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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

SAUL AMEZCUA-PENALOZA,

Petitioner-Plaintiff,

v.

John CANTU, Field Office Director of Phoenix 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.

A[redacted]

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, Saul Amezcua-Penaloza ("Mr. Amezcua-Penaloza" or "Petitioner"), Agency number [redacted], 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 continuing to detain him in 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. Petitioner also seeks an order enjoining DHS from continuing to violate the undisturbed bond release order issued by an Immigration Judge on March 6, 2012.

3. Petitioner lastly seeks his immediate release from detention in Florence Correctional Facility where ICE unlawfully re-detained and continues to imprison him without a hearing and without demonstrating that he is a flight risk or danger to the community, as required by the Due Process clause of the Fifth Amendment.

4. As background, Mr. Amezcua-Penaloza initially came into immigration custody due to his single criminal conviction: on August 21, 2009, he was convicted for Solicitation to Take the Identity of Another, a class 6 felony later designated a misdemeanor, in violation of A.R.S. sections 13-2008,13-1002, 12-114.01, 13-610, 13-701, 13-702, 13-702.01, and 13-801. He was sentenced to eighteen (18) months of probation and fulfilled the conditions of his sentence without issue. This conviction was for unknowingly using another person's social security number to work and attend college; he began using this social security number when he was a 14-year-old labor trafficking victim.

5. On July 7, 2010, the Board of Immigration Appeals (BIA) found that convictions like Mr. Amezcua-Penaloza's did not constitute a crime involving moral turpitude, as the Ninth Circuit has repeatedly held that the use of a false social security number for the purposes of employment is not a crime of moral turpitude. *See Matter of Gomez-Segura*, A087 540 725 (BIA

July 7, 2010) (unpublished) (citing *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000). ***Exhibit A.***

6. After being taken into custody, ICE subsequently released Mr. Amezcua-Penaloza on March 6, 2012, pursuant to an Immigration Judge's order granting his release on bond. The IJ's bond determination was based on a comprehensive review of the relevant factors under 8 C.F.R. §1236.1, including a determination that Mr. Amezcua-Penaloza was not a flight risk nor a danger to the community. This valid bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body. ***Exhibit B.***

7. Four years later, on April 18, 2016, IJ Hollis, granted Mr. Amezcua-Penaloza's Motion to Administratively Close Removal Proceedings, with DHS filing its non-opposition. ***Exhibit C.***

8. On June 3, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings. Contrary to the practice manual, DHS did not seek Petitioner's position before filing this motion. The improperly-filed Motion remains pending before the IJ. ***Exhibit D.***

9. On June 27, 2025, ICE no-notice arrested Mr. Amezcua-Penaloza less than a block from his home. 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.[1]

10. The arresting ICE officers did not articulate a reason as to why Mr. Amezcua-Penaloza was being re-detained, such as how he is now a flight risk, a danger to his community, or for any purported violations of the conditions associated with his bond release from 2012.

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[1] *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).

11. Indeed, there have been no changes in Mr. Amezcua-Penaloza's circumstances. For the past thirteen (13) years and four months that Mr. Amezcua-Penaloza has lived in freedom, he has been a devoted husband and father to his son and stepson, who are now 21 and 20 years old, respectively. His younger son faces significant health challenges due to living with epilepsy, which involves enduring unpredictable seizures that require extra attention and support. Mr. Amezcua-Penaloza is not only a dedicated family-man but also a successful entrepreneur and responsible business owner. He skillfully manages three different ventures, including a recently acquired venue that specializes in hosting weddings and quinceañeras. He is an exemplary asset to his community.

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 Amezcua-Penaloza's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he is afforded the opportunity to advance his arguments as to why his release should not be revoked.

13. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular meaning here, where Mr. Amezcua-Penaloza's detention was ***already*** found to be unnecessary to serve its purpose. An Immigration Judge previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

14. Therefore, at a minimum, in order to lawfully re-arrest Mr. Amezcua-Penaloza, 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. ICE's re-arrest of Mr. Amezcua-Penaloza on June 27, 2025, violated these regulations, laws, and due process.

CUSTODY

15. Mr. Amezcua-Penaloza is currently in the custody of ICE at the Florence Correctional Center in Florence, Arizona. Mr. Amezcua-Penaloza is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

16. 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

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 District of Arizona. Mr. Amezcua-Penaloza is under the jurisdiction of the Phoenix ICE Field Office, ICE unlawfully re-arrested him in his Phoenix, Arizona neighborhood, just a block from his home, in violation of 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), and he is being imprisoned in Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

22. No statutory exhaustion requirements apply to Mr. Amezcua-Penaloza's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

23. Moreover, Petitioner wrote ICE on July 7, 2025, raising these arguments; ICE has not released Petitioner. Because Petitioner's case has not been recalendared, no IJ has jurisdiction to consider a bond. Therefore, Petitioner has exhausted all remedies available.

PARTIES

24. Mr. Amezcua-Penaloza is a citizen and national of Mexico who entered the U.S. with his parents in 1997, at the age of 14. He briefly departed and re-entered in 2007, and has remained in the country since.

25. Mr. Amezcua-Penaloza was deemed neither a danger to his community or a flight risk by an Immigration Judge and released on bond in March 2012. ***Exhibit B***.

26. Mr. Amezcua-Penaloza is the sole financial provider for his wife and two sons. He is not only a dedicated family man but also a successful entrepreneur and responsible business owner. He skillfully manages three different ventures, including a recently acquired venue that specializes in hosting weddings and quinceañeras.

27. Respondent John CANTU is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Mr. Amezcua-Penaloza.

28. 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 Mr. Amezcua-Penaloza.

29. 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 Mr. Amezcua-Penaloza.

30. 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

31. Mr. Amezcua-Penaloza is citizen and national of Mexico who entered the U.S. in 1997, at the age 14, left the country voluntarily in 2007 and re-entered shortly after, at the age of 24 years old.

32. To enable him to work at young age of 14, adults in his life obtained a fake social security card and employment authorization documents that claimed he was 18 years old. Mr. Amezcua-Penaloza did not have the opportunity to enroll in high school due to his forced labor condition throughout his childhood and adolescence. At the age of 18, he wanted to learn English; too old to attend high school, he used a false social security number to register at Phoenix College. During a minor traffic stop, a Tempe detective discovered his use of a social security number based on his Phoenix College Student ID and admission to working at a hot dog restaurant with a fake social security number.

33. On August 21, 2009, he was convicted for the offense of Solicitation to Take the Identity of Another, a class 6 felony, in violation of A.R.S. sections 13-2008,13-1002, 12-114.01, 13-610, 13-701, 13-702, 13-702.01, and 13-801. He was sentenced to eighteen (18) months of probation, and satisfied the conditions of his sentence without issue. His conviction was later designated a misdemeanor. Prior to his arrest, Mr. Amezcua-Penaloza had no awareness that the social security number belonged to another individual(s) as the entire process was orchestrated by adults in his life when he was a child.

34. ICE then took Petitioner into custody. He sought release on bond. Based on case law from the Board of Immigration Appeals (BIA) and the Ninth Circuit, the IJ found Petitioner's use of a false social security number for the purposes of employment or education was not a crime of moral turpitude. *See Matter of Gomez-Segura*, A087 540 725 (BIA July 7, 2010) (unpublished) (citing *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000)). ***Exhibit A.*** The IJ further considered flight risk, danger to the community, and national security, and ultimately granted a $4,000 bond.

35. On March 6, 2012, ICE released Mr. Amezcua-Penaloza following the IJ's release order.

DHS did not appeal. The bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body. ***Exhibit B.***

36. On April 18, 2016, IJ Hollis, granted Petitioner's the Motion to Administratively Close Removal Proceedings, with a non-opposition motion filed by DHS. ***Exhibit C.***

37. On June 3, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings. The Motion remains pending; his case remains Administratively Closed, with no future hearing date set. ***Exhibit D.***

38. On June 11, 2025, Mr. Amezcua-Penaloza retained undersigned counsel to submit Form I-914, Application for T Nonimmigrant status, who thoroughly assessed his circumstances and determined that he is eligible for relief. This status is designed for individuals who have endured severe human trafficking, and in his case, it is based on a harrowing history of labor trafficking that began when he was only 14-years old and continued into adulthood from other traffickers. ***Exhibit E.***

39. On June 27, 2025, ICE detained Mr. Amezcua-Penaloza in his neighborhood. Upon his arrest, ICE officers did not articulate why Mr. Amezcua-Penaloza was now a flight risk, a danger to his community, or how he had violated any conditions of his 2012 bond release.

40. This is because ICE cannot make such a statement. Over the last thirteen (13) years and four months that Mr. Amezcua-Penaloza has lived in freedom, he has been a devoted husband and father to his son and stepson, who are now 21 and 20 years old, respectively. His younger son faces the challenges of living with epilepsy, which involves enduring unpredictable seizures that require extra attention and support. Mr. Amezcua-Penaloza is not only a dedicated family man but also a successful entrepreneur and responsible business owner. He skillfully manages three different ventures, including a recently acquired venue that specializes in hosting weddings and quinceañeras. He has had no criminal history; indeed, during this time, his felony was designated a misdemeanor, so his criminal history has been reduced in significance.

41. Petitioner has asked ICE to release him. ICE has not done so. Intervention from this Court is therefore required to ensure that Mr. Amezcua-Penaloza is released from his current custody based his unlawful arrest, returned to his home in Phoenix, Arizona, where ICE can then provide

him with a hearing before determining to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

42. In Mr. Amezcua-Penaloza'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 custody in February 2012, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

43. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA has 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.").

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

45. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody 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—failed to protect Mr. Amezcua-Penaloza's weighty interest in his freedom from any lawful detention.

46. The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of erroneous deprivation; and 3) the burden on the government – to assess whether the Petitioner was afforded "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista,* CV-18-00285-PHX-GMS at 4; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Id.* at 4.

47. 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 release from custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Mr. Amezcua-Penaloza *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. Amezcua-Penaloza's Protected Liberty Interest in His Conditional Release

48. Mr. Amezcua-Penaloza'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).

49. Since March 16, 2012, Mr. Amezcua-Penaloza exercised that freedom under ICE's order releasing him from custody. *See* ***Exhibit B***. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful 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).

50. 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.

51. 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).

52. 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).

53. Here, when this Court "'compar[es] the specific release in [Mr. Amezcua-Penaloza'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*, Mr. Amezcua-Penaloza'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, care for his children, including his U.S. citizen son for whom he is the sole caretaker, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

54. Mr. Amezcua-Penaloza is the financial provider and caretaker for his wife and two sons. His younger son faces the challenges of living with epilepsy, which involves enduring unpredictable seizures that require extra attention and support. He has no criminal history aside

from his 2009 conviction which the BIA ruled was not deemed a crime involving moral turpitude.

55. Mr. Amezcua-Penaloza past circumstances likely meet the qualifications for T nonimmigrant status. This status is designed for individuals who have endured severe hardships, and in his case, it is based on a harrowing history of labor trafficking that began when he was only fourteen years old. Throughout these years, he faced not only labor exploitation from multiple traffickers. These past atrocities underscore the urgent need for his release from detention and for protection from further harm.

Mr. Amezcua-Penaloza's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release from Custody

56. Mr. Amezcua-Penaloza asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for 160 months, during which time he has complied with all conditions of release and served as the sole caretaker for his family, including a step-son who suffers from epileptic seizures; (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance that has changed is DHS' *pending* Motion to Recalendar Administratively Closed Proceedings and ICE's move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

57. "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 [Mr. Amezcua-Penaloza'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)).

58. 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.*

59. Because, in this case, ICE is required to release Mr. Amezcua-Penaloza from his unlawful custody and provide Mr. Amezcua-Penaloza 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 [Mr. Amezcua-Penaloza's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

Mr. Amezcua-Penaloza's Private Interest in His Liberty is Profound

60. 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 Mr. Amezcua-Penaloza, 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. Amezcua-Penaloza retains a truly weighty liberty interest even though he is under conditional release.

61. What is at stake in this case for Mr. Amezcua-Penaloza is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing him from custody and to take away—without a lawful basis—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).

62. 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. Amezcua-Penaloza 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

63. The government's interest in detaining Mr. Amezcua-Penaloza without a due

process hearing is low, and when weighed against Mr. Amezcua-Penaloza's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release Mr. Amezcua-Penaloza from his unlawful custody and refrain from re-arresting Mr. Amezcua-Penaloza 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. Amezcua-Penaloza when the Court considers that the process he seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing Mr. Amezcua-Penaloza with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Amezcua-Penaloza 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. Amezcua-Penaloza.

64. 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 lawful basis for detaining Mr. Amezcua-Penaloza. Mr. Amezcua-Penaloza has lived at liberty complying with the conditions of his release since March 2012 while acting as the financial caretaker for his wife and two sons, including a step-son one who suffers from epileptic seizures. He is not only a dedicated family man but also a successful entrepreneur and responsible business owner. His only criminal history pre-dates his 2012 release on bond.

65. Mr. Amezcua-Penaloza was determined by an Immigration Judge not to be a danger to the community or a flight risk in March 2012 and has done nothing to undermine that determination. *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).

66. 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 March 2012, when he has complied with all conditions of release. The government's interest in detaining Mr. Amezcua-Penaloza 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.[2]

67. Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful pred-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Amezcua-Penaloza does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated.

68. 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. Mr. Amezcua-Penaloza has a stay of removal, which means that he will remain in custody until the agency adjudicates his case. ICE's unlawful action of placing him in custody is more of a financial burden than releasing him and providing any pre-custody hearing before any future re-arrest occurs.

69. In the alternative, providing Mr. Amezcua-Penaloza with a hearing before this Court (or a neutral decisionmaker) regarding release from custody 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 justify his re-arrest. But there is no justifiable reason to re-incarcerate Mr. Amezcua-Penaloza

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[2] *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.").

prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." *Morrissey*, 408 U.S. at 483.

70. Releasing Mr. Amezcua-Penaloza from unlawful custody and enjoining Mr. Amezcua-Penaloza's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Amezcua-Penaloza is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. g 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

71. Releasing Mr. Amezcua-Penaloza from unlawful custody and providing Mr. Amezcua-Penaloza a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Amezcua-Penaloza 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 ICE's March 2012 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Amezcua-Penaloza is a danger to the community or a flight risk.

72. On June 27, 2025, Mr. Amezcua-Penaloza did not receive this protection. Instead, he was detained by ICE, without notice, in a residential area just a block from his home when Mr. Amezcua-Penaloza has complied with the conditions of his release since 2012, whereby his case has been administratively closed since 2016, and there have been no material changes in his circumstances.

73. By contrast, the procedure Mr. Amezcua-Penaloza 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).

74. 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. Amezcua-Penaloza's re-incarceration is warranted.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

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

76. 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.

77. Mr. Amezcua-Penaloza has a vested liberty interest in his lawful 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.

78. The Court must therefore order that ICE release Mr. Amezcua-Penaloza from his current

unlawful custody.

79. 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, that Mr. Amezcua-Penaloza 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 Mr. Amezcua-Penaloza's re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

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

81. 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.

82. Mr. Amezcua-Penaloza 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.

83. Since March 2012, Mr. Amezcua-Penaloza 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—while he is the sole caretaker for his family, and a responsible business owner—would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

84. For these reasons, Mr. Amezcua-Penaloza's continued unlawful custody and any subsequent re-arrest without first being provided a hearing would violate the Constitution.

85. The Court must therefore order that he be released from custody.

86. The Court must order the government to not re-arrest him in any subsequent action without 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, that Mr. Amezcua-Penaloza 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 Mr. Amezcua-Penaloza's re-incarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, the Mr. Amezcua-Penaloza prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's June 27, 2025, apprehension and detention of Mr. Amezcua-Penaloza was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Order ICE to immediately release Mr. Amezcua-Penaloza from his unlawful detention;

(4) Enjoin re-arresting Mr. Amezcua-Penaloza 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;

(5) Declare that Mr. Amezcua-Penaloza 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;

(6) Award reasonable costs and attorney fees; and

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

Dated: July 11, 2025

Respectfully submitted,

/s/ *Hillary Walsh*