

**Manohar Raju, Public Defender**  
**Matt Gonzalez, Chief Attorney**

**GENNA ELLIS BEIER (SBN #300505),  
San Francisco Public Defender's Office  
555 7th Street  
San Francisco, California 94103  
Telephone: (510) 519-4971  
genna.beier@sfgov.org**

*Pro Bono Attorney for Petitioner*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**ISIDRO BENAVIDES CARBALLO,** ) **VERIFIED PETITION FOR WRIT OF**  
 ) **HABEAS CORPUS**  
Petitioner, )  
 )  
 )  
vs. ) **IMMIGRATION HABEAS CASE**  
 )  
 )  
 )  
TONYA ANDREWS, in her official capacity, )  
Facility Administrator of Golden State )  
Annex; )  
 )  
ORESTES CRUZ, in his official capacity, )  
Director for the San Francisco ICE Field )  
Office; )  
 )  
KRISTI NOEM, in her official capacity, )  
Secretary of the Department of Homeland )  
Security; )  
 )  
PAMELA BONDI, in her official capacity, )  
Attorney General of the United States. )

### Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

**INTRODUCTION**

1. Petitioner Isidro Benavides Carballo<sup>1</sup> (“Mr. Carballo”),<sup>2</sup> by and through undersigned counsel, hereby files this petition for writ of habeas corpus to compel his immediate release from the custody of the Department of Homeland Security (“DHS”). Mr. Carballo was unlawfully re-detained yesterday at a DHS check-in appointment in Fresno without first being provided a due process hearing to determine whether his incarceration meets any purpose. Mr. Carballo must be released from custody unless and until DHS proves to a neutral adjudicator by clear and convincing evidence that he presents a current danger and flight risk.

2. It is well-established that people released from custody have a protected liberty interest in their freedom. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). A chorus of district courts across California have recognized that noncitizens released from ICE custody share this strong liberty interest. *See, e.g., Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025); *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025) (collecting cases).

3. Mr. Carballo enjoyed his liberty interest for the five-plus years since District Judge Chhabria ordered his release from ICE custody on bail in the class action litigation *Zepeda Rivas v. Jennings*, No. 3:20-cv-02731-VC, (N.D. Cal.). Since then, he has resided in transitional

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<sup>1</sup> While all Department of Homeland Security documents refer to Petitioner as Isidro Benavides Carballo, his true and correct name is Jose Isidro Carballo.

<sup>2</sup> Mr. Carballo respectfully requests that the Court use his initials, rather than his full last name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. *See Memorandum Re: Privacy Concern Regarding Social Security & Immigration Opinions*, May 1, 2018, available at: [https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion\\_cacm\\_0.pdf](https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf). *See also Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at \*10 (E.D. Cal. June 24, 2025).

1 housing for nearly two years and was successfully discharged from parole. For the last three  
2 years, he has been living with his fiancé and working in agriculture, picking fruit. He has had no  
3 law enforcement contacts and has complied with all ICE check-in requirements.

4 4. Despite Mr. Carballo's stellar conduct on release, ICE unilaterally determined to re-  
5 detain him without notice or a hearing. On July 23, 2025, an ICE Officer called Mr. Carballo and  
6 asked him to come to the office on August 5, 2025, purportedly to pick up a passport. When Mr.  
7 Carballo diligently appeared at the Fresno ICE office yesterday morning, he was unexpectedly  
8 taken into ICE custody. When his immigration attorney contacted his deportation officer for an  
9 explanation, the ICE officer stated that he had received orders to detain Mr. Carballo solely due  
10 to his decades-old criminal history.

11 5. The basic principle—that individuals placed at liberty are entitled to process before the  
12 government imprisons them—applies with special force here, where Mr. Carballo's detention  
13 was *already* found to be unnecessary to serve its purpose. A district court previously determined  
14 that Mr. Carballo does not pose a danger to the community or a flight risk in ordering him  
15 released in 2020, and there are no changed circumstances that would suggest that analysis has  
16 changed. To the contrary, in the five years since his release, Mr. Carballo has proven that his  
17 release was warranted.

18 6. For these and the foregoing reasons, this Court should join its colleagues in holding that  
19 due process required notice and a hearing, *prior* to any re-detention, at which he would be  
20 afforded the opportunity to advance his arguments as to why his release should not be revoked.  
21 To restore the status quo ante, the Court should order Mr. Carballo's immediate release until a  
22 neutral decisionmaker determines that DHS has justified his incarceration by clear and  
23 convincing evidence.  
24

**JURISDICTION**

7. Mr. Carballo is currently detained by DHS at the Golden State Annex ICE Detention Center in McFarland, California, where he was transferred after being arrested by ICE officers at the Fresno ICE office. Since being arrested by ICE in Fresno, Mr. Carballo has not been provided with a constitutionally compliant hearing to determine whether his re-detention is justified.

8. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, and the Immigration & Nationality Act (“INA”). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

9. 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 Eastern District of California; because Petitioner was arrested in Fresno, which is in the jurisdiction of the Eastern District of California; because Petitioner is currently detained at Golden State Annex, in the Eastern District of California; and because there is no real property involved in this action.

**REQUIREMENTS OF 28 U.S.C. §2243**

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless Mr. Carballo is not entitled to relief. 28

1 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within  
2 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*  
3 (emphasis added).

4 11. Courts have long recognized the significance of the habeas statute in protecting  
5 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
6 important writ known to the constitutional law of England, affording as it does a swift and  
7 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,  
8 400 (1963) (emphasis added).

9 12. Habeas corpus must remain a swift remedy. Accordingly, “the statute itself directs courts  
10 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious  
11 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations  
12 omitted). In *Yong*, the court warned against any action creating the perception “that courts are  
13 more concerned with efficient trial management than with the vindication of constitutional  
14 rights.” *Id.*

### 15 PARTIES

16 13. Petitioner Isidro Benavides CARBALLO (also known as Jose Isidro Carballo) is a 58-  
17 year-old national of El Salvador. He has resided in the United States for the past forty years. He  
18 came fleeing the violent civil war in El Salvador when he was 18 years old, in 1985. He lives  
19 with his fiancé in Fresno, California and works in agriculture, picking fruit.

20 14. Respondent TONYA ANDREWS is the facility administrator of Golden State Annex, a  
21 detention center located in McFarland, California run by GEO Group Inc., a private, for-profit  
22 company. Pursuant to the Ninth Circuit’s recent decision in *Doe v. Garland*, 109 F.4th 1188,  
23 1197 (9th Cir. 2024), Tonya Andrews is the proper respondent because she is the de facto  
24 warden of the facility at which Mr. Carballo is detained.

15. Respondent ORESTES CRUZ is the Field Office Director of ICE for San Francisco. In his official capacity, he is the federal official most directly responsible for overseeing the ICE Fresno Field Office. Accordingly, he has legal custody over Mr. Carballo.

16. Respondent TODD M. LYONS ("Acting Director Lyons") is the current Assistant Field Office Director of ICE for Fresno. In his official capacity, he is the official responsible for the Fresno Field Office. The Assistant Field Office Director of ICE Fresno is the immediate and legal custodian of Mr. Carballo.

17. Respondent, KRISTI NOEM ("Secretary Noem"), is the Secretary of the Department of Homeland Security. She has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003). Given this authority, Secretary Noem is the legal custodian over Mr. Carballo and is empowered to carry out any administrative order issued against him.

18. Respondent, PAMELA BONDI ("Attorney General Bondi"), is the Attorney General of the United States, and as such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the Board of Immigration Appeals ("BIA"). In her official capacity, Attorney General Bondi is a legal custodian of Mr. Carballo.

### **STATEMENT OF FACTS**

#### **A. LENGTHY U.S. RESIDENCE AND FAMILY TIES**

19. Mr. Carballo is a 58-year-old national of El Salvador who came to the United States in 1985, when he was 18 years old. *See* Authenticating Declaration of Counsel at Exhibit ("Exh.") E, Declaration of Jennifer Friedman. He came fleeing the violent civil war in El Salvador,

1 including witnessing the murder of his brother. Guerilla forces took him by force and made him  
2 train with them in the jungle until he escaped. *Id.*

3 20. After arrival, Mr. Carballo was granted legal status as part of the Special Agricultural  
4 Worker (SAW) program, established by the Immigration Reform and Control Act of 1986  
5 (IRCA), 8 U.S.C. § 1160. His Temporary Resident Status later expired.

6 21. Since 2020, Mr. Carballo has been at liberty in Fresno, California where he lives with his  
7 fiancé, Mariel Valle. Mr. Carballo and Ms. Valle have lived together for the past three years and  
8 rely heavily on each other. Ms. Valle suffers from high blood pressure, among other chronic  
9 health conditions. Mr. Carballo helps her keep a healthy lifestyle and reminds her to take her  
10 medication. Mr. Carballo also has a strong relationship with Ms. Valle's three adult children,  
11 Shakina, Jessie, and Nestor.

12 22. Mr. Carballo also has extended family, including his cousin, Rafael Alfaro, and his  
13 family who reside in Indio, California; his nephew Elio Carballo in Washington, his niece Rosie  
14 Carballo in Coachella, CA; and his niece Marvyn Carballo in Miami, Florida.

15 **B. 1990 ARREST AND CONVICTION**

16 23. The violence and trauma that Mr. Carballo experienced in El Salvador deeply impacted  
17 him. He started drinking alcohol heavily upon arrival in the United States in part to cope with his  
18 past trauma.

19 24. Mr. Carballo's troubled past mixed with alcohol led to problems with the law as a young  
20 man. In 1987, as a teenager, he was convicted of a misdemeanor for providing a false name to a  
21 police officer and sentenced to 10 days. In 1988, he was convicted of misdemeanor assault with a  
22 deadly weapon, and sentenced to 30 days. In 1989, he was convicted of taking a vehicle without  
23 an owner's consent. In 1989, he was convicted of discharging a firearm in a negligent manner, a  
24 felony, and was sentenced to 364 days jail and three years of probation.

25. In 1989, at age 21, Mr. Carballo shot and killed a man. As a young man, Mr. Carballo was impulsive and angry, especially when using alcohol, which he attributes largely to the violence he escaped in El Salvador. On the day of the incident, he acted in an angry outburst and killed a man after a verbal argument between the two of them at a restaurant. In 1990, he was convicted of murder and sentenced to 25 years to life in prison.

### C. REHABILITATION IN PRISON AND RELEASE ON PAROLE

26. In prison, Mr. Carballo initially continued making poor decisions, including becoming affiliated with a gang.

27. However, Mr. Carballo realized he needed to turn his life around. He dedicated himself to sobriety, self-improvement, and a law-abiding life. In 2015, he renounced all gang affiliation and in 2016, went through a debrief process to officially disassociate from the gang. As part of his drop-out process, he was placed in segregation, then in protective custody in a special needs yard. He was brutally stabbed in retaliation for his attempt to end his affiliation on at least two occasions. His former affiliation was considered by the Parole Board, which recognized that he made great efforts to leave the gang and that he was a changed person.

28. In 2020, the California Parole Board, whose mission it is to “protect and preserve public safety” and which includes a panel of independent commissioners, recommended Mr. Carballo’s release from custody because he has changed and does not present a danger to the community.<sup>3</sup> The Board’s decision was then reviewed by the Governor of California who allowed the decision to stand.<sup>4</sup>

<sup>3</sup> See <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/> (last accessed Aug. 5, 2025).

<sup>4</sup> See <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/what-to-expect-after-a-parole-suitability-hearing/> (last accessed August 5, 2025).

29. The Parole Board found that Mr. Carballo had changed his life and attitude while in prison, determining that he is not a risk to public safety and was suitable for parole. The Parole Board relied on Mr. Carballo's significant self-help programming, including participating in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), Criminal Gangs Anonymous, and Victim Impact. They also considered his extensive vocational training and job skills, his lack of disciplinary misconduct since 2014, and multiple laudatory recommendations. As mentioned, the Parole Board recognized his disassociation from the gang, even when it caused him to be stabbed on multiple occasions. The California Parole Board placed great weight in Mr. Carballo's age at the time of the offense, 21 years old, and found that he had significant insight and remorse into his past actions, had developed impulse control, and had realistic and concrete plans for the future including how to avoid relapsing into criminal behavior.

30. The Parole Board process involves a thorough and lengthy evaluation including an interview by one of the Parole Board's forensic clinical psychologists for purposes of producing a comprehensive risk assessment, a review of his institutional behavior and programming, with input from solicited from the District Attorney, victim and victim's family, and a review of his criminal history and the circumstances of his crime.<sup>5</sup> The psychologist who evaluated Mr. Carballo in 2020 found him to be a low risk of re-offense if released.

31. Mr. Carballo feels great remorse for causing the death of his victim and for the harm he caused the family of the victim, as well as the harm his crime caused the community. He wrote letters of remorse and guilt to the victim's family through the Parole Board. The victim's sister came to the Parole Board, and told the Board that the family had decided to forgive Mr. Carballo.

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<sup>5</sup> See <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/>

1 He has done everything that he can to change his life, engaging in rehabilitative programming,  
2 and improving himself in every way possible.

3 **D. ARREST BY ICE AND RELEASE BY DISTRICT COURT**

4 32. Upon his release from prison, in July 2020, Mr. Carballo was arrested by ICE and  
5 transferred to the Mesa Verde Detention Center in Bakersfield, California.

6 33. On July 29, 2020, the Department of Homeland Security filed a Notice to Appear,  
7 charging Mr. Carballo as inadmissible under Section 212(a)(6)(A)(i) of the Immigration and  
8 Nationality Act, as a noncitizen present without being admitted or paroled; and under section  
9 212(a)(2)(A)(i)(I), as a noncitizen who has been convicted of a crime involving moral turpitude.

10 34. On August 5, 2020, Mr. Carballo was ordered released from custody through a bail order  
11 issued in *Zepeda Rivas v. Jennings*, No. 3:20-cv-02731-VC, (N.D. Cal.) (hereafter "*Zepeda*  
12 *Rivas*"), a class action lawsuit challenging the conditions of ICE custody at the Yuba County Jail  
13 and Mesa Verde Detention Center during the COVID-19 pandemic.

14 35. Finding an "exceedingly strong likelihood that they will prevail on their claim that  
15 current conditions at the facilities violate class members' due process rights by unreasonably  
16 exposing them to a significant risk of harm," District Judge Vince Chhabria held that the case  
17 presented "extraordinary" circumstances warranting a process of releasing class members on bail  
18 pending the litigation. *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 40 (N.D. Cal. 2020). Judge  
19 Chhabria noted that in the bail process, "care will be taken both to avoid releasing detainees who  
20 are a danger to the community and to minimize the possibility that released detainees will fail to  
21 appear for their removal proceedings." *Id.*

22 36. At the outset of the litigation, ICE released many class members independently of court  
23 order, through its authority to release noncitizens who do not pose a risk of flight or danger to the  
24 community. 8 C.F.R. § 236.1(c)(8). The district court also considered bail applications for  
hundreds of class members. In the bail process, a class member was required to disclose detailed

1 information regarding their individual circumstances, including all prior criminal convictions,  
2 any pending criminal charges or outstanding warrants, proposed residence, community ties,  
3 employment history. *Zepeda Rivas*, Draft Short Form Bail Application Template, Dkt. 65 (N.D.  
4 Cal. May 1, 2020).

5 37. Class members bore a heavy burden to establish eligibility for release; the court ordered  
6 that “no detainee will be released unless they have demonstrated extraordinary circumstances  
7 justifying release while the habeas petition is pending, based on a consideration of the following  
8 factors: (i) the likelihood that the class will ultimately prevail on its habeas petition; (ii) the risk  
9 posed to the detainee by current conditions at the facilities; (iii) the likelihood that the detainee  
10 will not be a danger to the community if released with conditions; and (iv) the likelihood that the  
11 detainee will appear for subsequent immigration/removal proceedings as required.” *Zepeda*  
12 *Rivas*, Standard for Considering Bail Requests, Dkt. 90 (N.D. Cal. May 4, 2020).

13 38. After plaintiffs submitted a bail application for a class member, the government had the  
14 opportunity to respond. The government contested each bail application, and the court denied a  
15 number of applications. *Zepeda Rivas v. Jennings*, 465 F. Supp. 3d 1028, 1030 (N.D. Cal. 2020).  
16 The court imposed numerous conditions of release on class members granted bail, which  
17 including a requirement to submit to location monitoring as directed by ICE. Dkt. 108, 369, 502,  
18 543. The Ninth Circuit upheld the district court’s authority to release class members on bail and  
19 declined to reverse any bail orders the district court issued. *Zepeda Rivas v. Jennings*, 845 F.  
20 App’x 530, 535 (9th Cir. 2021).

21 39. Petitioner was granted release on bail on August 5, 2020, necessarily taking into account  
22 his full criminal history and his subsequent rehabilitation. See Exh. C, *Zepeda Rivas*, Bail  
23 Application, Dkt. 473-1 (N.D. Cal. July 31, 2020); *Zepeda Rivas*, Bail Order, Dkt. 492 (N.D.  
24 Cal. Aug. 5, 2020).

40. On June 9, 2022, the district court approved a Settlement Agreement resolving the *Zepeda Rivas* litigation. *Zepeda Rivas*, Final Settlement Agreement, Dkt. 1205 (N.D. Cal. Aug. 5, 2020). Under the Settlement Agreement, which expired in June 2025, ICE was permitted to re-detain class members if a class member “pose[d] a threat to public safety or national security, and/or a risk of flight” based on the satisfaction of certain criteria. *Id.* at III.A-B. While the Settlement Agreement was in effect, ICE never alleged that Mr. Carballo posed a flight risk or danger to the community or sought his re-detention.

41. During the five years Mr. Carballo has been free from custody, he has continued his recovery, met his life partner and gotten engaged, complied with all conditions of release, and has not been re-arrested. His behavior has only bolstered the finding implicit in his bail order, and underscored by ICE’s decision to not seek his re-detention during the pendency of the Settlement Agreement, that he is neither a danger nor a flight risk.

#### **E. IMPECCABLE POST-RELEASE CONDUCT FOR FIVE YEARS**

42. Mr. Carballo has lived an exemplary life free of criminal conduct since his release from ICE custody.

43. For the first year and a half following his release, as required by parole, he lived in transitional housing and complied with all the rules and requirements there.

44. Since his release, he has been successfully discharged from parole in 2021.

45. Mr. Carballo has also built a family since his release. He met and fell in love with his now-fiancée, Mariel Valle, with whom he has lived for the past three years in Fresno, California. He works in agriculture, picking fruit in the fields.

#### **F. HEALTH ISSUES**

46. In 2021, Mr. Carballo suffered a serious fall at work and suffered multiple injuries, including three broken discs in his back and left arm has diminished strength and mobility. His

1 medical team has determined he needs back surgery which has yet to be scheduled. Since that  
2 time, he has suffered chronic pain and takes pain killers.

3 47. Since his accident, Mr. Carballo ability to work in agriculture has been impacted and he  
4 has had to decrease his hours based on pain and physical restriction.

5 **G. ON-GOING REMOVAL PROCEEDINGS AND APPLICATIONS FOR RELIEF**

6 48. Mr. Carballo has continued to pursue his legal avenues to fight his deportation since his  
7 release from ICE custody. After he was released by ICE, his removal proceedings were  
8 transferred to the non-detained docket in the San Francisco Immigration Court.

9 49. On November 16, 2020, he was scheduled to appear in immigration court for a master  
10 calendar hearing on May 6, 2021.

11 50. On April 13, 2021, that hearing was vacated and rescheduled for September 16, 2021. On  
12 August 18, 2021, that hearing was vacated and rescheduled for February 3, 2022. On January 7,  
13 2022, that hearing was vacated and rescheduled for June 9, 2022. On May 9, 2022, that hearing  
14 was vacated and rescheduled for January 5, 2023. On December 16, 2022, that hearing was  
15 vacated and rescheduled for February 29, 2024. On February 2, 2024, that hearing was vacated  
16 and rescheduled for July 23, 2024. On March 19, 2024, that hearing was scheduled and the  
17 Immigration Judge issued an Order for Mr. Carballo to file applications for relief.

18 51. On May 14, 2024, Mr. Carballo filed an application for deferral of removal under the  
19 Convention Against Torture (CAT) on Form I-589 with the Immigration Court along with  
20 identity documents.

21 52. On May 14, 2024, the Court scheduled Mr. Carballo's Individual Hearing for April 9,  
22 2026 at 10am at the Concord Immigration Court. Mr. Carballo and his immigration attorney  
23 were preparing for that final hearing on the merits of his application for relief.  
24

53. Meanwhile, Mr. Carballo had also updated the Immigration Court every time he moved, filing EOIR Form E-33 as required with every address change on December 7, 2020 and November 6, 2023.

54. Mr. Carballo faces near-certain torture or death if he is returned to El Salvador. He is anxious and motivated to pursue his application for relief, deferral of removal under CAT, and any subsequent appeals that may be necessary.

#### **H. UNEXPLAINED RE-ARREST BY ICE DESPITE COMPLIANCE WITH ISAP**

55. On May 14, 2025, ICE contacted Mr. Carballo and instructed him to report for a check-in the next day. On May 15, 2025, Mr. Carballo reported to ICE and was placed on Intensive Supervision Appearance Program (ISAP).

56. Since then, Mr. Carballo has complied with all ISAP requirements, including virtual reporting every week and home visits. On May 22, 2025, he reported in person. ISAP conducted multiple home visits, including June 27, 2025 and a second in July. He dutifully reported every Friday by sending a photograph of himself through an app, most recently this past Friday.

57. On July 23, 2025, Mr. Carballo received a call from ICE asking him to come to the office on August 5, 2025 at 7am. The ICE officer informed Mr. Carballo that they were calling him in to return his passport to him.

58. On August 5, 2025 he dutifully reported to the Fresno ICE Field Office as directed. He was immediately detained. He reports that he was told that he was re-detained because of his past criminal history.

### **ARGUMENT**

#### **Mr. Carballo Has a Protected Liberty Interest in His Conditional Release**

59. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”

*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For five years preceding his re-detention on

1 August 4, 2025, Mr. Carballo exercised that freedom under the district court's order granting him  
2 release. Importantly, during that time Mr. Carballo followed the law, attended any required  
3 hearings, and complied with all ICE requirements, including attending check-ins, home visits  
4 and electronic monitoring through the Intensive Supervision Appearance Program ("ISAP").

5 60. While that freedom may ultimately be revocable should circumstances materially change,  
6 *see Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F. Supp. 3d  
7 1168, 1196-97 (N. D. Cal. 2017), he nonetheless retains a weighty liberty interest under the Due  
8 Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520  
9 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v.*  
10 *Brewer*, 408 U.S. 471, 482-483 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70  
11 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in remaining out of  
12 custody following an IJ's bond determination); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020  
13 WL 5517277, at \*2 (N.D. Cal. 2020) (same); *Jorge M.F. v. Jennings*, 534 F.Supp.3d 1050, 1054-  
14 55 (N.D. Cal. 2021) (same).

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

62. 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).

63. 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).

64. An individual maintains a protectable liberty interest even where she 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 supports 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 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) (cleaned up).

65. Moreover, because Mr. Carballo faces civil detention, “his liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019). Mr. Carballo was released pending removal proceedings, unlike parolees

1 or probationers, who have a diminished liberty interest given their underlying convictions. *See*,  
 2 *e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987).  
 3 As someone at risk of civil detention, therefore, “it stands to reason that [Mr. Carballo] is entitled  
 4 to protections at least as great as those afforded to an individual . . . accused but not convicted of  
 5 a crime.” *See Jones*, 393 F.3d at 932.

6 66. District courts have overwhelmingly held that noncitizens released during their removal  
 7 proceedings have a similar liberty interest to that articulated in *Morrissey*. *See, e.g., Meza v.*  
 8 *Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963  
 9 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D.  
 10 Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2  
 11 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*4 (N.D.  
 12 Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at \*4 (N.D. Cal.  
 13 June 14, 2025); *Guillermo M.R. v. Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, 2025).

14 67. In the last month alone, two courts in this district have recognized the strength of a  
 15 noncitizen’s protected liberty interest following release from ICE custody. *See Garcia v.*  
 16 *Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at \*5 (E.D. Cal. July 14, 2025);  
 17 *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at \*1  
 18 (E.D. Cal. Aug. 4, 2025).

19 68. As in those cases, 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 clear  
 21 that they are on all fours. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr.  
 22 Carballo’s release “enables him to do a wide range of things open to persons” who have never  
 23 been in custody or convicted of any crime, including to live at home, work, and “be with family  
 24 and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at  
 482.

69. Since his release in 2020, Mr. Carballo has built a law-abiding life. He met Mariel Valle, fell in love, and got engaged. The couple has shared a home and rely on each other financially and emotionally. Mr. Carballo has become close to Ms. Valle's adult children. He has also maintained relationships with his own extended family, including his cousin and nieces and nephew. He works consistently in agriculture, picking fruit. He has been receiving treatment and pain management for a work accident he suffered in 2021. While released, he was able to participate in the "attachments of normal life," *Morrissey*, 408 U.S. at 482, and as such, he has a protected liberty interest and his continued detention without adequate process violates his due process rights.

**Mr. Carballo's Liberty Interest Mandated a Hearing *Before* any Re-Arrest by ICE**

70. 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." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). This is so even in cases where that freedom is lawfully revocable. *See Hurd*, 864 F.3d at 683 (emphasis added) (citing *Young*, 520 U.S. at 152 (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole). 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. *Zinerman*, 494 U.S. at 985.

71. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Carballo with notice and a hearing prior to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinerman*, 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

1 individuals awaiting involuntary civil commitment proceedings may not constitutionally be held  
2 in jail pending the determination as to whether they can ultimately be recommitted).

3 72. The decision in *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at \*8  
4 (E.D. Cal. Mar. 3, 2025), illustrates what due process requires prior to re-detention by ICE.  
5 There, Mr. Doe, a noncitizen from India, had been re-detained by ICE at a standard check-in  
6 more than five years after his release on a bond. *Id.* at \*1. In granting a preliminary injunction,  
7 the Court held that even with new adverse facts following release, Mr. Doe had established a  
8 strong likelihood of success in showing that he had an interest in his continued liberty and that  
9 mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due  
10 process rights unless he was afforded adequate process. *Id.* at \*5. The Court further held that,  
11 after applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe  
12 was entitled to a hearing before an IJ to determine whether his detention is warranted. *Id.* at \*6,  
13 \*8. At this hearing, the government bore the burden of establishing, by clear and convincing  
14 evidence, whether Mr. Doe posed a danger or a flight risk.

15 73. As in *Doe*, Mr. Carballo has a protected liberty interest in his freedom, and before  
16 Respondents may deprive him of that, the Fifth Amendment requires they first prove that they  
17 have a lawful basis to do so. Thus, Mr. Carballo is entitled to release and a hearing to determine  
18 whether his re-detention would be unlawful. Here, that would mean a hearing in which a neutral  
19 judge can evaluate whether DHS can establish that Mr. Carballo presents a *current* danger or  
20 flight risk by clear and convincing evidence.

21 **The Government's Interest in Keeping Mr. Carballo in Detention Without a Hearing is**  
22 **Low, and the Burden on the Government to Release Him from Custody Unless and Until**  
**He is Provided a Hearing is Minimal**

23 74. The government's interest in keeping Mr. Carballo in detention *without a due process*  
24 *hearing* is low and, when weighed against his significant private interest in his liberty, the scale

1 tips sharply in favor of releasing him from custody unless and until the government demonstrates  
2 by clear and convincing evidence that he is a flight risk or danger to the community.

3 75. Immigration detention is civil and cannot be punitive in purpose or effect. The  
4 government's only interests in holding an individual in immigration detention can be to prevent  
5 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*  
6 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a  
7 sudden interest in detaining Mr. Carballo in 2025 due to a conviction thirty-five years ago, when  
8 multiple prior adjudicators knew of this conviction and determined that he should still be  
9 released, and when Mr. Carballo has displayed unimpeachable conduct for the last five years.

10 76. Moreover, the "fiscal and administrative burdens" that release from custody would  
11 pose—unless and until a pre-deprivation bond hearing is provided—are nonexistent. *See*  
12 *Mathews*, 424 U.S. at 334-35. To the contrary, his release will save the government significant  
13 expenditure in resources until a neutral adjudicator decides whether his re-detention meets any  
14 valid civil purpose. As the Ninth Circuit noted, "[t]he costs to the public of immigration  
15 detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5  
16 million." *Hernandez*, 872 F.3d at 996.

17 77. The minimal administrative cost of providing a bond hearing pales in comparison to the  
18 costs of detaining Mr. Carballo for what will likely be years as he presents his application for  
19 relief from removal. *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. May 31, 2024) (cleaned up)  
20 (when a noncitizen "poses no danger and is not a flight risk, all the government does in requiring  
21 detention is separate families and remove from the community breadwinners, caregivers, parents,  
22 siblings and employees").

23 78. Giving Mr. Carballo a bond hearing before a judge is a routine procedure that the  
24 government provides to those in immigration jails on a daily basis. *See Doe* at \*6 ("The effort  
and cost required to provide Petitioner with procedural safeguards is minimal and indeed was

1 previously provided in his case.”). At that hearing, the court would have the opportunity to  
 2 determine whether Mr. Carballo’s 1990 conviction, for which he has already been found to be  
 3 rehabilitated, merits his indefinite detention without a hearing. As the Supreme Court noted in  
 4 *Morrissey*, even where the State has an “overwhelming interest in being able to return [a parolee]  
 5 to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to  
 6 abide by the conditions of his parole. . .the State has no interest in revoking parole without some  
 7 informal procedural guarantees.” 408 U.S. at 483.

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

11 79. Releasing Mr. Carballo from custody until he is provided a pre-deprivation hearing  
 12 would decrease the risk of an erroneous deprivation of his liberty. Before Mr. Carballo can be  
 13 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the  
 14 government is held to show that there has been sufficiently changed circumstances such that his  
 15 2020 release by district court order should be altered or revoked because clear and convincing  
 16 evidence exists to establish that Mr. Carballo is a danger to the community or a flight risk. *See*  
 17 *e.g. Diaz*, 2025 WL 1676854, at \*3 (finding that “the three factors relevant to the due process  
 18 inquiry set out in *Mathews*...support requiring a pre-detention hearing for [Mr. Carballo].”).

19 80. There is no change in circumstances to justify Mr. Carballo’ re-detention, much less a  
 20 material change. *Saravia*, 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d  
 21 1137 (DHS “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change  
 22 in circumstances.”). Further, no current evidence suggests that Mr. Carballo is a danger to the  
 23 community. While he has committed serious offenses in his youth, those stem from behaviors  
 24 from 1989 and earlier. After serving thirty years in prison, it was determined that he was a low  
 risk of reoffending and that he had fully rehabilitated himself. As such, he was found suitable for

1 release on parole. In August 2020, District Judge Vince Chhabria again weighed his criminal  
2 history with the mitigating factors, mainly the length of time since commission, his extensive  
3 rehabilitation, and the parole board's decision, and ordered him released in *Zepeda Rivas v.*  
4 *Jennings*. Both of these neutral adjudicators have been proven correct by Mr. Carballo's  
5 outstanding conduct since his release five years ago.

6 81. Nor is Mr. Carballo a flight risk. He has a stable residence, where he has lived for three  
7 years with his partner. He complied with all parole requirements upon release from ICE custody,  
8 including residing in transitional housing and successfully completed parole. He has been  
9 consistently checking in with ICE and complying with ISAP as requested. Mr. Carballo's post-  
10 release conduct in the form of his compliance with ICE check-ins and ISAP requirements further  
11 confirms that he is not a flight risk and that he is likely to present himself at any future hearings  
12 or ICE appearances.

13 82. In any event, the proper place for any alleged facts regarding danger and flight risk to be  
14 adduced is at a hearing before a neutral arbiter. As the court in *Doe* held:

15         Given that Petitioner was previously found to not be a danger or risk of flight and the  
16         unresolved questions about the timing and reliability of the new information, the risk of  
17         erroneous deprivation remains high. Moreover, the value in granting Petitioner  
18         procedural safeguard is readily apparent. At a hearing, a neutral decisionmaker can  
19         consider all of the facts and evidence before him to determine whether Petitioner in fact  
20         presents a risk of flight or dangerousness.

21 *Doe*, 2025 WL 691664, at \*5.

22 83. The same principles hold true here. Mr. Carballo has already been erroneously deprived  
23 of his liberty, and the risk that he will continue to be so deprived is high if ICE is permitted to  
24 keep him detained after making a unilateral decision to re-detain him. *See Diouf v. Napolitano*,  
634 F.3d 1081, 1091-92 (9th Cir. 2011) (observing that the risk of an erroneous deprivation of  
liberty is reduced where a neutral decisionmaker, rather than ICE, makes custody  
determinations). No statutory mechanism provides Mr. Carballo any process before a neutral

1 adjudicator following his re-detention. As a result, absent this Court's intervention, the necessity  
 2 of Mr. Carballo's re-detention would evade review by the IJ or any other neutral arbiter.

3 84. Due process also requires consideration of alternatives to detention and ability to pay at  
 4 any custody redetermination hearing that may occur. *See e.g., Hernandez v. Sessions*, 872 F.3d  
 5 976, 997 (9th Cir. 2017) ("Plaintiffs are likely to succeed on their challenge under the Due  
 6 Process Clause to the government's policy of allowing ICE and IJs to set immigration bond  
 7 amounts without considering the detainees' financial circumstances or alternative conditions of  
 8 release."); *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL  
 9 1744133, at \*10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to  
 10 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.  
 11 Detention is not reasonably related to this purpose if there are alternatives to detention that could  
 12 mitigate risk of flight. *See Bell*, 441 U.S. at 538. Accordingly, alternatives to detention and  
 13 ability to pay must be considered in determining whether Mr. Carballo's re-incarceration is  
 14 warranted.

### 15 **FIRST CAUSE OF ACTION**

#### 16 **Due Process**

#### 17 **U.S. Const. Amend. V**

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

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

22 87. Mr. Carballo had a vested liberty interest in his conditional release. Due Process does not  
 23 permit the government to strip him of that liberty without a hearing before this Court. *See*  
*Morrissey*, 408 U.S. at 487-488.

24 88. For these reasons, Mr. Carballo's re-arrest without a hearing violated the Constitution. The  
 only remedy of this violation is his immediate release from immigration detention until DHS

1 proves to this Court or, in the alternative, a neutral adjudicator, by clear and convincing  
2 evidence, and taking into consideration alternatives to detention and ability to pay a bond, that he  
3 is a present danger to the community or an unmitigable flight risk, such that his re-incarceration  
4 is warranted. Further, to comply with due process, the government must provide Mr. Carballo  
5 with details regarding the date, time, place, and substance of any conduct being used by ICE  
6 justify his re-detention.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Mr. Carballo prays that this Court grant the following relief:

- 9 (1) Assume jurisdiction over this matter;
- 10 (2) Enjoin Respondents from transferring Mr. Carballo outside the jurisdiction of the  
11 Eastern District of California pending the resolution of this case;
- 12 (3) Order the immediate release of Mr. Carballo from DHS custody on the conditions of  
13 his prior bond and the reinstatement of that bond until DHS proves to a neutral  
14 adjudicator by clear and convincing evidence that he is a present danger or an  
15 unmitigable flight risk after taking into consideration alternatives to detention and his  
16 ability to pay a bond, such that his re-incarceration is warranted.
- 17 (4) In the alternative, conduct an immediate bond hearing before this Court where DHS  
18 bears the burden of justifying Mr. Carballo' continued detention by clear and  
19 convincing evidence, after taking into consideration alternatives to detention and his  
20 ability to pay a bond, such that his re-incarceration is warranted.
- 21 (5) In the alternative, order an immediate bond hearing before a neutral decisionmaker  
22 where DHS bears the burden of justifying Mr. Carballo' continued detention by clear  
23 and convincing evidence that he is a present danger or an unmitigable flight risk after  
24 taking into consideration alternatives to detention and his ability to pay a bond, such  
that his re-incarceration is warranted.

1 (6) Award reasonable costs and attorney fees; and

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

3  
4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct to the best of my knowledge. Executed on August 6, 2025 in San  
6 Francisco, California.

7 Dated: August 6, 2025

Respectfully submitted,

8  
9 s/ Genna Beier  
10 Genna Beier

11 Attorney for Petitioner  
12  
13  
14  
15  
16

17 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**  
18 **PURSUANT TO 28 U.S.C. § 2242**

19 I am submitting this verification on behalf of the Petitioner because I am Petitioner's  
20 attorney. As the Petitioner's attorney, I hereby verify that the factual statements made in the  
21 attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

22 Dated: August 6, 2025

s/ Genna Beier  
23 Attorney for the Petitioner  
24