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*\*Application for admission forthcoming*

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Aroldo RODRIGUEZ DIAZ

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Aroldo RODRIGUEZ DIAZ,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San  
Francisco Office of Detention and Removal, U.S.  
Immigrations and Customs Enforcement; U.S.  
Department of Homeland Security;

Todd M. LYONS, 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;

Respondents-Defendants.

Case No. 25-5071

**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, Aroldo Rodriguez Diaz (“Mr. Rodriguez” or “Petitioner”), by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from returning him to an immigration jail pending resolution of his removal case without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. The DHS previously incarcerated Mr. Rodriguez for seventeen months—between 2019 and 2020—pending resolution of his immigration case. Mr. Rodriguez was initially denied bond, but the DHS subsequently released him on May 13, 2020, after an Immigration Judge (IJ)—acting pursuant to a district court order from the Hon. Yvonne Gonzalez Rogers following Mr. Rodriguez’s successful habeas petition—determined he was neither a flight risk nor a danger and set bond in the amount of \$10,000. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR (N.D. Cal. Apr. 27, 2020). Upon posting the \$10,000 bond, ICE installed an electronic ankle monitor and enrolled Mr. Rodriguez in the Intensive Supervision Appearance Program (ISAP). Mr. Rodriguez complied with all conditions of release, leading DHS to remove his ankle monitor in April 2022. Although the government appealed Judge Gonzalez Rogers’ opinion successfully at the Ninth Circuit, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022), DHS did not move to re-detain Mr. Rodriguez. DHS’s appeal was on the basis that the constitution did not require Mr. Rodriguez to receive a second bond hearing, and not on whether Mr. Rodriguez was a flight risk or a danger.

3. Over the last five years in which he has lived at liberty, Mr. Rodriguez has been the sole caretaker for his minor U.S. citizen son, and recently became the father of a newborn U.S. citizen daughter. He has also continued to diligently litigate his removal proceedings, including by and prevailing on his two consolidated Petitions for Review at the Ninth Circuit Court of Appeals. *See Rodriguez Diaz v. Garland* (19-72634 & 21-70497) (9th Cir. June 27, 2024). Mr. Rodriguez currently has a Master Calendar Hearing scheduled for August 19, 2026, before the San Francisco



1 Immigration Court.

2 4. On May 31, 2024, Mr. Rodriguez attended his last check-in appointment with ICE. At that  
3 time, ICE scheduled him to appear again on June 30, 2025.

4 5. Notwithstanding the above, on June 13, 2025, Mr. Rodriguez received a message from  
5 ISAP on his telephone stating: "Please report to the San Francisco ISAP Office at 478 Tehama  
6 St., San Francisco, CA 94103, between the hours of 8:00 a.m. – 4:00 p.m. on Saturday, June 14,  
7 2025, or Sunday, June 15, 2025. Failure to report as instructed will be considered a violation."  
8 *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. E (Message from ISAP). Mr. Rodriguez  
9 informed undersigned Counsel, who quickly called ISAP three times. Each time, undersigned  
10 Counsel was placed on hold for several seconds before the line disconnected. Sinodis Decl.  
11 Undersigned Counsel then called and emailed ICE San Francisco to seek clarification as to the  
12 purpose of the ISAP appointment and to confirm that ICE had no intention to re-incarcerate Mr.  
13 Rodriguez. *Id.* at Ex. F (Email to ICE San Francisco). As of the time of filing, ICE has not returned  
14 undersigned Counsel's calls or emails. Sinodis Decl.

15 6. On information and belief, numerous other noncitizens in the San Francisco Bay Area  
16 received the same or similar text message on June 13, 2025. *Id.*

17 7. On information and belief, on June 6, 2025, ISAP in Los Angeles sent the same or similar  
18 text message to dozens of noncitizens, instructing them to appear at ISAP in Los Angeles on either  
19 June 7, 2025, or June 8, 2025. *Id.*

20 8. On information and belief, many of those individuals who appeared as instructed at ISAP  
21 in Los Angeles were incarcerated or re-incarcerated by ICE.<sup>1</sup>

22 9. Numerous credible reports demonstrate that, across the country, including in San  
23 Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other  
24 check-ins with ICE and then arrested by ICE.<sup>2</sup>

25  
26 <sup>1</sup> "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS  
27 News (June 7, 2025), [https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/)  
28 [of-federal-building-in-los-angeles/](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/); "They followed the government's rules. ICE held them anyway," LAist (June  
11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

<sup>2</sup> "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025),  
<https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid Response Network, an  
immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision

10. In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.<sup>3</sup>

11. In light of credible reports of ICE re-incarcerating individuals at their ISAP check-ins, it is highly likely Mr. Rodriguez will be arrested and incarcerated at this appointment, despite the fact that Mr. Rodriguez is neither a flight risk nor a danger to the community. If he is arrested, he faces the very real possibility of being transferred outside of Northern California with little or no notice, far away from his family and two minor U.S. citizen children.

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 Mr. Rodriguez's case, due process requires notice and a hearing, *prior to any revocation of his conditional release on bond*, at which he is afforded the opportunity to advance his arguments as to why his bond should not be revoked.

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Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said.”; “ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say,” San Francisco Chronicle (June 5, 2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; “Cincinnati high school graduate faces deportation after routine ICE check-in,” ABC News (June 9, 2025), <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.  
<sup>3</sup> See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html> (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University PhD student detained by federal agents,” CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).



1 13. That basic principle—that individuals placed at liberty are entitled to process before the  
2 government imprisons them—has particular force here, where Mr. Rodriguez’s detention was  
3 *already* found to be unnecessary to serve its purpose. An IJ previously found that he need not be  
4 incarcerated to prevent flight or to protect the community, and no circumstances have changed  
5 that would justify re-arrest.

6 14. Therefore, at a minimum, in order to lawfully re-arrest Mr. Rodriguez, the government  
7 must first establish, by clear and convincing evidence and before a neutral decision maker, that  
8 he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

9 **CUSTODY**

10 15. Mr. Rodriguez is currently released from custody on a \$10,000 bond set by an IJ. Due to  
11 additional conditions of release set by ICE, he is also participating in ISAP, a monitoring program  
12 for immigrants in removal proceedings who have been released from custody. The program is  
13 operated by a private contractor, BI Incorporated. Pursuant to his contract with ISAP, among  
14 other restrictions, Mr. Rodriguez is subject to check-ins like the appointment scheduled via a  
15 message to his phone on June 13, 2025. Such stringent requirements “impose[] conditions which  
16 significantly confine and restrain his freedom; this is enough to keep him in the ‘custody’ of [the  
17 DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243  
18 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (“*Rodriguez I*”) (holding that  
19 comparable supervision requirements constitute “custody” sufficient to support habeas  
20 jurisdiction).

21 **JURISDICTION**

22 16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general  
23 federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*,  
24 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United  
25 States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common  
26 law.  
27  
28

**REQUIREMENTS OF 28 U.S.C. § 2243**

17. 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).

18. 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).

19. 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**

20. 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 Northern District of California; because Mr. Rodriguez is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California; and because there is no real property involved in this action.

**INTRADISTRICT ASSIGNMENT**

21. Any decision to re-arrest and re-incarcerate Mr. Rodriguez will be made by the San Francisco Field Office of ICE. Moreover, he is subject to an ISAP program operated out of San Francisco, California. Therefore, the assignment to the San Francisco Division of this Court is proper under N.D. Local Rule 3-2(d).



**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22. 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)). Mr. Rodriguez asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

23. No statutory exhaustion requirements apply to Mr. Rodriguez’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). Moreover, Mr. Rodriguez, via undersigned Counsel, has attempted to confirm with ICE and ISAP that they have no intention to re-incarcerate him, but neither ICE nor ISAP have responded to undersigned Counsel’s calls or emails. Sinodis Decl.

**PARTIES**

24. Mr. Rodriguez was born in El Salvador and moved to the United States as a child at the age of nine. On May 13, 2020, Mr. Rodriguez was released from immigration custody on a \$10,000 bond set by an IJ. Since that time, he has complied with all conditions of release. He is the sole caretaker for his minor U.S. citizen son, and recently became the father of a newborn U.S. citizen daughter. Mr. Rodriguez has several meritorious applications for relief from removal, including a pending asylum application, which is currently scheduled for a Master Calendar Hearing before the San Francisco Immigration Court on August 19, 2026.

25. Respondent Polly KAISER is the Acting Field Office Director of ICE, in San Francisco, California and is named in her 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 her official capacity, she is the legal custodian of Mr. Rodriguez.

1 26. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official  
2 capacity. Among other things, ICE is responsible for the administration and enforcement of the  
3 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,  
4 he is the legal custodian of Mr. Rodriguez.

5 27. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.  
6 DHS is the federal agency encompassing ICE, which is responsible for the administration and  
7 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her  
8 capacity as Secretary, Respondent Noem has responsibility for the administration and  
9 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland  
10 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §  
11 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Rodriguez.

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

17 **STATEMENT OF FACTS**

18 29. Mr. Rodriguez is citizen and national of El Salvador who entered the U.S. in 2006 at the  
19 age of nine. As a young child, he lived with his grandparents in El Salvador, where he was  
20 repeatedly threatened by MS-13 gang members. Fortunately, his grandmother sent him to the U.S.  
21 before the threats and harassment turned into physical violence.

22 30. Once in the U.S., Mr. Rodriguez struggled to adjust to his new surroundings. At the age  
23 of fifteen, following an arrest, U.S. immigration officials transferred him to the custody of the  
24 Office of Refugee Resettlement (ORR) and registered him as an "Unaccompanied Alien Child"  
25 (UAC). While in ORR custody, DHS initiated removal proceedings against him and provided him  
26 a copy of a Notice to Appear (NTA). On January 19, 2012, ORR released Mr. Rodriguez from  
27 custody. DHS failed to serve a copy of the NTA on the adult to whom Petitioner was released, as  
28 required by law. *See B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022); *see also Flores-Chavez v.*



1 *Ashcroft*, 362 F.3d 1150 (9th Cir. 2004).

2 31. During removal proceedings in immigration court, Mr. Rodriguez suffered several  
3 instances of ineffective assistance of counsel by two attorneys, which prevented him from fully  
4 presenting his claims for relief from removal.

5 32. On March 13, 2018, Mr. Rodriguez timely filed his Form I-589, Application for Asylum  
6 and for Withholding of Removal, with the U.S. Citizenship and Immigration Services (USCIS),  
7 as provided for in DHS's 2013 Kim Memorandum and the Trafficking Victims Protection  
8 Reauthorization Act, Public Law 110-457 (TVPPRA).

9 33. On August 3, 2018, Mr. Rodriguez was arrested by law enforcement due to a relationship  
10 dispute with the mother of his U.S. citizen son. He ultimately pleaded guilty to California Penal  
11 Code (PC) § 243(e)(1) and § 136.1(b)(1) and was sentenced to two-hundred-seventy-six days in  
12 jail, with credit for one-hundred-thirty-eight days served and eighteen months of probation. Upon  
13 completion of his sentence, ICE took him into custody on December 18, 2018, and transferred  
14 him to an immigration jail.

15 34. On February 27, 2019, Mr. Rodriguez received a custody redetermination hearing where  
16 the IJ denied him bond.

17 35. On May 13, 2019, a new attorney appeared on behalf of Mr. Rodriguez in Immigration  
18 Court at his Individual Calendar Hearing. That attorney failed to provide him with effective  
19 assistance of counsel, committing three prejudicial errors: improperly waiving his eligibility for  
20 withholding of removal; failing to raise that USCIS had initial jurisdiction over his pending  
21 asylum application; and failing to seek to terminate removal proceedings on the basis that DHS  
22 failed to effect proper service of the NTA.

23 36. The IJ proceeded to adjudicate and deny Mr. Rodriguez's claim for protection under the  
24 Convention Against Torture (CAT). On October 17, 2019, the BIA affirmed. Mr. Rodriguez filed  
25 a timely PFR with the Ninth Circuit. *See* Case No. 19-72634.

26 37. On January 13, 2020, Mr. Rodriguez filed a Motion to Reopen Removal Proceedings with  
27 the BIA, arguing proceedings should be reopened due to: (1) the ineffective assistance of his prior  
28 attorneys in Immigration Court; (2) his new eligibility for relief from removal; and (3) changed

1 country conditions in El Salvador. While the Motion to Reopen was pending, yet another attorney  
2 took over his case.

3 38. On February 5, 2020, Mr. Rodriguez filed a motion for custody redetermination with the  
4 IJ, arguing that a material change in circumstances rendered him eligible for a new hearing. The  
5 IJ denied that motion on February 24, 2020.

6 39. On March 16, 2020, Mr. Rodriguez filed a petition for writ of habeas corpus before the  
7 Northern District of California. The case was assigned to the Honorable Judge Yvonne Gonzalez  
8 Rogers. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR.

9 40. On April 27, 2020, Judge Rogers granted Mr. Rodriguez's petition and ordered the  
10 government to provide him a bond hearing before an IJ within twenty-one days where the  
11 government bore the burden to establish flight risk or danger by clear and convincing evidence.  
12 *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR (N.D. Cal. Apr. 27, 2020).

13 41. On May 13, 2020, an IJ granted Mr. Rodriguez bond in the amount of \$10,000 after  
14 determining that he was neither a flight risk nor a danger to the community. Sinodis Decl. at Ex.  
15 A (IJ Bond Order). He posted bond, but before being released, DHS installed an ankle monitor  
16 and enrolled him into ISAP as added conditions of release. Although the government appealed  
17 Judge Gonzalez Rogers' opinion successfully at the Ninth Circuit, *Rodriguez Diaz v. Garland*, 53  
18 F.4th 1189, 1193 (9th Cir. 2022), DHS did not move to re-detain Mr. Rodriguez.

19 42. On June 16, 2020, the BIA denied the Motion to Reopen. Mr. Rodriguez's counsel  
20 erroneously believed she had sixty days to file his PFR, and therefore failed to meet the thirty-  
21 day statutory deadline for filing a PFR. Upon discovering her mistake, Mr. Rodriguez's attorney  
22 filed an Emergency Motion to Rescind and Reissue, requesting that the BIA reissue its June 16,  
23 2020 Order so that Mr. Rodriguez could exercise his right to seek judicial review.

24 43. On February 1, 2021, the BIA denied Mr. Rodriguez's former counsel's Emergency  
25 Motion, asserting that she had failed to comply with *Matter of Lozada*, 19 I&N Dec. 637 (BIA  
26 1988), and *Matter of Melgar*, 28 I&N Dec. 169 (BIA 2020). Mr. Rodriguez filed a timely PFR,  
27 which was then consolidated with his previously filed PFR.  
28



1 44. In April 2022, because Mr. Rodriguez complied with all conditions of release, DHS  
2 removed his ankle monitor. Sinodis Decl.

3 45. On July 1, 2024, the Ninth Circuit granted Mr. Rodriguez consolidated PFRs and  
4 remanded proceedings to the BIA for a new decision. *Rodriguez Diaz v. Garland*, No. 19-72634,  
5 2024 WL 3250371, at \*1 (9th Cir. July 1, 2024).

6 46. Then, on September 25, 2024, the Asylum Office finally provided Mr. Rodriguez an  
7 interview regarding his application for asylum, ultimately referring his application to the  
8 Immigration Court. As stated above, he has a Master Calendar Hearing scheduled before the San  
9 Francisco Immigration Court on August 19, 2026. Sinodis Decl. at Ex. C (Evidence of Mr.  
10 Rodriguez's Master Calendar Hearing).

11 47. On May 31, 2024, Mr. Rodriguez attended his last check-in appointment with ICE. At that  
12 time, ICE scheduled him to appear again on June 30, 2025. Sinodis Decl.

13 48. On April 21, 2025, Mr. Rodriguez became the father of a newborn U.S. citizen daughter.  
14 Sinodis Decl. at Ex. D (Proof of Newborn Daughter).

15 49. Notwithstanding the above, on June 13, 2025, Mr. Rodriguez received a message from  
16 ISAP on his telephone stating: "Please report to the San Francisco ISAP Office at 478 Tehama  
17 St., San Francisco, CA 94103, between the hours of 8:00 a.m. – 4:00 p.m. on Saturday, June 14,  
18 2025, or Sunday, June 15, 2025. Failure to report as instructed will be considered a violation."  
19 Sinodis Decl. at Ex. E (Message from ISAP).

20 50. Mr. Rodriguez informed undersigned Counsel, who quickly called ISAP three times. Each  
21 time, undersigned Counsel was placed on hold for several seconds before the line disconnected.  
22 Sinodis Decl. Undersigned Counsel then called and emailed ICE San Francisco to seek  
23 clarification as to the purpose of the ISAP appointment and to confirm that ICE had no intention  
24 to re-incarcerate Mr. Rodriguez. Sinodis Decl at Ex. F (Email to ICE San Francisco).

25 51. As of the time of filing, ICE has not returned undersigned Counsel's calls or emails.  
26 Sinodis Decl.

27 52. On information and belief, on June 6, 2025, dozens of noncitizens in Los Angeles received  
28 the same or similar text message from ISAP, instructing that they appear at ISAP in Los Angeles

1 on June 7 or June 8, 2025. Sinodis Decl. On information and belief, many of those individuals  
2 who appeared as instructed at ISAP in Los Angeles were incarcerated or re-incarcerated by ICE.<sup>4</sup>

3 53. Numerous credible reports demonstrate that, across the country, including in San  
4 Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other  
5 check-ins with ICE and then arrested by ICE.<sup>5</sup>

6 54. In light of credible reports of ICE re-incarcerating individuals at their ISAP check-ins, it  
7 is highly likely Mr. Rodriguez will be arrested and incarcerated at this appointment, despite the  
8 fact that Mr. Rodriguez is neither a flight risk nor a danger to the community. He faces the very  
9 real possibility of being re-incarcerated and transferred out of the Northern District, far away from  
10 his family and minor U.S. citizen children.

11 55. Intervention from this Court is therefore required to ensure that Mr. Rodriguez is not  
12 unlawfully re-arrested and re-incarcerated and subjected to irreparable harm.

### 13 LEGAL BACKGROUND

#### 14 **Right to a Hearing Prior to Re-incarceration**

15 56. In Mr. Rodriguez's particular circumstances, the Due Process Clause of the Constitution  
16 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation  
17 hearing before a neutral decision maker to determine whether circumstances have materially  
18 changed since his release on bond in May 2020, such that detention would now be warranted on  
19 the basis that he is a danger or a flight risk by clear and convincing evidence.

22 <sup>4</sup> "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS  
23 News (June 7, 2025), [https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/)  
24 [of-federal-building-in-los-angeles/](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/); "They followed the government's rules. ICE held them anyway," LAist (June  
11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

25 <sup>5</sup> "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025),  
26 <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid Response Network, an  
27 immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision  
28 Appearance Program – for what are usually routine appointments to check on their immigration status. But the  
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3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025),  
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school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025),  
<https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.



1 57. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's  
2 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §  
3 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to  
4 revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at  
5 640, the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There,  
6 the BIA held that "where a previous bond determination has been made by an immigration judge,  
7 no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS  
8 "requires a showing of changed circumstances both where the prior bond determination was made  
9 by an immigration judge *and* where the previous release decision was made by a DHS officer."  
10 *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that,  
11 under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed  
12 circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent  
13 changed circumstances ... ICE cannot redetain Panosyan.").

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

20 59. ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also  
21 constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th  
22 Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the  
23 requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE  
24 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Mr.  
25 Rodriguez's weighty interest in his freedom from detention.

26 60. Federal district courts in California have repeatedly recognized that the demands of due  
27 process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in  
28 DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen

on bond, like Mr. Rodriguez, *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); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at \*3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at \*3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, \*4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

#### **Mr. Rodriguez's Protected Liberty Interest in His Conditional Release**

61. Mr. Rodriguez'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).

62. Since May 2020, Mr. Rodriguez exercised that freedom under the IJ's May 13, 2020, order granting him release on a \$10,000 bond. Sinodis Decl. at Ex. A (IJ Bond Order). Although he was released on bond (and thus under government custody, as further demonstrated by his enrollment in ISAP), he retains 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).

63. 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



1 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although  
2 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts  
3 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is  
4 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.  
5 at 482.

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

21 65. In fact, it is well-established that an individual maintains a protectable liberty interest even  
22 where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*,  
23 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process  
24 considerations support the notion that an inmate released on parole by mistake, because he was  
25 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because  
26 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would  
27 be inconsistent with fundamental principles of liberty and justice” to return him to prison)  
28 (internal quotation marks and citation omitted).

1 66. Here, when this Court “‘compar[es] the specific conditional release in [Mr. Rodriguez’s  
2 case], with the liberty interest in parole as characterized by *Morrissey*,’” it is clear that they are  
3 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Rodriguez’s  
4 release “enables him to do a wide range of things open to persons” who have never been in  
5 custody or convicted of any crime, including to live at home, work, care for his children, including  
6 his U.S. citizen son for whom he is the sole caretaker, and “be with family and friends and to form  
7 the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

8 67. Mr. Rodriguez is the sole caretaker for his minor U.S. citizen son. He has complied with  
9 all conditions of release for over five years, as he litigates his removal proceedings. He has  
10 meritorious applications for relief from removal, including a substantial asylum claim pending  
11 before the immigration court with an upcoming hearing in August 2026. *Sinodis Decl.*

12 **Mr. Rodriguez’s Liberty Interest Mandates a Hearing Before any Re-Arrest and**  
13 **Revocation of Bond**

14 68. Mr. Rodriguez asserts that, here, (1) where his detention would be civil, (2) where he has  
15 been at liberty for five years, during which time he has complied with all conditions of release  
16 and served as the sole caretaker for his minor U.S. citizen son, (3) where he has a substantial  
17 application for asylum pending before the Immigration Court, with an upcoming hearing on  
18 August 19, 2026, (4) where no change in circumstances exist that would justify his detention, and  
19 (5) where the only circumstance that has changed is ICE’s move to arrest as many people as  
20 possible because of the new administration, due process mandates that he receive notice and a  
21 hearing before a neutral adjudicator *prior* to any re-arrest or revocation of a bond.

22 69. “Adequate, or due, process depends upon the nature of the interest affected. The more  
23 important the interest and the greater the effect of its impairment, the greater the procedural  
24 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d  
25 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must  
26 “balance [Mr. Rodriguez’s] liberty interest against the [government’s] interest in the efficient  
27 administration of” its immigration laws in order to determine what process he is owed to ensure  
28 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth



1 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:  
2 “first, the private interest that will be affected by the official action; second, the risk of an  
3 erroneous deprivation of such interest through the procedures used, and the probative value, if  
4 any, of additional or substitute procedural safeguards; and finally the government’s interest,  
5 including the function involved and the fiscal and administrative burdens that the additional or  
6 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*  
7 *Eldridge*, 424 U.S. 319, 335 (1976)).

8 70. The Supreme Court “usually has held that the Constitution requires some kind of a hearing  
9 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127  
10 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the  
11 only remedies the State could be expected to provide” can post-deprivation process satisfy the  
12 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one of the  
13 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in  
14 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally  
15 to do the impossible by providing predeprivation process,” can the government avoid providing  
16 pre-deprivation process. *Id.*

17 71. Because, in this case, the provision of a pre-deprivation hearing is both possible and  
18 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr.  
19 Rodriguez with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See*  
20 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,  
21 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,  
22 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment  
23 proceedings may not constitutionally be held in jail pending the determination as to whether they  
24 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Mr.  
25 Rodriguez’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

26 **Mr. Rodriguez’s Private Interest in His Liberty is Profound**

27 72. Under *Morrissey* and its progeny, individuals conditionally released from serving a  
28 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 Mr. Rodriguez, 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, Mr. Rodriguez retains a truly weighty liberty interest even though he is under conditional release.

73. What is at stake in this case for Mr. Rodriguez 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).

74. 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 Re-Incarcerating Mr. Rodriguez Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal**

75. The government’s interest in detaining Mr. Rodriguez without a due process hearing is low, and when weighed against Mr. Rodriguez’s significant private interest in his liberty, the scale



tips sharply in favor of enjoining Respondents from re-arresting Mr. Rodriguez 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 Mr. Rodriguez when the Court considers that the process he seeks—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. Providing Mr. Rodriguez with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Rodriguez 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 individuals like Mr. Rodriguez.

76. 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 has any basis for detaining Mr. Rodriguez in June 2025 when he has lived at liberty complying with the conditions of his release since May 2020 while acting as the sole caretaker for his minor U.S. citizen son and a loving father to his newborn U.S. citizen daughter.

77. Mr. Rodriguez was determined by an IJ not to be a danger to the community in May 2020 and has done nothing to undermine that determination. In fact, ICE decided to remove his ankle monitor in April 2022, given his full compliance with the terms and conditions of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a person’s justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

78. As to flight risk, an IJ determined that a bond of \$10,000 was sufficient to guard against any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. Furthermore, Mr. Rodriguez has meritorious applications for relief from removal and eagerly awaits the opportunity to present his case before the Immigration Court. It is difficult to

1 see how the government's interest in ensuring his presence at the moment of removal has  
 2 materially changed since he was released in May 2020, when he has complied with all conditions  
 3 of release and is the sole caretaker for his minor U.S. citizen son in the United States and the  
 4 loving father of a newborn U.S. citizen daughter. The government's interest in detaining Mr.  
 5 Rodriguez at this time is therefore low. That ICE has a new policy to make a minimum number  
 6 of arrests each day under the new administration does not constitute a material change in  
 7 circumstances or increase the government's interest in detaining him.<sup>6</sup>

8 79. Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing  
 9 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Rodriguez does  
 10 not seek a unique or expensive form of process, but rather a routine hearing regarding whether  
 11 his bond should be revoked and whether he should be re-incarcerated.

12 80. In the alternative, providing Mr. Rodriguez with a hearing before this Court (or a neutral  
 13 decisionmaker) regarding bond is a routine procedure that the government provides to those in  
 14 immigration jails on a daily basis. At that hearing, the Court would have the opportunity to  
 15 determine whether circumstances have changed sufficiently to require a different amount of  
 16 bond—or if bond should be revoked. But there is no justifiable reason to re-incarcerate Mr.  
 17 Rodriguez prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even  
 18 where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment  
 19 without the burden of a new adversary criminal trial if in fact he has failed to abide by the  
 20 conditions of his parole . . . the State has no interest in revoking parole without some informal  
 21 procedural guarantees." 408 U.S. at 483.

22 81. Enjoining Mr. Rodriguez's re-arrest until ICE (1) moves for a bond re-determination  
 23 before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Rodriguez is a flight  
 24

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25 <sup>6</sup> See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available  
 26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's  
 27 Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025),  
 28 <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").



1 risk or danger to the community is far *less* costly and burdensome for the government than  
2 keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs  
3 to the public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting  
4 to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

5 **Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**  
6 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant**  
7 **Hearing Where ICE Carries the Burden Would Decrease That Risk**

8 82. Providing Mr. Rodriguez a pre-deprivation hearing would decrease the risk of him being  
9 erroneously deprived of his liberty. Before Mr. Rodriguez can be lawfully detained, he must be  
10 provided with a hearing before a neutral adjudicator at which the government is held to show that  
11 there has been sufficiently changed circumstances such that the IJ’s May 2020 bond determination  
12 should be altered or revoked because clear and convincing evidence exists to establish that Mr.  
13 Rodriguez is a danger to the community or a flight risk.

14 83. Under ICE’s process for custody determination—which affords Mr. Rodriguez no process  
15 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk  
16 that Mr. Rodriguez will be erroneously deprived of his liberty is high if ICE is permitted to re-  
17 incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. §  
18 236.1(c)(9), an arrest of Mr. Rodriguez automatically revokes his bond. Thus, the regulations  
19 permit ICE to unilaterally nullify a bond order without oversight of any kind. After re-arrest, ICE  
20 makes its own, one-sided custody determination and can decide whether the agency wants to hold  
21 Mr. Rodriguez without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). ICE’s new  
22 custody determination will be subject to review by the IJ. 8 U.S.C. § 1226(a). However, as a  
23 result, the actual *revocation* of Mr. Rodriguez’s bond would evade any review by the IJ or any  
24 other neutral arbiter. Under the current procedures, by the time Mr. Rodriguez ends up in front of  
25 an IJ seeking redetermination of his custody status, the IJ would only be considering whether Mr.  
26 Rodriguez has carried the burden to show that a new bond must be granted. The IJ will not be  
27 considering whether ICE’s re-arrest was, in fact, lawful, because the bond has been revoked and  
28 Mr. Rodriguez has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

84. By contrast, the procedure Mr. Rodriguez seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—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).

85. 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 Mr. Rodriguez’s re-incarceration is warranted.

## **FIRST CAUSE OF ACTION**

### **Procedural Due Process**

#### **U.S. Const. amend. V**

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

87. 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.

88. Mr. Rodriguez has a vested liberty interest in his conditional release. Due Process does



1 not permit the government to strip him of that liberty without a hearing before this Court. *See*  
2 *Morrissey*, 408 U.S. at 487-488.

3 89. The Court must therefore order that, prior to any re-arrest, the government must provide  
4 him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would  
5 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into  
6 consideration alternatives to detention and Mr. Rodriguez's ability to pay a bond, that Mr.  
7 Rodriguez is a danger to the community or a flight risk, such that his re-incarceration is warranted.  
8 During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral  
9 adjudicator must consider alternatives to detention when determining whether Mr. Rodriguez's  
10 re-incarceration is warranted.

## 11 **SECOND CAUSE OF ACTION**

### 12 **Substantive Due Process**

#### 13 **U.S. Const. amend. V**

14 90. Mr. Rodriguez re-alleges and incorporates herein by reference, as is set forth fully herein,  
15 the allegations in all the preceding paragraphs.

16 91. The Due Process Clause of the Fifth Amendment forbids the government from depriving  
17 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend.  
18 V.

19 92. Mr. Rodriguez has a vested liberty interest in his conditional release. Due Process does  
20 not permit the government to strip him of that liberty without it being tethered to one of the two  
21 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the  
22 community from danger.

23 93. Since May 2020, Mr. Rodriguez has fully complied with his bond and the additional  
24 conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk  
25 nor a danger. Re-arresting him now—while he is the sole caretaker for his minor U.S. citizen son  
26 and the loving father of a newborn U.S. citizen daughter—would be punitive and violate his  
27 constitutional right to be free from the unjustified deprivation of his liberty.

1 94. For these reasons, Mr. Rodriguez's re-arrest without first being provided a hearing would  
2 violate the Constitution.

3 95. The Court must therefore order that, prior to any re-arrest, the government must provide  
4 him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would  
5 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into  
6 consideration alternatives to detention and Mr. Rodriguez's ability to pay a bond, that Mr.  
7 Rodriguez is a danger to the community or a flight risk, such that his re-incarceration is warranted.  
8 During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral  
9 adjudicator must consider alternatives to detention when determining whether Mr. Rodriguez's  
10 re-incarceration is warranted.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, the Mr. Rodriguez prays that this Court grant the following relief:

- 13 (1) Assume jurisdiction over this matter;
- 14 (2) Enjoin ICE from re-arresting Mr. Rodriguez unless and until a hearing can be  
15 held before a neutral adjudicator to determine whether his re-incarceration  
16 would be lawful because the government has shown that he is a danger or a  
17 flight risk by clear and convincing evidence;
- 18 (3) Declare that Mr. Rodriguez cannot be re-arrested unless and until he is  
19 afforded a hearing on the question of whether his re-incarceration would be  
20 lawful—i.e., whether the government has demonstrated to a neutral  
21 adjudicator that he is a danger or a flight risk by clear and convincing evidence;
- 22 (4) Award reasonable costs and attorney fees; and
- 23 (5) Grant such further relief as the Court deems just and proper.
- 24

25 Dated: June 14, 2025

Respectfully submitted,

26 /s/ Johnny Sinodis

27 Johnny Sinodis

Marc Van Der Hout

28 Oona Cahill.

Attorneys for Mr. Rodriguez



**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 June 14, 2025, in San Francisco, California.

/s/ Johnny Sinodis  
Johnny Sinodis  
Attorney for Petitioner