Johnny Sinodis (California Bar #290402)
Marc Van Der Hout (California Bar #80778)
Zachary Nightingale (California Bar # 184501)
Christine Raymond (Massachusetts Bar #711907)*
Oona Cahill (California Bar #354525)
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

*Application for PHV forthcoming

Attorneys for Petitioner-Plaintiff
T.P.S.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

T.P.S.,

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. 3:25-cv-5428

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, T.P.S.[1] (Petitioner), by and through 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 neural adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. Petitioner is a citizen and national of India who fled to the United States to seek asylum in April 2023. The DHS previously incarcerated Petitioner when he first arrived in the United States to seek asylum but released him on an order of recognizance subject to reporting requirements on April 20, 2023. Since then, Petitioner has lived at liberty for over two years while complying with all reporting requirements and diligently litigating his meritorious asylum application, which remains pending before the Immigration Court. Petitioner works as a truck driver to provide for his wife and two minor children, who are also applying for asylum in the United States. Petitioner's family depends on him for financial and emotional care and support.

3. Petitioner is scheduled to attend a check-in at the ICE Sacramento sub-office on July 2, 2025, which is under the jurisdiction of the ICE San Francisco Field Office. In light of credible and recent reports of ICE re-incarcerating individuals at their ICE check-ins[2]—including undersigned Counsel's own experience with a similarly situated client who was re-arrested and re-incarcerated during a routine check-in appointment at ICE's Sacramento sub-office—undersigned counsel contacted ICE Sacramento's sub-office to request to reschedule the appointment to a date when counsel, who is unavailable on July 2, could attend the appointment with Petitioner. To date, ICE has not responded to or acknowledged these emails. On information and belief, multiple other attorneys who represent clients with ICE check-ins at the ICE

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[1] Petitioner T.P.S. is concurrently filing a motion to proceed under pseudonym in this matter.

[2] *See, e.g.*, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), 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.

Sacramento sub-office have received responses and been able to reschedule check-ins in recent weeks.

4. The fact that ICE has declined to respond to Counsel's emails, diverging from their typical practice, in conjunction with the numerous credible reports of similarly situated noncitizens being arrested at ICE check-in appointments, suggests it is highly likely Petitioner will be arrested and incarcerated at this appointment, despite the fact that Petitioner is neither a flight risk nor a danger to the community. This is particularly true given that ICE has received multiple directives to meet untenable daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary.[3] If Petitioner is arrested, he faces the very real possibility of being transferred outside of California with little or no notice, far away from his family and community.

5. 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 or parole, 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 requires notice and a hearing, *prior to any revocation of his conditional release on his own recognizance*, at which he is afforded the opportunity to advance his arguments as to why his bond should not be revoked.

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[3] *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/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), 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.").

6. 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 no circumstances have changed that would justify his re-arrest.

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

CUSTODY

8. Petitioner is currently released from custody on an order of recognizance issued by DHS. Due to additional conditions of release set by ICE, Petitioner also attends check-ins with the Sacramento ICE sub-office on approximately an annual basis and complies with other conditions of release including updating his address. Such stringent requirements "impose[] conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that comparable supervision requirements constitute "custody" sufficient to support habeas jurisdiction).

JURISDICTION

9. 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

10. 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).

11. 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).

12. 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

13. 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 Petitioner is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California[4]; and because there is no real property involved in this action.

14. Furthermore, because Petitioner is not challenging any present physical confinement but instead the likelihood of his future unlawful re-arrest and re-incarceration on July 2, 2025, during his ICE check-in appointment, the San Francisco ICE Field Office is the proper Respondent-Defendant.

INTRADISTRICT ASSIGNMENT

15. Any decision to re-arrest and re-incarcerate Petitioner will be made by the San Francisco Field Office of ICE, even though Petitioner is scheduled to appear before the Sacramento ICE

[4] U.S. Immigration and Customs Enforcement, *ICE Field Office*, https://www.ice.gov/contact/field-offices (stating the San Francisco ICE Field Office's area of responsibility is, as relevant here, "Northern California.").

sub-office, because the Sacramento ICE sub-office falls under the jurisdiction and direction of the San Francisco Field Office of ICE. 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

16. 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.

17. 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).

PARTIES

18. Petitioner was born in India and fled to the United States to seek asylum in April 2023. In April 2023, several days after DHS arrested and incarcerated Petitioner, DHS released him from immigration custody on an Order of Release on Own Recognizance with reporting requirements. Since that time, Petitioner has complied with all conditions of release, including attending ICE check-ins and updating his address. Petitioner has a meritorious asylum application that is pending before the Sacramento Immigration Court.

19. 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 Petitioner.

20. Respondent Todd M. LYONS 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.

21. Respondent Kristi NOEM is the Secretary of 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.

22. 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.

STATEMENT OF FACTS

23. Petitioner is citizen and national of India who entered the U.S. in April 2023 to seek asylum after enduring horrific persecution and torture at the hands of the Indian government. Petitioner, who is Sikh and a supporter of the Sikh separatist movement called Khalistan, was persecuted by the Indian government because of his political and religious beliefs, as well as his family relationships. Declaration of Johnny Sinodis (Sinodis Decl.).

24. Upon arrival to the United States on April 17, 2023, Petitioner presented himself to DHS agents, who took him into custody. Two days later, on April 19, 2023, DHS issued Petitioner a Notice to Appear (NTA), placed him in removal proceedings, and directed him to appear before the Sacramento Immigration Court on September 19, 2023. *Id.* at Ex. A (NTA). On April 20, 2023, DHS released Petitioner from custody on an order of recognizance. *Id.* at Ex. B (Order of Release on Recognizance). As part of his order of release, DHS required Petitioner to attend

periodic check in appointments with the Sacramento ICE sub-office, which he has done without issue. *Id.*

25. Since his release from immigration custody in April 2023, Petitioner has complied with all conditions of release while litigating his removal proceedings. Petitioner's asylum application is currently pending before the Sacramento Immigration Court. *Id.* at Ex. C (Evidence of Pending I-589); Ex. D (Evidence of Petitioner's Ongoing Removal Proceedings). Petitioner works as a truck driver pursuant to valid work authorization. *Id.* at Ex. E (Petitioner's Employment Authorization Card). Petitioner's wife and two minor children are also seeking asylum in the United States and depend on him for financial and emotional care and support. Sinodis Decl.

26. In March 2024, Petitioner attended his last check-in appointment with ICE. At that time, ICE scheduled him to appear again on July 2, 2025. *See id.* at Ex. F (ICE Check-In Notice for July 2, 2025).

27. Multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the Sacramento Area, San Francisco Bay Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[5]

28. 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.[6]

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[5] *See supra* n.2; "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "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 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.

[6] *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*,

29. Given the recent credible reports of arrests at ICE check-ins, undersigned Counsel emailed ICE's Sacramento sub-office on June 23, 2025, to request that Petitioner's July 2, 2025, check-in appointment be rescheduled by two weeks. Undersigned counsel requested this brief continuance because counsel will be out of the office on July 2, 2025, and would not be able to appear with Petitioner, who fears he will be arrested at the check-in. *Id.* On June 25, 2025, undersigned Counsel sent a second follow-up email to ICE. *Id.* As of the time of filing, ICE has not returned undersigned Counsel's emails. *Id.*

30. On information and belief, other attorneys representing clients with check-ins before the Sacramento ICE sub-office have made the same request and have received timely responses rescheduling their client's appointments. *Id.*

31. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and the fact that ICE has not responded to repeated emails from undersigned counsel, it is highly likely Petitioner will be arrested and incarcerated at this appointment. This is true despite the fact that Petitioner is neither a flight risk nor a danger to the community. He faces the very real possibility of being re-incarcerated and transferred out of the District, far away from his family and community.

32. Intervention from this Court is therefore required to ensure that Petitioner is not unlawfully re-arrested and re-incarcerated and subjected to irreparable harm.

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

33. 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 a neutral decision maker to determine whether circumstances have materially changed since his release from immigration custody in April 2023, such that incarceration would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

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).

34. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond or conditional parole 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 or conditional parole "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.").

35. 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 or conditional parole only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

36. ICE's power to re-arrest a noncitizen who is at liberty following a release on bond or conditional parole 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.

37. 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.*, *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); *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); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (enjoining ICE from re-detaining Petitioner absent notice and a hearing); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 WL 1771438, *6 (N.D. Cal. June 26, 2025).

Petitioner's Protected Liberty Interest in His Conditional Release

38. 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).

39. Since April 2023, Petitioner exercised that freedom under DHS's order of release on recognizance, dated April 20, 2023. Sinodis Decl. at Ex. B (Order of Release on Recognizance). Although he was released on conditional parole (and thus under government custody, as further demonstrated by his requirement to attend ICE check-ins), 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).

40. 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.

41. 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).

42. 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).

43. 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, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

44. Petitioner has complied with all conditions of release for over two years, as he litigates his removal proceedings. He has a meritorious application for relief from removal in the form of a substantial asylum claim pending before the immigration court in Sacramento. Sinodis Decl. Ex. C (Evidence of Petitioner's Asylum Application); *id.* at Ex. D (Evidence of Petitioner's Pending Immigration Court Proceedings).

Petitioner's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release

45. Petitioner asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for two years, during which time he has complied with all conditions of release, (3) where he has a substantial application for asylum pending before the Immigration Court, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

46. "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)).

47. 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.*

48. Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is 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 requires a pre-deprivation hearing before a neutral adjudicator.

Petitioner's Private Interest in His Liberty is Profound

49. 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 is under conditional release.

50. 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 release order 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).

51. 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 Petitioner 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

52. The government's interest in detaining Petitioner 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 enjoining Respondents from re-arresting Petitioner 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 he seeks—notice and a hearing regarding whether his order of release should be revoked and, if so, whether a bond amount should be set that is sufficient to mitigate any risk of flight—is a standard course of action for the government. 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 individuals like Petitioner.

53. 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 Petitioner in July 2025 when he has lived at liberty complying with the conditions of his release since April 2023, has a pending asylum application, and has no criminal history.

54. Petitioner was determined by DHS not to be a danger to the community in April 2023 and has done nothing to undermine that determination, 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).

55. As to flight risk, DHS determined that reporting requirements were sufficient to guard against any possible flight risk, to "assure [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Furthermore, Petitioner has a meritorious application for relief from removal and eagerly awaits the opportunity to present his case before the Immigration Court. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in April 2023, when he has complied with all conditions of release and works hard as a truck driver to provide for his wife and minor children, who are also seeking asylum in the United States. The government's interest in detaining Petitioner at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[7]

56. Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing would impose is 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 a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated.

57. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) regarding bond is a 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 circumstances have changed sufficiently to require some amount of bond—or if his release should be revoked. But there is no justifiable reason to re-incarcerate Petitioner 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

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[7] *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/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), 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.").

his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

58. Enjoining Petitioner's re-arrest until ICE (1) moves for a bond re-determination before an IJ 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.

Without a Due Process Hearing Prior to Any Re-Arrest, 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

59. Providing Petitioner 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 Petitioner should be detained because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

60. Under ICE's process for custody determination—which affords Petitioner no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Petitioner will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 236.1(c)(9), a noncitizen's release from custody "may be revoked at any time in the discretion of the district director." Thus, the regulations permit ICE to unilaterally revoke a release determination without oversight of any kind—even if, as here, the individual has been living at liberty for years and no circumstances justify their arrest. 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 release again. 8 C.F.R. § 236.1(c)(9). 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 release 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 he can and should be released on bond. The IJ will not be considering whether ICE's re-arrest was, in fact, lawful, because the release has been revoked and Petitioner has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

61. By contrast, the procedure Petitioner 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).

62. 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

Procedural Due Process

U.S. Const. amend. V

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

64. 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.

65. Petitioner has 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.

66. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention and Petitioner's ability to pay a bond, that Petitioner 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, a neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

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

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

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

70. Since April 2023, Petitioner has fully complied with the conditions of release imposed

on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

71. For these reasons, Petitioner's re-arrest without first being provided a hearing would violate the Constitution.

72. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention and Petitioner's ability to pay a bond, that Petitioner 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, a neutral adjudicator must consider alternatives to detention when determining 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 ICE from re-arresting Petitioner unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;

(3) Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(4) Award reasonable costs and attorney fees; and

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

Dated: June 28, 2025

Respectfully submitted,

/s/ Johnny Sinodis

Johnny Sinodis
Marc Van Der Hout
Zachary Nightingale
Christine Raymond
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 June 28, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner