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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nasir Mohammad MOHAMMAD-QASIM,

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, Nasir Mohammed Qasim-Qasim ("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 the DHS from violating the Immigration Judge's August 3, 2020 grant of Withholding of Removal and grant of protection under the Convention Against Torture Protection, by removing him to any country without first providing a full and fair removal hearing. Exh. A, BIA Dec. Aug. 4, 2022, affirming IJ grant of withholding and CAT protection.

3. Petitioner also seeks an order enjoining DHS from continuing to violate the administratively final bond release order issued by an Immigration Judge on November 17, 2020. Exh. B, BIA Dec. February 14, 2025, finding IJ bond order was administratively final.

4. Petitioner lastly seeks his immediate release from detention in Arizona where ICE unlawfully re-detained on July 25, 2025, 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.

5. As background, the DHS previously incarcerated Petitioner for over five years in Eloy Detention Center, pending resolution of his immigration case. After an Immigration Judge found Petitioner was not a flight risk or danger, he was granted a $5,000 bond and released on November 17, 2020. DHS appealed. The BIA dismissed the appeal as moot on February 14, 2025, since the IJ's grant of withholding of removal and CAT had been affirmed by the BIA in 2022 and was therefore administratively final. *Id.*

6. During the past 4.5 years of freedom, Petitioner has not been had any ICE reporting requirements. He has, however, been gainfully employed and started his own company, and has had no criminal history.

7. Petitioner has also diligently litigated his removal proceedings since his release. The most recent IJ to grant him asylum was in August 2020; that judge also granted Petitioner withholding of removal and CAT protection. DHS appealed. The BIA affirmed the IJ's grant of withholding of removal and CAT, but sustained the appeal on asylum. Thus, withholding and CAT are administratively final, providing mandatory protection from removal.

8. In 2023, Petitioner appealed the BIA's denial of asylum to the Ninth Circuit. *Mohammad-Qasim v. Bondi*, Case No. 23-1821.

9. In February 2025, ICE issued a new policy, announcing it would begin removing immigrants like Petitioner to third countries without a full and fair hearing on whether the individual fears harm from that country.[1] ICE then removed several immigrants with withholding and CAT grants, like Petitioner, to Guantanamo Bay, CECOT in El Salvador, and to a war-zone in Sudan.[2] On April 18, 2025, a federal district court in Massachusetts certified a nation-wide class, which includes Petitioner.[3]

10. During his May 14, 2025 oral argument, the Ninth Circuit panel explicitly asked government counsel what would happen if the government wanted to remove Petitioner to another country. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821, oral argument *available at*

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[1] *See* Feb. 18, 2025 ICE policy, *available at* https://immigrationlitigation.org/wp-content/uploads/2025/03/1-4-Att-C-Feb-18-2025-Directive.pdf

[2] *See* Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, *available at* https://s3.documentcloud.org/documents/25982155/file-5344.pdf

[3] *See D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025) *available at* https://immigrationlitigation.org/wp-content/uploads/2025/04/64-Class-Cert-PI-Order.pdf (certifying class members as:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

https://www.youtube.com/watch?v=rGuAMPb-G6U, time stamp 19:17. Government counsel responded that, by statute and regulation, the government would be required to move to reopen proceedings to provide Petitioner with an opportunity to seek protection for any third country, before the government could remove him to another country, and stated that she was unaware of any intention of the Department to remove Petitioner to a third country. *Id.*

11. Just four days ago, on July 21, 2025, the Ninth Circuit's mandate issued. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821.

12. The government has filed no motion to reopen with the BIA. Exh. C, EOIR Automated Case Information accessed July 25, 2025 (noting no motion to reopen has been lodged).

13. Yet today, July 25, 2025, ICE no-notice arrested Petitioner at his place of employment. He was given no reason for his arrest, much less why he was now a flight risk, a danger to his community, or had violated any terms of his release.

14. Indeed, there have been no negative changes in Petitioner's circumstances. For the past 4.5 years Petitioner has lived in freedom, worked lawfully at multiple jobs and even started his on rental arbitrage business. Further, on July 11, 2025, Petitioner requested the Phoenix Police Department certify his I-918B so he can apply for a U visa, a visa for victims of violent crime who have bene helpful to law enforcement's investigation, based off his reporting of being robbed at knife-point. He is also filed a report with the FBI in the hopes of helping the agency apprehend his human trafficker from when he was a child trafficking victim.

15. The ICE inmate locator currently states Petitioner is "in ICE custody," but does not provide his exact location. On information and belief, he is being transported to Florence Processing Center now. Counsel for Petitioner has called and emailed ICE but has not received a response.

16. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d

1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Petitioner's case, due process 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.

17. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular meaning here, where Petitioner'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.

18. 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.

19. Further, the constitution prohibits prolonged detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (finding detention is "prolonged" and therefore unconstitutional when there is "no significant likelihood of removal in the foreseeable future"). Here, Petiitoner has been granted protection under the CAT and withholding of removal. No motion to reopen has been filed to otherwise disturb this final administrative order. Thus, under these statutes, there is *zero* likelihood of Petitioner's removal in the foreseeable future and therefore even one day in detention is unconstitutional.

CUSTODY

20. Petitioner is currently in the custody of ICE at an unknown location, believed to be in Arizona. As of 12:15pm PST, on July 25, 2025, the ICE inmate locator does not have Petitoiner's location on it; it lists only that he is in ICE custody and to call the Phoenix Field Office. Exh. D. Petitioner 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

21. 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

22. 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).

23. 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).

24. 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

25. 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. Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE

unlawfully re-arrested him at his Phoenix, Arizona workplace, 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 on information and belief in Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. 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.

27. 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. *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).

28. Moreover, Petitioner wrote ICE, an AUSA, and OIL counsel for the Ninth Circuit matter on July 25, 2025, raising these arguments; ICE has not released Petitioner. Because Petitioner's grant of withholding and CAT protection is a final administrative order, the BIA has already held that the Agency has no jurisdiction to consider a bond. Exh. B. Therefore, Petitioner has exhausted all remedies available.

PARTIES

29. Petitioner is a citizen and national of Afghanistan who entered the U.S. as a refugee child of his adoptive mother, who is also his biological aunt, and his brother. While a Lawful Permanent Resident, he briefly departed and re-entered about ten years ago, and has remained in the country

since. He was later convicted of a crime involving fraud; DHS put him into removal proceedings, where his residency was revoked and he was granted asylum, withholding, and CAT protection.

30. Petitioner was deemed neither a danger to his community or a flight risk by an Immigration Judge and released on $5,000 bond in November 2020. Exhibit B. He was released; however, DHS appealed. The BIA deemed that appeal moot, because by the time the BIA was able to address it, Petitioner's grant of withholding and CAT had already been affirmed by the BIA, making his order administratively final.

31. 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 Petitioner.

32. 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.

33. 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.

34. 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

35. Petitioner is a citizen and national of Afghanistan who entered the U.S. in 2002, as a refugee child of his adoptive mother, who is also his biological aunt, and his brother. Petitioner was subsequently trafficked by his adoptive mother/aunt, who forced him to work rather than allowing him to attend high school and withheld food from him and threatened to contact immigration and the police as methods of control. He was granted lawful permanent residency in 2005.

36. DHS issued a Notice to Appear on June 18, 2015, and took Petitioner into ICE custody.

37. On August 3, 2020, the IJ granted asylum, withholding of removal, and CAT. DHS appealed.

38. Meanwhile, after five years of ICE detention and in light of the IJ's grant of relief, the IJ reconsidered Petitioner's flight risk, danger to the community, and national security, and granted a $5,000 bond in November 2020. On November 17, 2020, ICE released Petitioner following the IJ's release order. DHS appealed.

39. On August 4, 2022, the BIA affirmed the IJ's grant of withholding and CAT. Thus, these forms of relief became final on August 4, 2022. The BIA sustained DHS's appeal on the grant of asylum, however. Petitioner timely appealed to the Ninth Circuit.

40. In February 2025, the BIA dismissed DHS's appeal of the IJ's bond decision granting a $5,000 bond, finding DHS's appeal was moot due to Petitioner having a final administrative order. Exhibit B.

41. On May 14, 2025, the Ninth Circuit Court of Appeals held oral argument. Undersigned counsel appeared as did OIL attorney Sunah Lee. The panel explicitly asked Ms. Lee if the government had any intention of removing Petitioner to a third country, and if it did, what would be the procedure for doing so. Ms. Lee assured the Court that she was unaware of any plan to remove Petitioner, and if such a plan arose, the government would be required by statute and regulation to file a motion to reopen with the BIA so that Petitioner could have a full and fair hearing on his removability to a third country. *See Mohamed-Qasim v. Bondi*, Case No. 23-1821,

oral argument available at https://www.youtube.com/watch?v=rGuAMPb-G6U, time stamp 19:17.

42. The Ninth Circuit affirmed the BIA's decision; thus, withholding of removal and CAT remain, but not asylum. The Court's mandate issued July 21, 2025.

43. On July 25, 2025, ICE detained Petitioner at his workplace. Upon his arrest, ICE officers did not articulate any reason why he was now a flight risk, a danger to his community, or how he had violated any conditions of his 2020 bond release.

44. This is because ICE cannot make such a statement. Over the last 4.5 years Petitioner has lived in freedom, he has simply worked and been a good member of society. He has reported several crimes to the government, some of which he was a victim of. He has had no new criminal history and has remained in complete compliance with the law.

45. Petitioner has asked ICE to release him. ICE has not done so. Intervention from this Court is therefore required to ensure that Petitioner 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

46. 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 custody in November 2020, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

47. 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.").

48. 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.

49. 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 Petitioner's weighty interest in his freedom from any lawful detention.

50. 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.

51. Federal district courts in California have also 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 Petitioner *before* ICE re-detains him. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *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).

Petitioner's Protected Liberty Interest in His Conditional Release

52. 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*, 533 U.S. at 690.

53. Since November 2020, Petitioner exercised that freedom under ICE's order releasing him from custody. 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).

54. 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.

55. 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).

56. 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).

57. Here, when this Court "'compar[es] the specific 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, care for his family, including his U.S. citizen niece and nephew, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

58. Petitioner is already protected from removal, because he has been granted withholding of removal and CAT protection, both of which automatically provide a stay of removal. The government has done nothing to disrupt the final administrative order.

59. Further, Petitioner's 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. For years, he faced labor exploitation, underscoring the urgent need for his release from detention and for protection from further harm.

60. He also likely qualifies for a U visa, available to victims of violent crime in the U.S. who have been helpful to law enforcement's investigation. Here, Petitioner was robbed at knife-point and reported this to law enforcement, helping the agency prosecute the crime. Petitioner sought certification from the Phoenix Police Department on July 11, 2025.

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

61. Petitioner asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for 53 months, during which time he has complied with all conditions of release; (3) where no change in circumstances exist that would justify his lawful detention; and

(4) where the only circumstance is 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.

62. "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)).

63. 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.*

64. Because, in this case, ICE is required to release Petitioner from his unlawful

custody and provide Mrhim 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

65. 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.

66. 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 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).

67. 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

68. 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 to release Petitioner from his unlawful custody and refrain from re-arresting him 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 he has violated any conditions of his release, and, if so, 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.

69. 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 Petitioner. Petitioner has already been granted non-discretionary protection from

removal, which DHS appealed and lost; the BIA has already held this grant to be a final administrative order. Thus, the government has no interest in detaining Petitioner. Further, to do so at this point would necessarily be prolonged detention, because DHS has not moved to reopen and therefore the order remains final—and his removal is impossible and therefore not foreseeable.

70. Petitioner was also already determined by an Immigration Judge not to be a danger to the community or a flight risk in November 2020 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).

71. 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.[4]

72. 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. Petitioner 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.

73. 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. Petitioner has been granted relief and therefore

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[4] *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.").

that comes with a stay of removal. ICE's unlawful action of placing him in custody for an unforeseeably long amount of time is more of a financial burden than releasing him and providing any pre-custody hearing before any future re-arrest occurs.

74. In the alternative, providing Petitioner 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 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 his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." *Morrissey*, 408 U.S. at 483.

75. Releasing Petitioner from unlawful custody and enjoining his 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. 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

76. Releasing Petitioner from unlawful custody and providing him 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 ICE's November 2020 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

77. On July 25, 2025, Petitioner did not receive this protection. Instead, he was detained by ICE, without notice, at work despite Petitioner having complied with the conditions of his release since 2020 and having a final administrative order prohibiting his removal, and there have been no material changes in his circumstances.

78. 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).

79. 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

80. Petitioner 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 any "person" of liberty "without due process of law." U.S. Const. amend. V.

82. Petitioner 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.

83. The Court must therefore order that ICE release Petitioner from his current unlawful custody.

84. 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 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 constitutional and warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

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

86. 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.

87. 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.

88. Since November 2020, 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.

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

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

91. 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 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.

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PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's July 25, 2025, apprehension and detention of Petitioner 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 Petitioner from his unlawful detention;

(4) Enjoin 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;

(5) Find Petitioner is a class member of *D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025);

(6) Enjoin Respondents from deporting Petitioner to any country without first affording him a full and fair hearing;

(7) 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;

(8) Award reasonable costs and attorney fees; and

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

Dated: July 25, 2025

Respectfully submitted,

/s/ Hillary Walsh
Hillary Walsh
Attorney 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 July 25, 2025, in Phoenix, AZ.

/s/ Hillary Walsh
Hillary Walsh
Attorney for Petitioner