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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 VICTOR AMADO RODRIGUEZ-FLORES,

Case No.: 2:25-cv-6900

12 Petitioner,

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS; COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

13 v.

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

14 F. SEMAIA, in his official capacity as
15 Warden, Adelanto Detention Facility;
16 EARNESTO SANTACRUZ, JR., in his
17 official capacity as Acting ICE Field
18 Office Director U.S. Immigration and
19 Customs Enforcement;
20 TODD M. LYONS, Acting Director, U.S.
21 Immigration and Customs Enforcement;
22 KRISTI NOEM, Secretary of United
23 States Department of Homeland
24 Security; and
PAM BONDI, Attorney General of the
United States,

Respondents.

1 Petitioner VICTOR AMADO RODRIGUEZ-FLORES petitions this Court for a writ of
2 habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully,
3 and states as follows:

4 **INTRODUCTION**

5 1. Petitioner, VICTOR AMADO RODRIGUEZ-FLORES ("Mr. Rodriguez-Flores" or
6 "Petitioner"), by and through his undersigned counsel, hereby files this petition for writ of
7 habeas corpus and complaint for declaratory and injunctive relief to compel his immediate
8 release from the immigration jail where he has been held by the U.S. Department of
9 Homeland Security (DHS) since being unlawfully re-detained on June 7, 2025, without first
10 being provided a due process hearing to determine whether his incarceration is justified.

11 2. Petitioner must be released from custody unless and until DHS proves to a neutral
12 adjudicator, by clear and convincing evidence, changed circumstances that would justify
13 cancelling a bond that an Immigration Judge had previously set, and that Petitioner is a
14 flight risk or a danger to the community. DHS will not be able to do so. Due process
15 requires the government to provide noncitizens with notice and a hearing prior to re-
16 detention, and that re-detention, without prior notice, a showing of changed
17 circumstances, or a meaningful opportunity to respond, does not satisfy the procedural
18 requirements of the Fifth Amendment.

19 **STATEMENT OF FACTS**

20 3. Petitioner is a Guatemalan born 49-year-old father of ten children, six of whom are
21 U.S. citizens, and for whom Petitioner is the primary breadwinner. Petitioner has been
22 residing in the United States continuously since 2010. In October 2019, DHS had
23 previously incarcerated Petitioner for over six months after he was stopped by DHS while
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1 Petitioner was driving home from work. Petitioner had fled Guatemala on multiple
2 occasions, beginning in 2003 due to persecution by a Guatemalan government connected
3 group member.

4 4. On April 22, 2020, after being detained in excess of six months, Petitioner was
5 released on an *Aleman*¹ bond by an immigration judge in the Otay Mesa Detention Center
6 on a \$5000.00 bond and ATD at DHS discretion.

7 5. On June 7, 2025, Petitioner was re-detained without any notice, a hearing, or an on-
8 the-record determination. Neither Petitioner nor his counsel were contacted or provided
9 with any reason for his detention until June 26, 2025, when his sponsor, Dr. Richard Dyke
10 received a Notice of Immigration Bond Cancellation. Although this notice is dated June 7,
11 2025, it was not mailed until June 23, 2025. Despite his undersigned counsel contacting
12 various offices, no one has provided counsel with any reasons for the cancellation of the
13 bond or offered any changed circumstances that would justify cancelling a bond that an
14 Immigration Judge had set. Nor did the government file any motion for redetermination of
15 custody, or any other motion or notice with the Court.

16 6. Petitioner was born in the city of Finca La Corona de Aldea Tatasirire, in Jalapa,
17 Guatemala. He is of the Hispanic race and a Catholic. Petitioner attended first grade and
18 then his father took him out so that Petitioner could help his father with farm work.
19 Petitioner had also been attending church regularly since childhood and went on to
20 become actively involved with his church, including teaching religion to children in a
21 church youth group.
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24 ¹ *Aleman Gonzalez v. Sessions*, No. 18-CV-01869-JSC, 2018 WL 2688569 (N.D. Cal. June 5, 2018)

1 7. After Petitioner became actively involved in his church, he was approached by a
2 group of men led by a man (the group leader) who was a close associate of Mario Estrada,
3 who was a presidential candidate in Guatemala but was convicted and sentenced to 15
4 years in prison in the United States for participating in a conspiracy to import and
5 distribute tons of cocaine to the United States. Petitioner believes that their relationship
6 began when the group leader was serving in the Guatemalan military, then serving as Mr.
7 Estrada's security guard before becoming a police officer. Petitioner had known the group
8 leader since childhood as he believes they attended the same elementary school. The
9 group leader went on to join a gang dealing drugs and later joined the Guatemalan
10 military. The group leader began recruiting Petitioner and his friends in the early 1990s,
11 but Petitioner repeatedly rebuffed the group leader and his gang and Petitioner expressed
12 his moral, religious and political opposition to the activities of The group leader and his
13 gang. The group leader and his gang would stop Petitioner and would disrupt Petitioner
14 when he was trying to attend his church and participate in his church related activities.
15 Petitioner was a church-goer and in a position of trust, which could help the group leader
16 and his gang transport and store their drugs with minimum level of detection.

17 8. In the beginning of his recruitment efforts, the group leader would harass Petitioner
18 by telling him, "The church is not for men. It is for gays. Come on, be a real man and join
19 us." When Petitioner continued to resist, the group leader told Petitioner, "Well if you don't
20 participate, you will have a problem." In 1995, the group leader and his gang killed
21 Petitioner's cousin because he too had refused to join them. After the killing of his cousin,
22 Petitioner moved to Guatemala City and began working there in a metal company in San
23 Jose La Rosa Zone 6 Misco. On December 24, 2002, Petitioner was visiting his uncle
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1 in Petitioner's parental home of Jalapa. Petitioner was with his two brothers-in-law when
2 they were approached by the group leader and his associates who told Petitioner, "You're
3 here again. Come with us. Come outside, or otherwise, there will be a problem." Id. When
4 Petitioner's uncle heard this, he told the group leader and his associates, "You are not
5 going to come in here and bother my family." A struggle ensued in which Petitioner's uncle
6 picked up a rock and threw it, hitting one of The group leader's associates in the head,
7 killing him.

8 9. After this incident, Petitioner, his uncle and two brothers-in-law fled back to
9 Guatemala City where they stayed very discretely hoping that the group leader and his
10 associates would not find them there. However, on February 14, 2003, when Petitioner
11 and one of his brothers-in-law were returning from work, they were attacked by the group
12 leader and four of his associates. the group leader tried to stab Petitioner with a knife in
13 his stomach, but he missed and instead stabbed Petitioner's arm. Petitioner and his
14 brother-in-law managed to run away and as they were being chased, the group leader
15 shouted, "You can run away but we will find and kill you guys." Petitioner and his brother-
16 in-law went home where Petitioner's uncle was, and they dispersed. Petitioner's brother-
17 in-law went to Guasagapan Santa Rosa while Petitioner went to a clinic where he received
18 treatment and then stayed in Guatemala City for one month until his wound was
19 sufficiently healed and then he went to join his brother-in-law. Petitioner's uncle
20 disappeared, and he has not been seen or heard from since.

21 10. Two months later, Petitioner and his brother-in-law received another threat
22 from the group leader through a friend, and they stayed in Guasagapan Santa Rosa until
23 August 2003 when Petitioner travelled to the U.S. Petitioner continued to reside and work
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1 in the U.S. while his brother-in-law remained in Guatemala. However, on June 28, 2007, the
2 group leader and his gang found and killed Petitioner's brother-in-law. Although he was
3 found essentially lynched with his hands tied, the police concluded that he had killed
4 himself. The kidnapping was witnessed by the victim's brother, who fled to Guatemala City.
5 However, they were able to chase the brother down and kill him as well on August 27,
6 2008. Before they killed the brother, they called and threatened his wife.

7 11. In 2009, Petitioner returned to Guatemala. He and his partner wanted to
8 return to Guatemala to attempt to pursue their lives there. Still fearing the group leader,
9 Petitioner resided in another town approximately three hours away from his hometown.
10 Petitioner's maternal uncle lived there. Petitioner lived in a house owned by someone
11 whose house was across the street from their family metal shop, where Petitioner worked
12 along with his two other cousins doing welding and making metal doors. However, it was
13 not very long until the group leader discovered that Petitioner was back. In December
14 2009, the group leader went to the house in La Corona looking for Petitioner and when
15 Petitioner's cousin told the group leader he did not know Petitioner's whereabouts, the
16 group leader had replied, "I'm gonna find him." Then on January 1, 2010, the group leader
17 set the house Petitioner was living in on fire, but at the time, Petitioner was not home and
18 was visiting his sister. Petitioner's cousins had seen the group leader and others who were
19 with the group leader outside the Petitioner's house. The group leader was in a marked
20 patrol car. Moreover, later that day, one of the cousins had seen the group leader again,
21 who told the cousin that Petitioner had escaped from hell and that he would not be able to
22 run away from him any longer anywhere in Guatemala.
23
24

1 12. With nowhere to go, Petitioner decided to return to the U.S. Although
2 Petitioner was apprehended and returned to Guatemala on two occasions, he could not
3 remain in Guatemala and returned to the U.S. in 2010 and has been residing here ever
4 since. Following his apprehension in October 2019, Petitioner expressed fear of return to
5 Guatemala, he was placed in reasonable fear proceedings, he was found to have a
6 reasonable fear of persecution or torture in Guatemala by an asylum officer, and was
7 placed in withholding proceedings. The immigration judge denied relief, Petitioner timely
8 appealed to the Board of Immigration Appeals, which dismissed Petitioner's appeal.
9 Petitioner timely petitioned to the Ninth Circuit Court of Appeals.

10 13. Petitioner has no criminal history and has been reporting to all of his ICE
11 check-ins religiously. In fact, Petitioner has become a pillar of his community. He is loved
12 and highly admired in his community, church and children's soccer leagues, where he is a
13 big volunteer and contributor. Countless numbers of citizens have come forward and
14 provided letters of support. Dr. Richard W. Dyke, M.A. M.P.A. Ph.D., who has been
15 Petitioner's neighbor for 11 years, writes, "Victor is a humble and hard worker. He has
16 learned English and makes his own way with a variety of jobs. He is a very skilled
17 carpenter, construction worker, house painter, and all-around handyman and mechanic."
18 Dr. Dyke goes on to state, "Victor is a churchgoer and helper at his children's school, too.
19 He is also a soccer Dad who is very concerned about raising his children properly and
20 helping his family, church, school, and community. At the same time, it is important to note
21 that he has been trying through the legal system over the past six years to be given status
22 to remain in the United States to take care of his children." For much of that time he has
23 worn an ankle monitor prescribed by the government to be allowed to stay at home."
24

1 Paula Radcliffe Dyke, Dr. Dyke's wife writes, "I also know [Victor] as a hard worker who
2 often works six days a week to make ends meet. Every weekday about 7:00 am, Victor
3 takes the children to school and Victor and his wife drive to work." Mrs. Dyke goes on to
4 state, "Victor and his family attend St. Andrew's Catholic Church in Pasadena on Sundays.
5 Most of the children have been baptized at the church. Victor is also active at his children's
6 school, where he helps out with activities when he can. He is also very helpful to his
7 neighbors. He has fixed plumbing and electrical problems for one neighbor and has helped
8 my husband and I with car repairs and tire problems and also patched the roof of another
9 neighbor." Another community member and fellow churchgoer, Marisol Gonzalez, writes,
10 "I have known Victor for approximately five years, and during this time, I have come to
11 know him as a hardworking, responsible individual who is deeply devoted to his family. He
12 is a man of great humility and honesty. Victor regularly attends our Prayer Group at
13 Immaculate Conception Church, accompanied by his wife and young children. His presence
14 is a constant source of strength for his family, and I cannot imagine how they are coping
15 without him. He is their primary support, and they are currently going through a very
16 painful time in his absence." Josefa Diaz writes, "Victor's detention has devastated his
17 family. He was the sole provider of income in their income in their household. Now, his
18 wife and children face not only the emotional anguish of his absence but also a desperate
19 financial situation. They are at risk of losing their home... Additionally, Victor was part of
20 the local recreational soccer community, actively participating in the "Premier USA Soccer
21 Leagues" and frequently gathering at the John Ferraro Athletic Fields in Los Angeles.
22 There, he shared his passion for the sport with others in the community, promoting a
23 healthy lifestyle, positive relationships, and active, productive integration into our society."
24

1 Coach Hector Anaya writes, "I have known Victor Amado Rodriguez Flores for a few years.
2 I coach both of his children Dulce and Camilo Rodriguez, they are part of the Chivitas
3 Soccer Team here at Villa Park in Pasadena, CA. Victor Amado Rodriguez Flores is a good,
4 honest, and hardworking family man, he is always present at his kid's soccer games
5 showing them support. I have witness how this situation has affected his entire family as
6 they depend on him for support."

7 14. On April 22, 2020, after being detained in excess of six months, Petitioner
8 was released on an *Alema²n* bond by an immigration judge in the Otay Mesa Detention
9 Center on a \$5000.00 bond and ATD at DHS discretion.

10 15. Since his release in April 2020, Petitioner has been focused on recovering
11 from the effects of the persecution and torture he experienced in Guatemala and
12 addressing the lasting mental and physical scars of that trauma. Petitioner recently
13 discovered that his young daughter was being sexually abused in the past, including during
14 his separation from his young children during the last bout of his incarceration by ICE
15 between October 2019 and April 2020. Petitioner has been diagnosed with conditions
16 labeled as Major Depressive Disorder, Recurrent, Moderate and Generalized Anxiety
17 Disorder and Post Traumatic Stress Disorder (PTSD) due to the frequency, intensity and
18 duration of his symptoms. According to his psychologist, Petitioner's condition began
19 when his daughter was a victim of sexual abuse. Petitioner's response to the event
20 involved intense fear, helplessness and terror. Petitioner's daughter's therapist under the
21 licensed supervision of her psychologist, has been providing weekly therapy to Dulce
22 Rodriguez since August 14, 2024. Her work has primarily focused on processing a
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24 ² *Aleman Gonzalez v. Sessions*, No. 18-CV-01869-JSC, 2018 WL 2688569 (N.D. Cal. June 5, 2018)

1 traumatic event that has had a significant impact on Petitioner's daughter's mental and
2 emotional well-being. According to her therapist, it is her professional opinion that the
3 departure of Petitioner would greatly exacerbate her symptoms of trauma and anxiety.
4 The separation would not only affect her psychological stability but also have profound
5 negative effects on the well-being of her entire family system. The therapist further opines
6 that given the fragile nature of Petitioner's daughter's emotional state, maintaining familial
7 stability is critical to her therapeutic progress and overall mental health.

8 16. On May 20, 2025, Petitioner filed a petition for classification as a U
9 nonimmigrant Status due to being an indirect victim of a U-visa qualifying crime and
10 having assisted law enforcement investigate and prosecute the perpetrator of the crime.

11 17. On January 4, 2022, the Ninth Circuit Court of Appeals ordered Petitioner's
12 stay of removal until the mandate issues unless the court orders otherwise.

13 18. On February 25, 2022, Petitioner's appeal was administratively closed by
14 request of the government and by agreement of both parties pursuant to the government's
15 then enforcement priorities policy and exercise of prosecutorial discretion.

16 19. On April 2, 2025, the appeal was reopened by the Ninth Circuit by way of the
17 government's motion (although there has been no changed circumstances in Petitioner's
18 case or his personal circumstances).

19 20. To date, Petitioner had been regularly and timely checking into his ISAP
20 appointments. He has no criminal record and nothing has changed recently.

21 21. On June 7, 2025, Petitioner was called in for a nonscheduled check-in and told
22 by individuals representing themselves to be ICE agents and demanded that he report to a
23 particular location in Los Angeles. When he arrived at said location, these individuals were
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1 waiting for him and immediately detained him and transported him to a detention center
2 and ultimately to the Adelanto Detention facility.

3 22. Petitioner was re-detained without any notice, a hearing, or an on-the-record
4 determination. Neither Petitioner nor his counsel were contacted or provided with any
5 reason for his detention until June 26, 2025, when his sponsor, Dr. Richard Dyke received a
6 Notice of Immigration Bond Cancellation. Although this notice is dated June 7, 2025, it was
7 not mailed until June 23, 2025. Despite his undersigned counsel contacting various offices,
8 no one has provided counsel with any reasons for the cancellation of the bond or offered
9 any changed circumstances that would justify cancelling a bond that an Immigration Judge
10 had set. Nor did the government file any motion for redetermination of custody, or any
11 other motion or notice with the Court.

12 23. Therefore, on July 3, 2025, Petitioner, through his undersigned counsel of
13 record moved the Adelanto Immigration Court to reinstate the previously issued bond or
14 enter a new custody redetermination order pursuant to 8 C.F.R §236.1(d)(1) and
15 1003.19(c)(1), and Chapter 9.1(d)(ii) of the Immigration Court Practice Manual, as well
16 as *Aleman Gonzalez v. Sessions*, No. 18-CV-01869-JSC, 2018 WL 2688569 (N.D. Cal. June 5,
17 2018).

18 24. On July 11, 2025, the Immigration Judge denied the motion based on a
19 claimed lack of jurisdiction, despite counsel citing several federal court decisions
20 supporting that due process requires the government to provide noncitizens with notice
21 and a hearing prior to re-detention, and that re-detention, without prior notice, a showing
22 of changed circumstances, or a meaningful opportunity to respond, does not satisfy the
23 procedural requirements of the Fifth Amendment. *See Ortega v. Bonnar*, 415 F. Supp. 3d
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1 963 (N.D. Cal. 2019); *Lopez v. Sessions*, 2018 U.S. Dist. LEXIS 98712 (S.D.N.Y. June 12,
2 2018); and *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 U.S. Dist. LEXIS 94664 (N.D. Cal.
3 June 4, 2018) *See also*, *Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003)
4 ("Excludable aliens—like all aliens—are clearly protected by the Due Process Clauses of
5 the Fifth and Fourteenth Amendments.") (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct.
6 1064, 30 L. Ed. 220 (1886)).

7 25. The Immigration Judge stated that although he sympathized with Petitioner's
8 situation, and that he agreed that the government had not shown any changed
9 circumstances, and that if he did have jurisdiction, he would order Petitioner released on
10 the same conditions that the prior immigration judge had released Petitioner. The IJ went
11 on to claim that he would only have jurisdiction if Petitioner was detained in excess of 180
12 days or if he had an order from a federal court ordering a custody redetermination
13 hearing.

14 26. By statute and regulation, as interpreted by the Board of Immigration Appeals
15 (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where
16 there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b);
17 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government
18 has further clarified in litigation that any change in circumstances must be "material."
19 *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H.*
20 *v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is
21 proscribed by the Due Process Clause because it is well-established that individuals
22 released from incarceration have a liberty interest in their freedom. In turn, to protect that
23 interest, on the particular facts of Petitioner's case, due process requires notice and a
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1 hearing, *prior to any revocation of his conditional release on bond*, at which he was
2 afforded the opportunity to advance his arguments as to why his bond should not be
3 revoked.

4 27. That basic principle—that individuals placed at liberty are entitled to process
5 before the government imprisons them—has particular force here, where Petitioner’s
6 detention was *already* found to be unnecessary to serve its purpose. An Immigration Judge
7 previously found that he need not be incarcerated to prevent flight or to protect the
8 community. DHS was required to afford Petitioner the opportunity to advance arguments
9 in favor of his freedom before it robbed him of his liberty. Under federal law and ICE
10 policy, DHS would have nevertheless found it impossible to re-arrest him following a pre-
11 deprivation due process hearing because he is neither a flight risk nor a danger to the
12 community. He must therefore be released from custody unless and until DHS proves to a
13 neutral decisionmaker, by clear and convincing evidence, that he is a flight risk or a danger
14 to the community. During any custody redetermination hearing that occurs, the neutral
15 adjudicator must further consider whether, in lieu of incarceration, alternatives to
16 detention exist to mitigate any risk that DHS may establish.

17 **CUSTODY**

18 28. Petitioner is currently detained by DHS at the Adelanto Detention Facility in
19 Adelanto, California, where he was transferred after being arrested by ICE officers at or
20 near the Los Angeles Field Office. Prior to and since being arrested by ICE in Los Angeles,
21 Petitioner has not been provided with a constitutionally compliant bond hearing.

22 **JURISDICTION**

VENUE

33. 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 occur Los Angeles and Adelanto in the Central District of California; because Petitioner was arrested in Los Angeles, which is in the jurisdiction of the Central District of California; because Petitioner is currently detained in the Central District of California; and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

34. The decision to re-arrest and re-detain Petitioner was made by the Los Angeles Field Office of ICE, and until he was unlawfully re-detained by ICE, his case was pending before the Ninth Circuit Court of Appeals. Furthermore, on July 3, 2025, Petitioner filed a Motion for Custody Redetermination with the IJ in Adelanto who denied to have jurisdiction. Therefore, the assignment to the Western Division of this Court is proper under E.D. Local Rule 120.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. 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

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

3 36. No statutory exhaustion requirements apply to Petitioner's claim of unlawful
4 custody in violation of his due process rights, and there are no administrative remedies
5 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045,
6 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does
7 not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F.
8 Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

9 37. More importantly, every day that Petitioner remains detained causes him
10 harm that cannot be repaired. His continued detention puts his physical and mental health
11 at greater risk, further warranting a finding of irreparable harm and the waiver of the
12 prudential exhaustion requirement. As Respondents are aware, Petitioner suffers from
13 post-traumatic stress disorder, depression, and anxiety, which is mainly related to his
14 separation from his young children during the last bout of his incarceration between 2019,
15 during which time his young daughter was being sexually abused, as well as his recent
16 discovery of his daughter being a victim of sexual abuse. Due to being an indirect victim of
17 a U-visa qualifying crime and having assisted law enforcement investigate and prosecute
18 the perpetrator of the crime, Petitioner has filed petition for classification as a U
19 nonimmigrant Status (which will provide him an additional relief against removal). The
20 Court must consider this in its irreparable harm analysis of the effects on Petitioner as his
21 detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at
22 *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant
23 psychological effects from his detention, including anxiety caused by the threats of other
24

1 inmates and two suicide attempts," in finding that petitioner would suffer irreparable
2 harm warranting waiver of exhaustion requirement).

3
4
5 **PARTIES**

6 38. Petitioner is a 49-year-old Guatemalan father of ten children, six of whom are
7 U.S. citizens. Petitioner was born in the city of Finca La Corona de Aldea Tatasirire, in
8 Jalapa, Guatemala. He is of the Hispanic race and a Catholic. He fled Guatemala due to
9 political and religious persecution and the threat of torture in Guatemala. He was
10 imprisoned in immigration custody from October 2019 until April 22, 2025. On April 22,
11 2020, after being detained in excess of six months, Petitioner was released on an *Alema³ⁿ*
12 bond by an immigration judge in the Otay Mesa Detention Center on a \$5000.00 bond and
13 ATD at DHS discretion. On June 7, 2025, ICE, without prior notice or a hearing, and in
14 violation of the prior Immigration Judge's order ordering release of Petition on bond, took
15 Petitioner into custody during a non-routine check-in appointment in Los Angles,
16 California.

17 39. Respondent EARNESTO SANTACRUZ, JR is the Acting Field Office Director of
18 ICE, in Los Angeles, California and is named in his official capacity. ICE is the component of
19 the DHS that is responsible for detaining and removing noncitizens according to
20 immigration law and oversees custody determinations. In his official capacity, he is the
21 legal custodian of Petitioner.
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³ *Aleman Gonzalez v. Sessions*, No. 18-CV-01869-JSC, 2018 WL 2688569 (N.D. Cal. June 5, 2018)

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

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

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

18 43. Respondent F. SEMAIA is the F Warden, Adelanto Detention Facility where
19 Petitioner is being held. Respondent Andrews oversees the day-to-day operations of
20 Adelanto Detention Facility and acts at the Direction of Respondents LYONS, NOEM, and
21 BONDI. He is a custodian of Petitioner and is named in his official capacity.
22

23 **LEGAL BACKGROUND**

24 **Right to a Hearing Prior to Re-incarceration**

1 44. In Petitioner's particular circumstances, the Due Process Clause of the
2 Constitution makes it unlawful for Respondents to re-arrest him without first providing a
3 pre-deprivation hearing before the IJ to determine whether circumstances have materially
4 changed since his release on an immigration judge bond in on April 22, 2020, such that
5 detention would now be warranted.

6 45. The statute and regulations grant ICE the ability to unilaterally revoke any
7 noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b);
8 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE
9 the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of*
10 *Sugay*, 17 I&N Dec. at 640, the BIA recognized an implicit limitation on ICE's authority to
11 re-arrest noncitizens. There, the BIA held that "where a previous bond determination has
12 been made by an immigration judge, no change should be made by [the DHS] absent a
13 change of circumstance." *Id.* In practice, DHS "requires a showing of changed
14 circumstances both where the prior bond determination was made by an immigration
15 judge *and* where the previous release decision was made by a DHS officer." *Saravia*, 280 F.
16 Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter*
17 *of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances.
18 *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed
19 circumstances ... ICE cannot re-detain Panosyan.").
20

21 46. ICE has further limited its authority as described in *Sugay*, and "generally only
22 re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances."
23 *Saravia*, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting
24 Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and

1 ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond
2 only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter*
3 *of Sugay*, 17 I&N Dec. at 640.

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

11 48. Federal district courts in California have repeatedly recognized that the
12 demands of due process and the limitations on DHS's authority to revoke a noncitizen's
13 bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-
14 deprivation hearing for a noncitizen on bond, like Petitioner, *before* ICE re-detains him.
15 *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415
16 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
17 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
18 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

19 **Petitioner's Protected Liberty Interest in His Conditional Release**
20

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

1 50. For five years preceding his re-detention on June 7, 2025, Petitioner exercised
2 that freedom under an immigration judge's April 22, 2020, order granting him release on a
3 \$5,000 bond. Although he was released on bond (and thus under government custody), he
4 retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment
5 in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*
6 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

17 52. This basic principle—that individuals have a liberty interest in their
18 conditional release—has been reinforced by both the Supreme Court and the circuit courts
19 on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals
20 placed in a pre-parole program created to reduce prison overcrowding have a protected
21 liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82
22 (holding that individuals released on felony probation have a protected liberty interest
23 requiring pre-deprivation process). As the First Circuit has explained, when analyzing the
24

1 issue of whether a specific conditional release rises to the level of a protected liberty
2 interest, “[c]ourts have resolved the issue by comparing the specific conditional release in
3 the case before them with the liberty interest in parole as characterized by *Morrissey*.”
4 *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks
5 and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.
6 Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
7 lawfully revocable—has a liberty interest that entitles him to constitutional due process
8 before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and
9 *Morrissey*, 408 U.S. at 482).

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

19 54. Here, when this Court “compar[es] the specific conditional release in
20 [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is
21 clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in
22 *Morrissey*, Petitioner’s release “enables him to do a wide range of things open to persons”
23 who have never been in custody or convicted of any crime, including to live at home, work,
24

1 advocate for his community, and “be with family and friends and to form the other
2 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

3 55. Since his release in April 2020, Petitioner has been focused on recovering
4 from the effects of the persecution and torture he experienced in Guatemala and
5 addressing the lasting mental and physical scars of that trauma. Petitioner recently
6 discovered that his young daughter was being sexually abused in the past, including during
7 his separation from his young children during the last bout of his incarceration between
8 October 2019 and April 2020. Petitioner has been diagnosed with conditions labeled as
9 Major Depressive Disorder, Recurrent, Moderate and Generalized Anxiety Disorder and
10 Post Traumatic Stress Disorder (PTSD) due to the frequency, intensity and duration of his
11 symptoms. According to his psychologist, Petitioner’s condition began when his daughter
12 was a victim of sexual abuse. Petitioner’s response to the event involved intense fear,
13 helplessness and terror. Petitioner’s daughter’s therapist under the licensed supervision of
14 her psychologist, has been providing weekly therapy to Dulce Rodriguez since August 14,
15 2024. Her work has primarily focused on processing a traumatic event that has had a
16 significant impact on Petitioner’s daughter’s mental and emotional well-being. According
17 to her therapist, it is her professional opinion that the departure of Petitioner would
18 greatly exacerbate her symptoms of trauma and anxiety. The separation would not only
19 affect her psychological stability but also have profound negative effects on the well-being
20 of her entire family system. The therapist further opines that given the fragile nature of
21 Petitioner’s daughter’s emotional state, maintaining familial stability is critical to her
22 therapeutic progress and overall mental health.
23
24

1 56. On May 20, 2025, Petitioner filed a petition for classification as a U
2 nonimmigrant Status due to being an indirect victim of a U-visa qualifying crime and
3 having assisted law enforcement investigate and prosecute the perpetrator of the crime.

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

6 57. Petitioner asserts that, here, (1) where his detention is civil, (2) where he has
7 diligently complied with ICE's reporting requirements on a regular basis, (3) where he has
8 a substantial application for protection or relief pending, (4) where ICE is unable to show
9 any changed circumstances, and (5) where ICE officers claim that circumstances had not
10 changed and they were taking the action because of the new administration, due process
11 mandates that he was required to receive notice and a hearing before a neutral adjudicator
12 prior to any re-arrest or revocation of a bond.

13 58. "Adequate, or due, process depends upon the nature of the interest affected.
14 The more important the interest and the greater the effect of its impairment, the greater
15 the procedural safeguards the [government] must provide to satisfy due process."
16 *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*,
17 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the
18 [government's] interest in the efficient administration of" its immigration laws in order to
19 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
20 him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court
21 must consider three factors in conducting its balancing test: "first, the private interest that
22 will be affected by the official action; second, the risk of an erroneous deprivation of such
23 interest through the procedures used, and the probative value, if any, of additional or
24 substitute procedural safeguards; and finally the government's interest, including the

1 function involved and the fiscal and administrative burdens that the additional or
2 substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing*
3 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

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

1 liberty” and required a pre-deprivation hearing before a neutral adjudicator, which ICE
2 failed to provide.

3 **Petitioner’s Private Interest in His Liberty is Profound**

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

20
21 62. What is at stake in this case for Petitioner is one of the most profound
22 individual interests recognized by our legal system: whether ICE may unilaterally nullify a
23 prior bond decision and be able to take away his physical freedom, i.e., his “constitutionally
24 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203

1 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always
2 been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
3 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from
4 imprisonment—from government custody, detention, or other forms of physical
5 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper*
6 *v. Oklahoma*, 517 U.S. 348 (1996).

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

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

13 64. The government’s interest in keeping Petitioner in detention without a due
14 process hearing is low, and when weighed against Petitioner’s significant private interest
15 in his liberty, the scale tips sharply in favor of releasing Petitioner from custody unless and
16 until the government demonstrates by clear and convincing evidence that he is a flight risk
17 or danger to the community. It becomes abundantly clear that the *Mathews* test favors
18 Petitioner when the Court considers that the process Petitioner seeks—release from
19 custody pending notice and a hearing regarding whether his bond should be revoked and,
20 if so, whether a new bond amount should be set—is a standard course of action for the
21 government. In the alternative, providing Petitioner with a hearing before this Court (or a
22 neutral decisionmaker) to determine whether there is clear and convincing evidence that
23 Petitioner is a flight risk or danger to the community would impose only a *de minimis*
24

1 burden on the government, because the government routinely provides this sort of hearing
2 to detained individuals like Petitioner.

3 65. As immigration detention is civil, it can have no punitive purpose. The
4 government's only interests in holding an individual in immigration detention can be to
5 prevent danger to the community or to ensure a noncitizen's appearance at immigration
6 proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly
7 assert that it had a sudden interest in detaining Petitioner in June 2025 due to any alleged
8 dangerousness or any flight risk concerns.

9 66. Petitioner was determined by an immigration judge not to be a danger to the
10 community in April 2020 and has done nothing to undermine that determination. In fact,
11 he has continued to appear before ICE for each and every appointment that has been
12 scheduled. *See Morrissey*, 408 U.S. at 482 ("It is not sophistic to attach greater importance
13 to a person's justifiable reliance in maintaining his conditional freedom so long as he
14 abides by the conditions on his release, than to his mere anticipation or hope of freedom")
15 (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d
16 Cir. 1971).

17 67. As to flight risk, the immigration judge already determined that a bond of
18 \$5,000 and frequent check-ins were sufficient to guard against any possible flight risk, to
19 "assure [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Furthermore,
20 Petitioner, a well-known handyman in his community, volunteers for his children's soccer
21 teams and events, and has a meritorious claim for protection based on persecution and
22 torture he experienced in Guatemala and eagerly awaits the a positive decision from the
23 Ninth Circuit Court of Appeals. It is difficult to see how the government's interest in
24

1 ensuring his presence at the moment of removal has materially changed since he was
2 released in April 2020. Petitioner (1) was already subject to a bond in the amount of
3 \$5,000, and (2) attended regular check-ins with ICE, *see id.* Petitioner's post-release
4 conduct in the form of full compliance with his check-in requirements further confirms
5 that he is not a flight risk and that he is likely to present himself at any future hearings or
6 ICE appearances. The government's interest in detaining Petitioner at this time is therefore
7 low. That ICE has a new policy to make a minimum number of arrests each day under the
8 new administration does not constitute a material change in circumstances or increase the
9 government's interest in detaining him.⁴

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

16 69. In the alternative, providing Petitioner with an immediate hearing before this
17 Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that
18 the government provides to those in immigration jails on a daily basis. At that hearing, the
19 Court would have the opportunity to determine whether circumstances have changed such
20 that Petitioner is more of a danger to the community or flight risk. But there was no
21 justifiable reason to re-incarcerate Petitioner and ship him to Adelanto Detention Facility
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23
24 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/>.

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

6 70. Release from custody until ICE (1) moves for a bond re-determination before
7 an Immigration Judge and (2) demonstrates by clear and convincing evidence that
8 Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for
9 the government than keeping him detained. As the Ninth Circuit noted in 2017, which
10 remains true today, “[t]he costs to the public of immigration detention are ‘staggering’:
11 \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*,
12 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at
13 which the government bears the burden of justifying his continued detention, the
14 government would bear no additional cost if the hearing is scheduled within seven days,
15 rather than allowing Petitioner to sit in detention for days or weeks awaiting a hearing.
16 This is particularly true where, as here, DHS has been in possession of the only information
17 it has relied on to justify a dangerousness determination for months on end without taking
18 any action.

19
20 **Without Release from Custody until the Government Provides a Due Process Hearing, the**
21 **Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a**
22 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That**
23 **Risk**

24 71. Releasing Petitioner from custody until he is provided a pre-deprivation
hearing would decrease the risk of him being erroneously deprived of his liberty. Before

1 Petitioner can be lawfully detained, he must be provided with a hearing before a neutral
2 adjudicator at which the government is held to show that there has been sufficiently
3 changed circumstances such that the April 22, 2020 immigration judge bond
4 determination should be altered or revoked because clear and convincing evidence exists
5 to establish that Petitioner is a danger to the community or a flight risk.

6 72. Under the process that ICE maintains is lawful—which affords Petitioner no
7 process whatsoever—ICE can simply re-detain him at any point if the agency desires to do
8 so, as ICE did on June 7, 2025. Petitioner has already been erroneously deprived of his
9 liberty, and the risk he will continue to be deprived is high if ICE is permitted to keep him
10 detention after making a unilateral decision to re-detain him. Pursuant to 8 C.F.R. §
11 236.1(c)(9), an arrest of Petitioner automatically revokes his bond. Thus, the regulations
12 permit ICE to unilaterally nullify a bond order without oversight of any kind. After re-
13 arrest, ICE makes its own, one-sided custody determination and can decide whether the
14 agency wants to hold Petitioner without a bond, or grant him a new bond. 8 C.F.R.
15 § 236.1(c)(9). In this instance, the immigration judge has declined to assume jurisdiction
16 over bond for Petitioner and he was not granted a bond by the Immigration Court. ICE's
17 new custody determination will be subject to review by the IJ. 8 U.S.C. § 1226(a).
18 Therefore, the actual *revocation* of Petitioner's bond evades any review by the IJ or any
19 other neutral arbiter.

20 73. By contrast, the procedure Petitioner seeks—release from custody and
21 reinstatement of his prior bond until he is provided a hearing in front of a neutral
22 adjudicator at which the government proves by clear and convincing evidence that
23 circumstances have changed to justify his detention—is much more likely to produce
24

1 accurate determinations regarding factual disputes, such as whether a certain occurrence
2 constitutes a “changed circumstance.” *See*
3 *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments
4 depending on credibility of witnesses and assessment of conditions not subject to
5 measurement” are at issue, the “risk of error is considerable when just determinations are
6 made after hearing only one side”). “A neutral judge is one of the most basic due process
7 protections.”

8 *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by*
9 *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the
10 risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a
11 neutral decisionmaker, rather than ICE alone, makes custody determinations.

12 *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

13 74. Due process also requires consideration of alternatives to detention at any
14 custody redetermination hearing that may occur. The primary purpose of immigration
15 detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*,
16 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives
17 to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).
18 Accordingly, alternatives to detention must be considered in determining whether
19 Petitioner’s re-incarceration is warranted.
20

21 **FIRST CAUSE OF ACTION**

22 **Due Process**

23 **U.S. Const. amend. V**

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

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

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

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

14 **PRAYER FOR RELIEF**

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

16 (1) Assume jurisdiction over this matter;

17 (2) Enjoin Respondents from transferring Petitioner outside the jurisdiction
18 of the Los Angeles Field Office and/or the Southern District of California
19 pending the resolution of this case;

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

- 1 (4) In the alternative, conduct an immediate bond hearing before this Court
2 where DHS bears the burden of justifying Petitioner's continued detention
3 by clear and convincing evidence and the Court takes into consideration
4 alternatives to detention and Petitioner's ability to pay a bond;
5 (5) In the alternative, order an immediate bond hearing before a neutral
6 decisionmaker where DHS bears the burden of justifying Petitioner's
7 continued detention by clear and convincing evidence and the neutral
8 adjudicator takes into consideration alternatives to detention and
9 Petitioner's ability to pay a bond;
10 (6) Award reasonable costs and attorney fees; and
11 (7) Grant such further relief as the Court deems just and proper.

12 Dated: July 28, 2025

Respectfully submitted,

14 By: /s/ Bashir Ghazialam
15 Bashir Ghazialam

16 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. 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 28, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner