Petitioner or suggest his bond should be revoked on that basis.

10. On January 29, 2025, in correspondence with undersigned Counsel following Petitioner's detention, ICE acknowledged there had been no change in circumstances since it received information regarding the INTERPOL Red Notice and criminal cases [redacted], but nonetheless took the position that ICE can unilaterally reconsider a previously issued bond without moving for a hearing before an IJ. Sinodis Decl. ICE further stated that it would not consider setting a new bond for Petitioner, advising that he would need to seek bond from the IJ. *Id.*

11. On January 30, 2025, Petitioner filed a Motion for Immediate Release with the IJ who presided over his case at the Sacramento Immigration Court, detailing the circumstances of his arrest and the reasons why his re-incarceration was and is unlawful. *Id.* at Ex. L (Motion for Immediate Release). The following day, without addressing Petitioner's Motion, the IJ transferred the case to the Adelanto Immigration Court in Adelanto, California. *Id.* at Ex. N (Order Granting Change of Venue).

12. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280

F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Petitioner's case, due process required notice and a hearing, *prior to any revocation of his conditional release on bond*, at which he was afforded the opportunity to advance his arguments as to why his bond should not be revoked.

13. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Petitioner's detention was *already* found to be unnecessary to serve its purpose. DHS previously found that he need not be incarcerated to prevent flight or to protect the community, and despite knowing in 2023 that an INTERPOL Red Notice had been issued for Petitioner, DHS did not seek to re-arrest or re-incarcerate him until January 28, 2025. Under these circumstances, DHS was required to afford him the opportunity to advance arguments in favor of his freedom before it robbed him of his liberty. Under federal law and ICE policy, DHS would have nevertheless found it impossible to re-arrest him following a pre-deprivation due process hearing because he is neither a flight risk nor a danger to the community. He must therefore be released from custody unless and until DHS proves to a neutral decisionmaker, by clear and convincing evidence, that he is a flight risk or a danger to the community. During any custody redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk that DHS may establish.

CUSTODY

14. Petitioner is currently detained by DHS at the Golden State Annex ICE Detention Center in McFarland, California, where he was transferred after being arrested by ICE officers at the Sacramento Field Office. Prior to and since being arrested by ICE in Sacramento, Petitioner has not been provided with a constitutionally compliant bond hearing.

JURISDICTION

15. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 *et seq.*, All Writs Act; 28 U.S.C. § 2241 *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

18. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

VENUE

19. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of California; because Petitioner was arrested in Sacramento, which is in the

jurisdiction of the Eastern District of California; because Petitioner is currently detained in the Eastern District of California; and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

20. The decision to re-arrest and re-detain Petitioner was made by the Sacramento Field Office of ICE, and until he was unlawfully re-detained by ICE, his case was pending before an IJ at the Sacramento Immigration Court. Furthermore, on January 30, 2025, Petitioner filed a Motion for Immediate Release with the IJ in Sacramento that went unaddressed until his removal proceedings were transferred to the Adelanto Immigration Court. Therefore, the assignment to the Sacramento Division of this Court is proper under E.D. Local Rule 120.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

22. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

23. More importantly, every day that Petitioner remains detained causes him harm that cannot be repaired. His continued detention puts his physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. [redacted]

[redacted]

[redacted] The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

PARTIES

24. Petitioner John DOE [redacted] On January 28, 2025, ICE, without prior notice or a hearing, and in violation of the TRAP Act and Directive 15006.1, took Petitioner into custody during a routine check-in appointment in Sacramento, California.

25. Respondent Moises BECERRA is the Acting Field Office Director of ICE, in Sacramento, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

26. Respondent Caleb VITELLO is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

27. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of

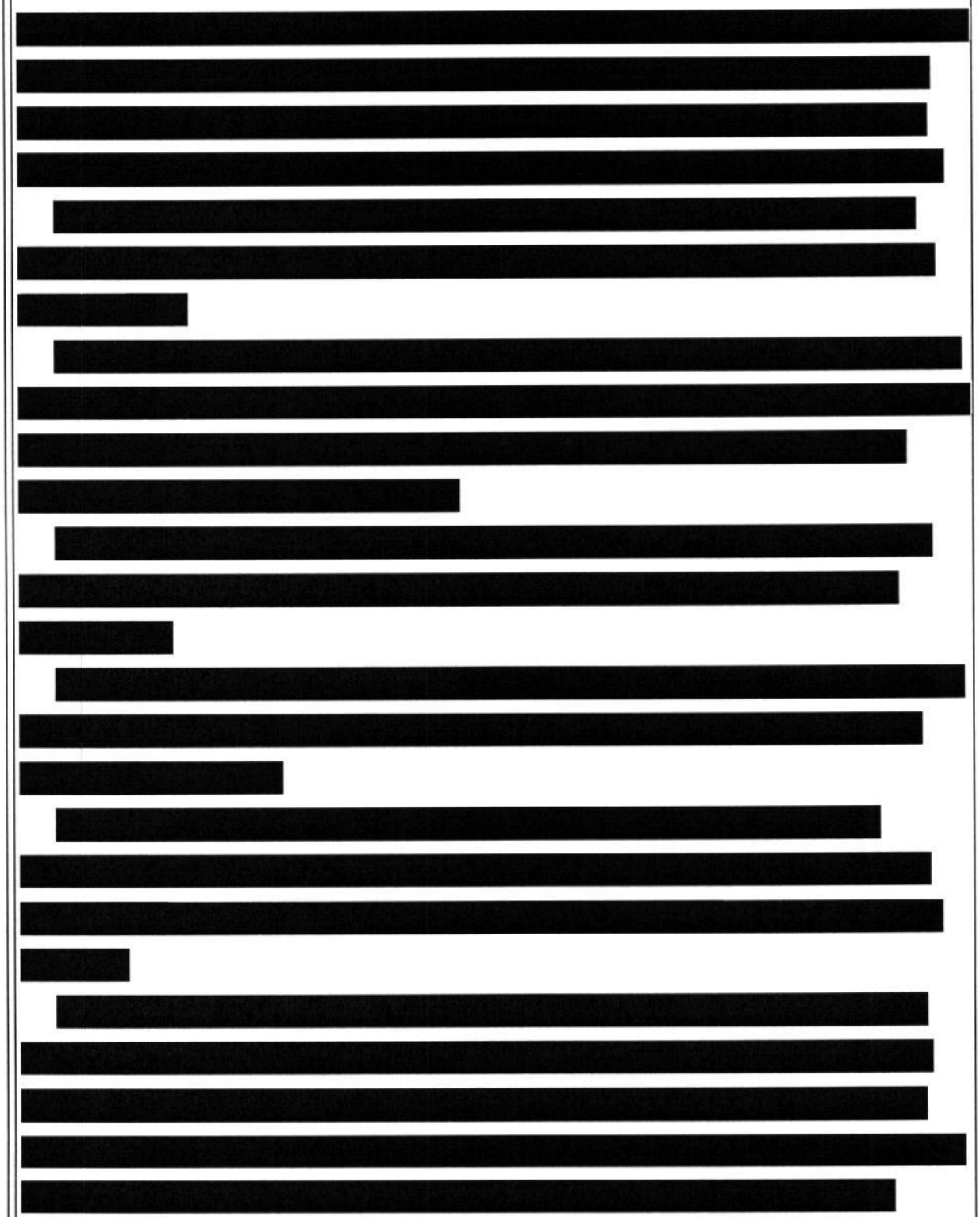
noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

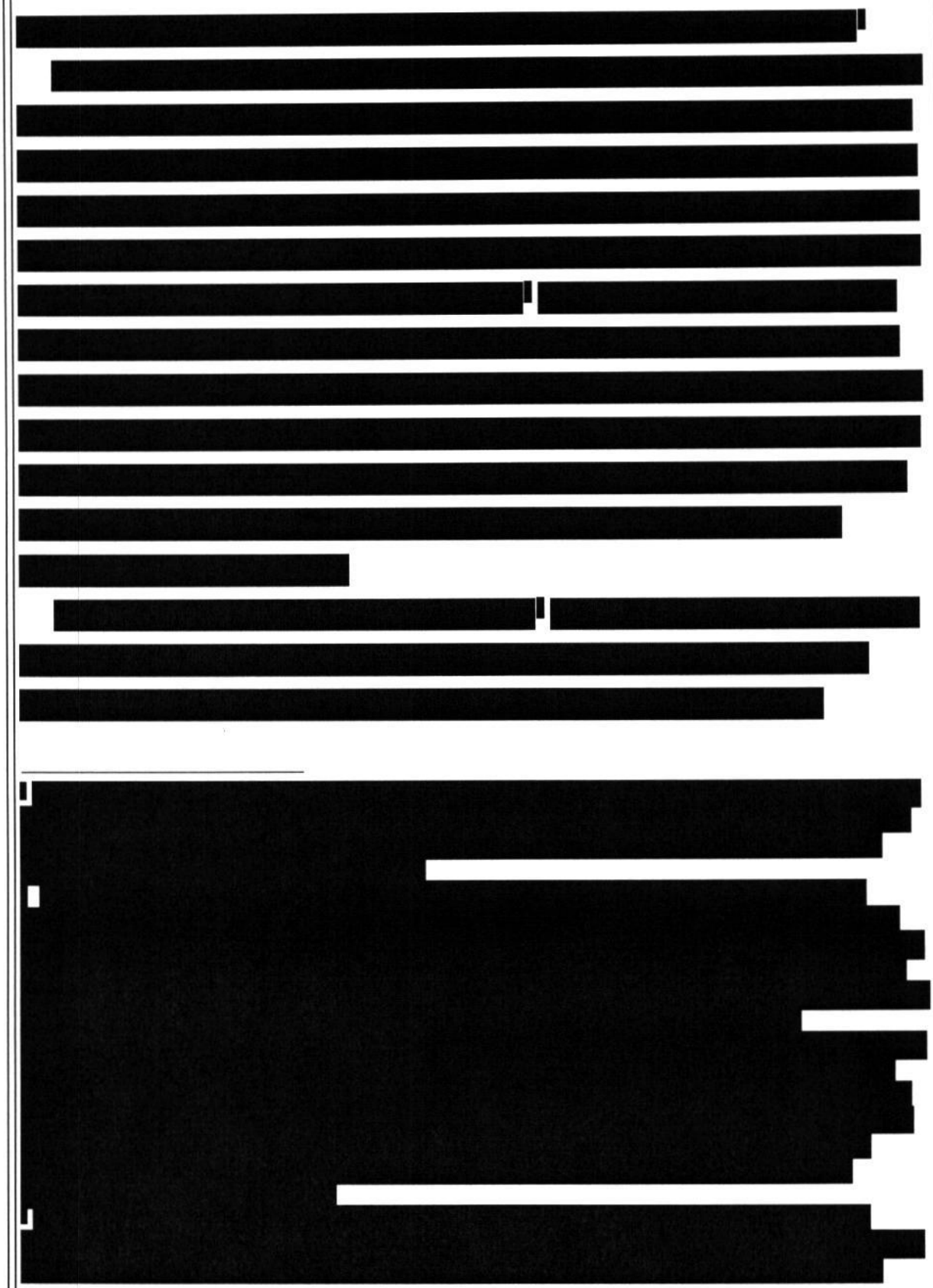
28. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

29. Respondent Tonya ANDREWS is the Facility Administrator of Golden State Annex where Petitioner is being held. Respondent Andrews oversees the day-to-day operations of Golden State Annex and acts at the Direction of Respondents Vitello, Noem, and Becerra. She is a custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

30. [redacted]





[redacted]

[redacted]

52. On January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make 75 arrests per day.[8]

53. On January 28, 2025, when Petitioner arrived at the ICE office in Sacramento, California, for his routine check-in, ICE, without prior notice or a hearing, took him into custody.

54. ICE did not move the Sacramento Immigration Court, where Petitioner's removal proceedings were pending case, for a bond re-determination prior to detaining him.

55. Petitioner asked the ICE officers why they were detaining him, when he had been complying with his conditions of release and no circumstances had changed since his check-in a month a prior. ICE stated that the reason for his re-detention was the new administration and the new President, which authorized them to do so. Sinodis Decl. at Ex. L (Motion for Immediate Release).

56. On January 29, 2025, undersigned counsel spoke via phone with ICE SDDO Robertson, who stated ICE took Petitioner into custody because of the INTERPOL Red Notice and criminal allegations against Petitioner in [redacted]. *Id.* Undersigned counsel informed SDDO

[8] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

Robertson that ICE has known about the Red Notice and allegations against Petitioner since at least March 7, 2024, when ICE submitted the INTERPOL Red Notice and other documents to the Immigration Court, and likely much longer. *Id.* SDDO Robertson confirmed that Petitioner's sudden re-detention was based solely on the allegations in the INTERPOL Red Notice. *Id.* SDDO Robertson further stated that ICE had not moved to reconsider Petitioner's prior bond, confirming that ICE believes it can unilaterally reconsider a previously issued bond. *Id.*

57. On January 29, 2025, ICE transferred Petitioner to the Golden State Annex (GSA), located at 611 Frontage Rd., McFarland, California 93250, where he remains incarcerated.

58. On January 30, 2025, undersigned counsel spoke with ICE DO Vermillion by phone, who stated that ICE would not consider setting a bond for Petitioner, and that Petitioner would need to file a motion for bond before an IJ. *Id.*

59. On January 30, 2025, Petitioner filed a Motion for Immediate Release with the Sacramento Immigration Court on the basis that ICE had unlawfully detained him without the opportunity for a pre-deprivation hearing in violation of his due process rights. *Id.* at Ex. L (Motion for Immediate Release). Petitioner also submitted a notice that he intended to oppose a Motion to Change Venue filed by DHS within the ten days permitted by regulation. *Id.* at Ex. M (Notice of Intent to Respond in Opposition).

60. On January 31, 2025, without ruling on Petitioner's Motion for Immediate Release, the IJ transferred venue of proceedings to the Adelanto Immigration Court. *Id.* at Ex. N (Order Granting Change of Venue). Four days later, on February 4, 2025, the Sacramento Immigration Court rejected Petitioner's Motion for Immediate Release on the basis that venue had been changed to Adelanto. *Id.* at Ex. O (Rejection Notice).In addition to being unlawfully re-arrested, Petitioner's incarceration is problematic for yet another reason. [redacted]

[redacted]

62. Intervention from this Court is therefore required to ensure that Petitioner does not continue to suffer irreparable harm.

LEGAL BACKGROUND

Federal Law Policy Prohibits Relying on INTERPOL Red Notices to Justify Detention or Arrest

63. In 2021, in recognition of the misuse and abuse of INTERPOL Red Notices by member countries seeking to persecute political dissidents living in exile in the United States, Congress enacted the TRAP Act. The Act provides in part: "It is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL's databases and processes, including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other unlawful character and in violation of international human rights standards, including by making

requests to harass or persecute political opponents, human rights defenders, or journalist." 22 U.S.C. § 263b(a).

64. The TRAP Act further provides for a biannual report that includes any incidents in which DOJ assesses that United States courts and executive departments or agencies have relied on INTERPOL communications in contravention of existing law or policy to seek the detention of individuals or render judgments concerning their immigration status or requests for asylum, withholding of removal, or convention against torture claims. *Id.* § 263b(c)(2)(E). In the August 2022 report, DOJ and the Department of State jointly recognized:

> Governments seeking to misuse INTERPOL systems tend not to cite political offenses in their red notices or diffusions, but instead cite what appear on their face to be ordinary law crimes, such as fraud, financial crimes, terrorism, and other offenses that would not facially conflict with INTERPOL's constitution and/or rules but are in fact fabricated charges or cases based on weak information or loose associations. In such cases, in the absence of open source information on the situation, or information from other INTERPOL member countries, it can be difficult for NDTF as well as the other member countries to distinguish legitimate notices or diffusions from those based on political motives.[9]

65. DOJ's stated policy is that "The United States does not consider a Red Notice alone to be a sufficient basis for the arrest of a subject does not meet the requirements for arrest under the 4th Amendment to the Constitution."[10] Consistent with this position, several courts of appeals have similarly found that a Red Notice on its own does not establish probable cause that would justify an arrest. *See, e.g.*, *Gonzalez-Castillo*, 47 F.4th at 978; *Barahona*, 993 F.3d at 1028.

66. Because Red Notices cannot form the basis of a decision by a federal law enforcement agency to arrest or detain someone in the United States, ICE issued guidance in 2023 clarifying that its officers will not rely exclusively on a Red Notice to justify detention. Specifically, ICE Directive 15006.1 explained that:

> [A] Red Notice or Wanted Person Diffusion is not an international arrest warrant and conveys no legal authority to arrest, detain, or remove a person. Therefore, ICE personnel will not rely exclusively on Red Notices or Wanted Person Diffusions to justify

---

[9] *See* "Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes," U.S. Department of State (August 2022), available at: https://www.state.gov/wp-content/uploads/2022/09/2022-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf

[10] *See* About INTERPOL Washington: Frequently Asked Questions, U.S. Dep't of Justice, https://www.justice.gov/interpol-washington/frequently-asked-questions (last checked February 14, 2025).

> enforcement actions or during immigration proceedings. If ICE personnel intend to rely on a Red Notice or a Wanted Person Diffusion to help inform whether an enforcement action should be taken or during immigration proceedings, they should do so sparingly, and only if the threshold criteria have been met, as outlined in this Directive.

Right to a Hearing Prior to Re-incarceration

67. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before the IJ to determine whether circumstances have materially changed since his release on bond [redacted] such that detention would now be warranted.

68. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

69. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

70. ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th

Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Petitioner's weighty interest in his freedom from detention.

71. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, *before* ICE re-detains him. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

Petitioner's Protected Liberty Interest in His Conditional Release

72. Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

73. [redacted] preceding his re-detention on January 28, 2025, Petitioner exercised that freedom [redacted]d. Sinodis Decl. at Ex. A (Notice of Custody Redetermination). Although he was released on bond (and thus under government custody), he retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

74. More importantly, following DHS's discovery of the INTERPOL Notice and politically motivated charges in [redacted], Petitioner continued presenting himself before ICE for his regular check-in appointments. Specifically, he appeared on January 27, 2024, and December 17,

2024, and each time, ICE did not seek to re-arrest him. ICE instead gave him a future date and time to appear again.

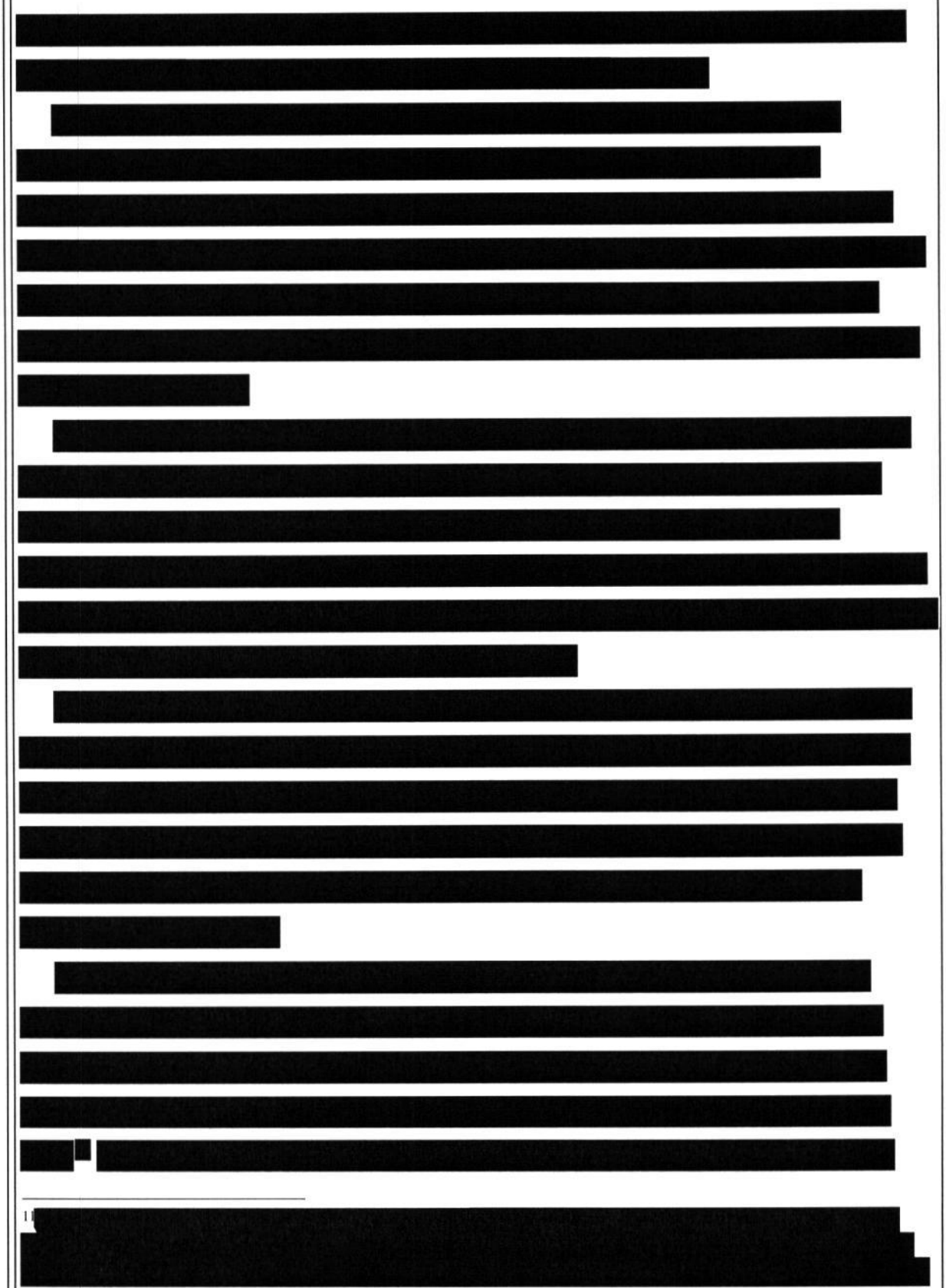
75. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

76. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

77. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

78. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, a[redacted], and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

79. [redacted]



[redacted]

Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond

85. Petitioner asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis, (3) where he has a substantial application for asylum pending before the Immigration Court, (4) where the *only* change in circumstances ICE could possibly point to is politically motivated criminal allegations [redacted] and that ICE has been aware of since 2023 yet did not re-arrest him, and (5) where ICE officers stated to Petitioner that circumstances had not changed and they were taking the action because of the new administration, due process mandates that he was required to receive notice and a hearing before a neutral adjudicator prior

[redacted]

to any re-arrest or revocation of a bond.

86. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

87. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

88. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;

Zinermon, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

Petitioner's Private Interest in His Liberty is Profound

89. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest.

90. What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms

of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

91. Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

The Government's Interest in Keeping Petitioner in Detention Without a Hearing is Low and the Burden on the Government to Release Him from Custody Unless and Until He is Provided a Hearing is Minimal

92. The government's interest in keeping Petitioner in detention without a due process hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process Petitioner seeks—release from custody pending notice and a hearing regarding whether his bond should be revoked and, if so, whether a new bond amount should be set—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to detained individuals like Petitioner.

93. As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner in January 2025 due to alleged dangerousness based on politically motivated accusations that it had been aware of since, on information and belief, 2023, or, at the very latest, March 7, 2024—more than eleven months before his re-arrest. Further, the meritless and politically motivated criminal allegations against Petitioner [redacted] are problematic on numerous levels and provide no basis for a determination that he is a danger to the community.

94. [redacted]

[redacted]

[16] [redacted]

96. [redacted]

99. [redacted]

100.

101.

[redacted]

102. Moreover, the "fiscal and administrative burdens" that release from custody unless and until a pre-deprivation bond hearing is provided would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather his release from custody until a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated takes place.

103. In the alternative, providing Petitioner with an immediate hearing before this Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity to determine whether the fact of unverified and politically motivated criminal allegations [redacted] that the government has been aware of for a year or more changes the dangerousness analysis sufficiently to require a different amount of bond—or if bond should be revoked. But there was no justifiable reason to re-incarcerate Petitioner and ship him to Golden State Annex prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

104. Release from custody until ICE (1) moves for a bond re-determination before an Immigration Judge and (2) demonstrates by clear and convincing evidence that Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at which the government bears the burden of justifying

[24] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

his continued detention, the government would bear no additional cost if the hearing is scheduled within seven days, rather than allowing Petitioner to sit in detention for days or weeks awaiting a hearing. This is particularly true where, as here, DHS has been in possession of the only information it has relied on to justify a dangerousness determination for months on end without taking any action.

Without Release from Custody until the Government Provides a Due Process Hearing, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

105. Releasing Petitioner from custody until he is provided a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that the [redacted] bond determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

106. Under the process that ICE maintains is lawful—which affords Petitioner no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did on January 28, 2025. Petitioner has already been erroneously deprived of his liberty, and the risk he will continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain him. Pursuant to 8 C.F.R. § 236.1(c)(9), an arrest of Petitioner automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond order without oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). In this instance, ICE has confirmed that it will not consider bond for Petitioner and that he will need to be granted a bond by the Immigration Court. When Petitioner attempted to do so, his case was transferred to a new immigration court. ICE's new custody determination will be subject to review by the IJ. 8 U.S.C. § 1226(a). However, as a result, the actual *revocation* of Petitioner's bond would evade any

review by the IJ or any other neutral arbiter. Under the current procedures, by the time Petitioner ends up in front of an IJ seeking redetermination of his custody status, the IJ would only be considering whether Petitioner has carried the burden to show that a new bond must be granted. The IJ will not be considering whether ICE's re-arrest was, in fact, lawful, because the bond has been revoked and Petitioner has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

107. By contrast, the procedure Petitioner seeks—release from custody and reinstatement of his prior bond until he is provided a hearing in front of a neutral adjudicator at which the government proves by clear and convincing evidence that circumstances have changed to justify his detention—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

108. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Petitioner's re-incarceration is warranted.

FIRST CAUSE OF ACTION

Due Process

U.S. Const. amend. V

109. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

110. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

111. Petitioner had a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

112. For these reasons, Petitioner's re-arrest without a hearing violated the Constitution. The only remedy of this violation is his immediate release from immigration jail unless and until DHS proves to this Court or, in the alternative, a neutral adjudicator, by clear and convincing evidence, and taking into consideration alternatives to detention and Petitioner's ability to pay a bond, that he is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, the neutral adjudicator must consider alternatives to detention when determination whether Petitioner's re-incarceration is warranted.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the San Francisco Field Office and/or the Eastern District of California pending the resolution of this case;

(3) Order the immediate release of Petitioner from DHS custody on the conditions of his prior bond and the reinstatement of that bond unless and until DHS proves to a neutral adjudicator by clear and convincing evidence that he is a danger or a flight risk;

(4) In the alternative, conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

(5) In the alternative, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the neutral adjudicator takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

(6) Award reasonable costs and attorney fees; and

(7) Grant such further relief as the Court deems just and proper.

Dated: February 24, 2025

Respectfully submitted,

s/ Johnny Sinodis
Johnny Sinodis
Oona Cahill
Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this February 21, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner