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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF
9 CALIFORNIA

9 RODRIGO A. PAZ HERNANDEZ,
10 Petitioner-Plaintiff,

11 v.

12 Minga WOFFORD, Field Office Director, Mesa
13 Verde, Office of Detention and Removal, U.S.
14 Immigrations and Customs Enforcement; U.S.
15 Department of Homeland Security;

16 POLLY KAISER, Acting Field Office Director of
17 the San Francisco Immigration and Customs
18 Enforcement Office

19 Todd M. LYONS, Acting Director, Immigration
20 and Customs Enforcement, U.S. Department of
21 Homeland Security;

22 Kristi NOEM, in her Official Capacity, Secretary,
23 U.S. Department of Homeland Security; and

24 Pam BONDI, in her Official Capacity, Attorney
25 General of the United States;

26 Respondents-Defendants.

Case No. 1:25-at-00662

A 

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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

INTRODUCTION

1
2 1. Petitioner, Rodrigo Paz Hernandez ("Mr. Paz Hernandez"), Agency number [REDACTED]
3 by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and
4 complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland
5 Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing to detain
6 him in an immigration jail pending resolution of his removal case without first providing him a
7 due process hearing where the government bears the burden to demonstrate to a neutral
8 adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

9 2. Petitioner also seeks an order enjoining DHS from continuing to violate the undisturbed
10 release on recognizance that DHS issued on 05/06/2024.

11 3. Petitioner seeks his immediate release from detention in Mesa Verde ICE Processing
12 Center where ICE unlawfully re-detained and continues to imprison him without a hearing and
13 without demonstrating that he is a flight risk or danger to the community, as required by the Due
14 Process clause of the Fifth Amendment.

15 4. This arrest is part of a new, nationwide DHS strategy of sweeping up people who attend
16 their immigration court hearings, detaining them, and seeking to re-route them to fast-track
17 deportations. Since mid-May, DHS has implemented a coordinated practice of leveraging
18 immigration detention to strip people like Petitioner of their substantive and procedural rights and
19 pressure them into deportation. Immigration detention is civil, and thus is permissible for only
20 two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger
21 to the community. But DHS did not arrest and detain Petitioner - who demonstrably poses no risk
22 of absconding from immigration proceedings or danger to the community—for either of these
23 reasons. Instead, as part of its broader enforcement campaign, DHS detained Petitioner to strip
24 him of his procedural rights, force him to forfeit his applications for relief, and pressure him into
25 fast-track removal.

26 5. Mr. Paz Hernandez initially came into immigration custody immediately after crossing
27 the border into the United States. He was detained for approximately two days. He explained to
28 DHS officers that he was afraid of returning to his country of El Salvador. He provided the officers

1 with contact information for a friend who would receive him. He was processed and released from
2 custody on his recognizance on 05/06/2024. DHS gave him a Notice to Appear (NTA) for removal
3 proceedings in immigration court. The NTA charged him with removability pursuant to 8 U.S.C.
4 § 1182(a)(6)(A)(i) as “an alien present in the United States without being admitted or paroled, or
5 who arrives in the United States at any time or place other than as designated by the Attorney
6 General.” DHS did not require Mr. Paz Hernandez to post a bond or wear an ankle monitor.¹

7 6. Following his release, Mr. Paz Hernandez came to live with his friend, Dinora, in San
8 Francisco, California. He established a life in San Francisco. He is a devout Jehovah's Witness
9 and is very involved in the activities of his church and community. He has paid taxes, obtained a
10 California driver's license, found work, and is in a committed relationship with a U.S. citizen. Mr.
11 Paz Hernandez has maintained a clean criminal record.²

12 7. In March 2025, Mr. Paz Hernandez sought legal assistance for his immigration case from
13 the Immigration Center for Women and Children (ICWC) in San Francisco. ICWC assisted him
14 in preparing and filing his Form I-589, Application for Asylum and for Withholding of Removal.

15 8. Mr. Paz Hernandez appeared for his Master Calendar Hearing on May 6, 2025. The
16 Immigration Judge advised him of his rights and granted his request for a continuance to find an
17 attorney. He called some non-profits looking for legal assistance but got waitlisted.

18 9. Mr. Paz Hernandez appeared again before the Immigration Court on July 8, 2025. At that
19 hearing, the Department of Homeland Security's counsel moved to dismiss his case, without any
20 prior notice, which the Immigration Judge denied. The Judge scheduled Mr. Paz Hernandez's
21 final merits hearing for a date in 2026.

22 10. After detention, the Immigration Court transferred the matter to Adelanto. Since then, a
23 different Immigration Judge has terminated Mr. Paz Hernandez's removal proceedings. Mr. Paz
24 Hernandez intends to appeal the order dismissing his removal proceedings. Mr. Paz Hernandez is
25 currently awaiting a credible fear interview.

26
27
28 ¹ A true and correct copy of Petitioner's border release documentation is attached hereto as Exhibit 1.

² A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 11. Despite the fact that Mr. Paz Hernandez had filed an application for Asylum and had
2 presented himself at his hearing, ICE officers arrested him as he was leaving the courtroom. In
3 recent months, ICE has engaged in highly publicized arrests of individuals who presented no
4 flight risk or danger, often with no prior notice that anything regarding their status was amiss or
5 problematic, whisking them away to faraway detention centers without warning.³

6 12. The ICE officers, who were masked, grabbed him, confirmed his identity, and handcuffed
7 him without offering any explanation.

8 13. He reported that the arresting agents never identified themselves, did not state which
9 agency they represented, and never showed him any badges, credentials, or an arrest warrant

10 14. When he asked why he was being arrested, they told him could not ask questions. The
11 arresting ICE officers did not and have not articulated why Mr. Paz Hernandez was now a flight
12 risk, a danger to the community, or how he had violated any conditions of his 2024 release

13 15. At the time of the arrest, a protest was occurring outside the building.⁴ The agents dragged
14 Mr. Paz Hernandez into a basement or emergency exit hallway, where he was held for
15 approximately ninety minutes. He remained handcuffed with his arms bent painfully behind his
16 back.

17 16. He described being forcibly moved through another exit, where agents pushed through
18 protestors. Mr. Paz Hernandez stated he felt he was being pulled and pushed by both the agents
19 and the crowd, which was a traumatic experience and caused injury to his wrists from the tight
20 handcuffs. He was then forced into a van

21 17. He was first transported to the ICE facility at 630 Sansome Street in San Francisco for
22 fingerprinting, then placed back in the van with other detainees for transport to Fresno. He
23

24 ³ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
25 2025), available at <https://www.nytimes.com/vidco/us/politics/100000010054472/mahmoud-khalils-arrest.html>
26 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University
27 PhD student detained by federal agents," CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html)
28 [detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html) (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
& Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
(Mar. 19, 2025), available at [https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
[student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

⁴ A true and correct copy of newspaper articles describing Petitioner's arrest is attached hereto as Exhibit 3.

1 remained shackled at his hands and feet for the entire multi-hour journey, arriving at the detention
2 facility at approximately 4:00 a.m. the following morning.

3 18. Petitioner's arrest and detention have caused him tremendous and ongoing harm. Since
4 being detained, Mr. Paz Hernandez reports suffering from nightmares. He has described the
5 conditions of his confinement as poor, stating that meals are sometimes withheld for hours, and
6 the staff are rude. He is unable to fully practice his religion as there are no meetings for Jehovah's
7 Witnesses in the detention center. Every additional day Petitioner spends in unlawful detention
8 subjects him to further irreparable harm.

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

20 20. That basic principle—that individuals placed at liberty are entitled to process before the
21 government imprisons them—has particular meaning here. A DHS officer previously found that
22 he need not be incarcerated to prevent flight or to protect the community, and no circumstances
23 have changed that would justify re-arrest. Therefore, at a minimum, in order to lawfully re-arrest
24 Mr. Paz Hernandez, the government must first establish, by clear and convincing evidence and
25 before a neutral decision maker, that he is a danger to the community or a flight risk, such that his
26 re-incarceration is necessary. ICE's re-arrest of Mr. Paz Hernandez on July 8, 2025, violated
27 these regulations, laws, and due process.

28 21. Mr. Paz Hernandez respectfully seeks a writ of habeas corpus ordering the government

1 to immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest
2 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
3 this Court's jurisdiction, Petitioner also requests that this Court order the government not to
4 transfer him outside of the District or deport him for the duration of this proceeding.

5 CUSTODY

6 22. Mr. Paz Hernandez is currently in the custody of ICE at the Mesa Verde ICE Processing
7 Center in Bakersfield, California. Mr. Paz Hernandez is therefore in "'custody' of [the DHS]
8 within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

9 JURISDICTION AND VENUE

10 23. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
11 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.
12 § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the
13 Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative
14 Procedure Act).

15 24. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.
16 § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

17 REQUIREMENTS OF 28 U.S.C. § 2243

18 25. The Court must grant the petition for writ of habeas corpus or issue an order to show
19 cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C.
20 § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three*
21 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis
22 added).

23 26. Courts have long recognized the significance of the habeas statute in protecting
24 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
25 important writ known to the constitutional law of England, affording as it does a *swift* and
26 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
27 400 (1963) (emphasis added).
28

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

29. Mr. Paz Hernandez has sought a bond hearing from an Immigration Judge. His request was summarily denied based on the current interpretation of the BIA’s recent decision in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025).

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

31. Moreover, because Mr. Paz Hernandez’s case has not been recalendared, no IJ has jurisdiction to consider a bond. Therefore, Mr. Paz Hernandez has exhausted all remedies available.

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PARTIES

32. Mr. Paz Hernandez is a citizen and national of El Salvador who entered the U.S. with his parents in 2024 and has remained in the country since.

33. The DHS has deemed Mr. Paz Hernandez neither a danger to his community or a flight risk and released him on his recognizance in May of 2024. *Exhibit B*.

34. Mr. Paz Hernandez established a life in San Francisco. He is a devout Jehovah's Witness and is very involved in the activities of his church and community. He has paid taxes, obtained a California driver's license, found work, and is in a committed relationship with a U.S. citizen. Mr. Paz Hernandez has maintained a clean criminal record.

35. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde, Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In her official capacity, she is the legal custodian of Mr. Paz Hernandez.

36. Respondent Polly KAISER is the Acting Field Office Director of the San Francisco ICE Field Office. In this capacity, she is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent Kaiser maintains an office and regularly conducts business in this district. Respondent Kaiser is sued in her official capacity.

37. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. Paz Hernandez.

38. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland

1 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
2 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Paz Hernandez.

3 39. Respondent Pam BONDI is the Attorney General of the United States and the most senior
4 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
5 authority to interpret immigration laws and adjudicate removal cases. The Attorney General
6 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
7 administers the immigration courts and the BIA.

8 STATEMENT OF FACTS

9 *A. DHS Dramatically Expands the Scope of Expedited Removal.*

10 40. For decades, DHS applied expedited removal exclusively in the border enforcement
11 context, with only narrow exceptions to that general rule. From 1997 until 2002, expedited removal
12 applied only to inadmissible noncitizens arriving at ports of entry. *See* Inspection and Expedited
13 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
14 Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

15 41. In 2002, the government for the first time invoked its authority to apply expedited removal
16 to persons already inside the country, but only for a narrow group of people who arrived by sea,
17 were not admitted or paroled, and were apprehended within two years of entry. *See* Notice
18 Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the
19 Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002).

20 42. In 2004, the government authorized the application of expedited removal to individuals
21 who entered by means other than sea, but only if they were apprehended within 100 miles of a land
22 border and were unable to demonstrate that they had been continuously physically present in the
23 United States for 14 days. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877
24 (Aug. 11, 2004).

25 43. In 2019, at the direction of President Trump, DHS published a Federal Register Notice
26 authorizing the application of expedited removal to certain noncitizens arrested anywhere in the
27 country who could not affirmatively show that they had been continuously present for two years.
28

1 See Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The District
2 Court for the District of Columbia entered a preliminary injunction preventing the rule from taking
3 effect, which the D.C. Circuit later vacated. *Make the Rd. New York v. McAleenan*, 405 F. Supp.
4 3d 1, 11 (D.D.C. 2019), *vacated sub nom. Make the Rd. New York v. Wolf*, 962 F.3d 612, 618 (D.C.
5 Cir. 2020).

6 44. In 2021, President Biden directed the DHS Secretary to review the rule expanding
7 expedited removal and consider whether it comported with legal and constitutional requirements,
8 including due process. In 2022, DHS rescinded the rule. See Rescission of the Notice of July 23,
9 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

10 45. While the 2019 expansion was in effect, the government applied expedited removal to
11 persons inside the country in an exceedingly small number of cases. Thus, from 1997 to 2025, with
12 limited exceptions, immigration authorities generally did not apply expedited removal to
13 noncitizens apprehended far from the border, or individuals anywhere in the United States
14 (including near the border) who had been residing in the country for more than fourteen days.

15 46. This state of affairs changed drastically on January 20, 2025, the day that President Trump
16 took office for his second term. That day, President Trump signed Executive Order 14159,
17 “Protecting the American People Against Invasion,” the purpose of which was “to faithfully
18 execute the immigration laws against all inadmissible and removable aliens, particularly those
19 aliens who threaten the safety or security of the American people.” Exec. Order No. 14,159, 90
20 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take
21 various actions “to ensure the efficient and expedited removal of aliens from the United States.”
22 *Id.*

23 47. To implement this Executive Order, DHS issued a notice immediately authorizing
24 application of expedited removal to certain noncitizens arrested anywhere in the country who
25 cannot show “to the satisfaction of an immigration officer” that they have been continuously
26 present in the United States for at least two years. 90 Fed. Reg. 8139 (published Jan. 24, 2025).
27
28

48. On January 23, 2025, the Acting Secretary of Homeland Security issued a memorandum “provid[ing] guidance regarding how to exercise enforcement discretion in implementing” the new expedited-removal rule. The guidance directed federal immigration officers to “consider . . . whether to apply expedited removal” to “any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied.” As part of that process, the guidance encourages officers to “take steps to terminate any ongoing removal proceeding and/or any active parole status.”⁵

49. Under the administration’s expanded approach to expedited removal, hundreds of thousands of noncitizens who have lived in the country for less than two years are at imminent risk of summary removal without any hearing, meaningful process, access to counsel, or judicial review—regardless of the strength of their ties to the United States.

B. To Place More People in Expedited Removal, DHS Undertakes New Campaign of Courthouse Arrests and Detention.

50. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse and placing them into expedited removal.⁶

51. The first step of this enforcement operation typically takes place inside the immigration court. When people arrive in court for their master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without any notice to the affected individual. Although DHS regulations do not permit such motions to dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. § 239.2(a)(7), (c), DHS attorneys do not conduct any case-

⁵ Benamine C. Huffman, *Guidance Regarding How to Exercise Enforcement Discretion*, Dep’t of Homeland Sec. (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf.

⁶ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23, 2025, <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

1 specific analysis of changed circumstances before filing these motions to dismiss.

2 52. Even though individuals are supposed to have ten days to respond to a motion to dismiss,
3 some IJs have granted the government's oral motion on the spot and immediately dismissed the
4 case. This is consistent with recent instructions from the Department of Justice to immigration
5 judges stating that they may allow the government to move to dismiss cases orally, in court,
6 without a written motion, and to decide that motion without allowing the noncitizen an opportunity
7 to file a response.

8 53. Despite these instructions, some IJs have still asked DHS to re-file the motion as a written
9 motion and continued proceedings to allow individuals to file their response. A smaller group of
10 IJs have expressly denied the motion to dismiss on the record or in a written order.

11 54. The next step of DHS's new campaign takes place outside the courtroom. ICE officers, in
12 consultation with DHS attorneys and officials, station themselves in courthouse waiting rooms,
13 hallways, and elevator banks. When an individual exits their immigration hearings, ICE officers—
14 typically masked and in plainclothes—immediately arrest the person and detain them. ICE officers
15 execute these arrests regardless of how the IJ rules on the government's motion to dismiss. On
16 information and belief, they typically do not have an arrest warrant.

17 55. Once the person has been transferred to a detention facility, the government places the
18 individual in expedited removal. In cases in which the IJ did not dismiss the person's removal
19 proceedings, DHS attorneys unilaterally transfer venue of the case to a "detained" immigration
20 court, where they renew their motions to dismiss—again with the goal of putting the person in
21 expedited removal.
22

23 56. DHS is aggressively pursuing this arrest and detention campaign at courthouses throughout
24 the country. In New York City, for example, "ICE agents have apprehended so many people
25 showing up for routine appointments this month that the facilities" are "overcrowded," with
26 "[h]undreds of migrants . . . sle[eping] on the floor or sitting upright, sometimes for days."⁷
27

28 ⁷ Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*, N.Y. Times, June 12, 2025, <https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html>.

57. The same is true at the San Francisco Immigration Court, where Petitioner was arrested. Over the last month, dozens of people have been arrested and detained after attending their routine immigration hearings.⁸

58. DHS's aggressive tactics at immigration courts appear to be motivated by the Administration's imposition of a new daily quota of 3,000 ICE arrests.⁹ In part as a result of this campaign, ICE's arrests of noncitizens with no criminal record have increased more than 800% since before January.¹⁰

59. The new courthouse arrest and detention campaign is a sharp break from DHS's previous practices, when immigration officers avoided arrests at courthouses given the concern that such enforcement actions would deter people from appearing for their proceedings and complying with court orders.¹¹

60. In fact, DHS officials previously permitted ICE officers to conduct "civil immigration enforcement action . . . in or near a courthouse" only in highly limited circumstances, such as when "it involves a national security threat," or "there is an imminent risk of death, violence, or physical harm." These limitations were necessary, DHS explained, because "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and, as a result, impair the fair administration of justice."¹² The new policy includes no such limiting

⁸ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., June 12, 2025, <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>; Margaret Kadifa & Gustavo Hernandez, *Immigrants fearful as ICE Nabs at least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, <https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/>; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

⁹ Ted Hesson & Kristina Cooke, *ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets*, Reuters, June 10, 2025, <https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/>; Alayna Alvarez & Brittany Gibson, *ICE Ramps Up Immigration Arrests in Courthouses Across the U.S.*, Axios, June 12, 2025, <https://www.axios.com/2025/06/12/ice-courthouse-arrests-trump>.

¹⁰ José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, <https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures>.

¹¹ Hamed Aleaziz, Luis Ferré-Sadurni, & Miriam Jordan, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

¹² A true and correct copy of DHS' April 27, 2021 *Civil Immigration Enforcement Actions in or Near Courthouses* memorandum from Tac Johnson and Troy Miller is attached hereto as Exhibit 4.

1 language.¹³

2 61. The government's new campaign is also a significant shift from previous DHS practice of
3 re-detaining noncitizens only after a material change in circumstances. *See Saravia v. Sessions*,
4 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905
5 F.3d 1137 (9th Cir. 2018) (describing prior practice).

6 ***C. Petitioner is Unlawfully Arrested and Detained Pursuant to DHS's New Policy.***

7 62. Mr. Paz Hernandez is a citizen and national of El Salvador. He fled El Salvador due to his
8 fear of being wrongfully arrested and imprisoned without due process under the country's ongoing
9 "state of exception," which targets suspected gang members, even though he has never been
10 involved with a gang. He recounted being stopped by police on several occasions. For instance,
11 around 2019 or 2020, the Salvadoran police stopped him, forced him against a wall, and
12 threatened to detain him. He was held for 10-15 minutes and was only released after the officers
13 searched him and saw he had no tattoos. In late 2022 or early 2023, he was again stopped by the
14 Salvadoran police late at night in a rural area while returning from his job, still in his work
15 uniform.

16 63. He entered the United States on or about May 6, 2024.

17 64. Upon crossing the border into the United States, Mr. Paz Hernandez encountered U.S.
18 immigration officials. He was detained for approximately two days. He explained to the officers
19 that he was afraid of returning to his country of El Salvador. He provided officials with contact
20 information for a friend who would receive him. He was processed and released from custody on
21 his own recognizance on 05/06/2024. DHS did not require him to post a bond or wear an ankle
22 monitor.

23 65. Following his release, Mr. Paz Hernandez came to live with his friend, Dinora, in San
24 Francisco, California.

25
26
27 ¹³ A true and correct copy of ICE's January 21, 2025 *Interim Guidance: Civil Immigration Enforcement Actions in*
28 *or near Courthouses* memorandum from Caleb Vitello is attached hereto as Exhibit 2. A true and correct copy of
ICE's May 27, 2025 *Civil Immigration Enforcement Actions In or Near Courthouses* memorandum from Todd M.
Lyons is attached hereto as Exhibit 5.

1 66. He established a life in San Francisco. He is a devout Jehovah's Witness and is very
2 involved in the activities of his church and community. He has paid taxes, obtained a California
3 driver's license, found work, and is in a committed relationship with a U.S. citizen.

4 67. Mr. Paz Hernandez has maintained a clean criminal record.

5 68. In March 2025, Mr. Paz Hernandez sought legal assistance for his immigration case from
6 the Immigration Center for Women and Children (ICWC) in San Francisco. ICWC assisted him
7 in preparing his Form I-589, Application for Asylum and for Withholding of Removal.

8 69. After an initial attempt to file the application in person at the Immigration Court was
9 unsuccessful due to a missing page, ICWC corrected the application and mailed it to the court on
10 his behalf. ICWC informed Mr. Paz Hernandez that they would not be able to represent him in
11 his court proceedings.

12 70. Mr. Paz Hernandez appeared for his Master Calendar Hearing on May 6, 2025. The
13 Immigration Judge advised him of his rights and granted his request for a continuance to find an
14 attorney. He called a few non-profits but got waitlisted.

15 71. He appeared again before the Immigration Court on July 8, 2025. At that hearing, the
16 Department of Homeland Security's counsel moved to dismiss his case, without any prior notice,
17 which the Immigration Judge denied. The Judge scheduled Mr. Paz Hernandez's final merits
18 hearing for a date in 2026.

19 72. Since then, a different Immigration Judge has terminated Mr. Paz Hernandez's removal
20 proceedings. Mr. Paz Hernandez is currently awaiting a credible fear interview.

21 73. Mr. Paz Hernandez stated that immediately following his court hearing on July 8, 2025,
22 he was arrested by several men as he left the courthouse. The men, who were masked, grabbed
23 him, confirmed his identity, and handcuffed him without offering any explanation.

24 74. He reported that the arresting agents never identified themselves, did not state which
25 agency they represented, and never showed him any badges, credentials, or an arrest warrant.
26 When he asked why he was being arrested, they told him could not ask questions. The arresting
27 ICE officers did not and have not articulated why Mr. Paz Hernandez was now a flight risk, a
28 danger to the community, or how he had violated any conditions of his 2024 release.

1 75. At the time of the arrest, a protest was occurring outside the building. The agents dragged
2 Mr. Paz Hernandez into a basement or emergency exit hallway, where he was held for
3 approximately ninety minutes. He remained handcuffed with his arms bent painfully behind his
4 back.

5 76. He described being forcibly moved through another exit, where agents pushed through
6 protestors. Mr. Paz Hernandez stated he felt he was being pulled and pushed by both the agents
7 and the crowd, which was a traumatic experience and caused injury to his wrists from the tight
8 handcuffs. He was then forced into a van.

9 77. He was first transported to the ICE facility at 630 Sansome Street in San Francisco for
10 fingerprinting, then placed back in the van with other detainees for transport to Fresno. He
11 remained shackled at his hands and feet for the entire multi-hour journey, arriving at the detention
12 facility at approximately 4:00 a.m. the following morning.

13 78. Since being detained, Mr. Paz Hernandez reports suffering from nightmares. He has
14 described the conditions of his confinement as poor, stating that meals are sometimes withheld
15 and the staff are rude. He is unable to fully practice his religion as there are no meetings for
16 Jehovah's Witnesses in the detention center.

17 79. This case has substantial factual and legal support to be granted, resulting in Mr. Paz
18 Hernandez's release from custody, and enjoining DHS from detaining Mr. Paz Hernandez
19 pending a hearing before a neutral adjudicator, to substantiate a material change in circumstances
20 indicating that Mr. Paz Hernandez is either a flight risk or a danger to the community.

21 80. Intervention from this Court is therefore required to ensure that Mr. Paz Hernandez is
22 released from his current custody based on his unlawful arrest, returned to his home in San
23 Francisco, California, where ICE can then provide him with a hearing before determining to re-
24 arrest him pursuant to the Due Process Clause of the Fifth Amendment.

25 LEGAL BACKGROUND

26 **Statutory Framework**

27 81. Mr. Paz Hernandez's removal proceedings before the San Francisco Immigration Judge
28 were governed by section 240 of the Immigration and Nationality Act ("section 240

proceedings”). Section 240 proceedings provide important statutory protections, including hearings before an Immigration Judge. See 8 U.S.C. § 1229a(a)(1), (a)(4).

82. DHS is now pursuing expedited removal of Mr. Paz Hernandez pursuant to 8 U.S.C. § 1225(b)(1). In contrast to section 240 proceedings, expedited removal takes place outside of the immigration court. Noncitizens in expedited removal proceedings can be removed by an immigration officer “without further hearing or review” 8 U.S.C. § 1225(b)(1)(A)(i).

83. However, if a noncitizen in expedited removal expresses a fear of persecution or intent to seek asylum, the immigration officer must refer the noncitizen to an asylum officer for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer determines that a noncitizen has a credible fear of persecution, then the noncitizen will receive “full consideration” of his asylum claim in section 240 proceedings. 8 C.F.R. § 208.30(f). The noncitizen “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Right to a Hearing Prior to Re-incarceration

84. In Mr. Paz Hernandez’s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release from custody in May of 2024, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

85. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens. There, the BIA held that “where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice, DHS “requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed

1 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
 2 circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent
 3 changed circumstances ... ICE cannot redetain Panosyan.").

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

10 87. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is
 11 also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981
 12 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by
 13 the requirements of due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due
 14 Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*,
 15 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release from custody in January
 16 2024 and ties to his community provide him with a protected liberty interest. *See Ortega v.*
 17 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019)

18 88. Federal district courts in California have repeatedly recognized that the demands of due
 19 process and the limitations on DHS's authority to revoke a noncitizen's release from custody set
 20 out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
 21 noncitizen on bond, like Mr. Paz Hernandez before ICE re-detains him. *See, e.g., Meza v. Bonnar*,
 22 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal.
 23 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23,
 24 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar.
 25 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May
 26 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing
 27 before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
 28 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's

ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

Mr. Paz Hernandez's Protected Liberty Interest in His Conditional Release

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

90. Since May 6, 2024, Mr. Paz Hernandez exercised that freedom under ICE's order releasing him from custody. *See Exhibit B*. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that Mr. _____ would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

91. This reasonable expectation creates constitutionally-protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

92. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to

1 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
2 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
3 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
4 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
5 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
6 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
7 at 482.

8 93. This basic principle—that individuals have a liberty interest in their conditional release—
9 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
10 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
11 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
12 deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released
13 on felony probation have a protected liberty interest requiring pre-deprivation process). As the
14 First Circuit has explained, when analyzing the issue of whether a specific conditional release
15 rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
16 specific conditional release in the case before them with the liberty interest in parole as
17 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
18 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864
19 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
20 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
21 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
22 and *Morrissey*, 408 U.S. at 482).

23 94. In fact, it is well-established that an individual maintains a protectable liberty interest even
24 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
25 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
26 considerations support the notion that an inmate released on parole by mistake, because he was
27 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
28 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would

1 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
 2 (internal quotation marks and citation omitted).

3 95. Here, when this Court “‘compar[es] the specific release in [Mr. Paz Hernandez’s
 4 case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
 5 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Paz
 6 Hernandez’s release “enables him to do a wide range of things open to persons” who have never
 7 been in custody or convicted of any crime, including to live at home, work, care for his children,
 8 including his U.S. citizen son for whom he is the sole caretaker, and “be with family and friends
 9 and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

10 **Mr. Paz Hernandez’s Liberty Interest Mandates a Hearing Before any Re-Arrest and**
 11 **Revocation of Release from Custody**

12 96. Mr. Paz Hernandez asserts that, here, (1) where his detention would be civil; (2) where
 13 he has been at liberty for over 12 months; (3) where no change in circumstances exist that would
 14 justify his lawful detention; and (4) where the only circumstance was ICE’s move to arrest as
 15 many people as possible because of the new administration, due process mandates that he be
 16 released from his unlawful custody and receive notice and a hearing before a neutral adjudicator
 17 *prior* to any re-arrest or revocation of his custody release.

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

1 including the 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 *Mathews v.*
3 *Eldridge*, 424 U.S. 319, 335 (1976)).

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

13 99. Because, in this case, ICE is required to release Mr. Paz Hernandez from his unlawful
14 custody and provide Mr. Paz Hernandez with notice and a hearing *prior* to any re-incarceration
15 and revocation of his bond. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56;
16 *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307,
17 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting
18 involuntary civil commitment proceedings may not constitutionally be held in jail pending the
19 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance
20 weighs heavily in favor of [Mr. Paz Hernandez’s] liberty” and requires a pre-deprivation hearing
21 before a neutral adjudicator.

22 **Mr. Paz Hernandez’s Private Interest in His Liberty is Profound**

23 100. Under *Morrissey* and its progeny, individuals conditionally released from serving
24 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
25 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
26 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
27 him to constitutional due process before he is re-incarcerated—apply with even greater force to
28 individuals like Mr. Paz Hernandez, who have been released pending civil removal proceedings,

1 rather than parolees or probationers who are subject to incarceration as part of a sentence for a
 2 criminal conviction. Parolees and probationers have a diminished liberty interest given their
 3 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*,
 4 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held
 5 that the parolee cannot be re-arrested without a due process hearing in which they can raise any
 6 claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-*
 7 *Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Paz Hernandez retains a truly
 8 weighty liberty interest even though he is under conditional release.

9 101. What is at stake in this case for Mr. Paz Hernandez is one of the most profound
 10 individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior
 11 decision releasing him from custody and to take away—without a lawful basis—his physical
 12 freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v.*
 13 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily
 14 restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha*
 15 *v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from
 16 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
 17 the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S.
 18 348 (1996).

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

23 **The Government’s Interest in Re-Incarcerating Mr. Paz Hernandez Without a Hearing is**
 24 **Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and**
Until He is Provided a Hearing That Comports with Due Process is Minimal

25 103. The government’s interest in detaining Mr. Paz Hernandez without a due
 26 process hearing is low, and when weighed against Mr. Paz Hernandez’s significant private interest
 27 in his liberty, the scale tips sharply in favor of enjoining Respondents to release Mr. Paz
 28

1 Hernandez from his unlawful custody and refrain from re-arresting Mr. Paz Hernandez unless and
2 until the government demonstrates by clear and convincing evidence that he is a flight risk or
3 danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Paz
4 Hernandez when the Court considers that the process he seeks—notice and a hearing regarding
5 whether he has violated any conditions of his release, and, if so, providing Mr. Paz Hernandez
6 with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear
7 and convincing evidence that Mr. Paz Hernandez is a flight risk or danger to the community would
8 impose only a *de minimis* burden on the government, because the government routinely provides
9 this sort of hearing to individuals like Mr. Paz Hernandez..

10 104. As immigration detention is civil, it can have no punitive purpose. The
11 government's only interests in holding an individual in immigration detention can be to prevent
12 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*
13 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
14 lawful basis for detaining Mr. Paz Hernandez. Mr. Paz Hernandez has lived at liberty complying
15 with the conditions of his release since March 2012 while acting as the financial caretaker for his
16 wife and two sons, including a step-son one who suffers from epileptic seizures. He is not only
17 a dedicated family man but also a successful entrepreneur and responsible business owner. His
18 only criminal history pre-dates his 2012 release on bond.

19 105. Mr. Paz Hernandez was determined by an Immigration Judge not to be a danger
20 to the community or a flight risk in March 2012 and has done nothing to undermine that
21 determination. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance
22 to a person’s justifiable reliance in maintaining his conditional freedom so long as he abides by
23 the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United*
24 *States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

25 106. It is difficult to see how the government’s interest in ensuring his presence at the
26 moment of removal has materially changed since he was released in March 2012, when he has
27 complied with all conditions of release. The government’s interest in detaining Mr. Paz
28 Hernandez at this time is therefore low. That ICE has a new policy to make a minimum number

1 of arrests each day under the new administration does not constitute a material change in
 2 circumstances or increase the government's interest in detaining him.¹⁴

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

8 108. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the
 9 public of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total
 10 daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996. Mr. Paz Hernandez is waiting for a
 11 credible fear interview, which means that he will remain in custody until the agency adjudicates
 12 his case. ICE's unlawful action of placing him in custody is more of a financial burden than
 13 releasing him and providing any pre-custody hearing before any future re-arrest occurs.

14 109. In the alternative, providing Mr. Paz Hernandez with a hearing before this Court
 15 (or a neutral decisionmaker) regarding release from custody is a routine procedure that the
 16 government provides to those in immigration jails on a daily basis. At that hearing, the Court
 17 would have the opportunity to determine whether circumstances have changed sufficiently to
 18 justify his re-arrest. But there is no justifiable reason to re-incarcerate Mr. Paz Hernandez prior
 19 to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State
 20 has an "overwhelming interest in being able to return [a parolee] to imprisonment without the
 21 burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his
 22 parole . . . the State has no interest in revoking parole without some informal procedural
 23 guarantees." *Morrissey*, 408 U.S. at 483.

24
 25 ¹⁴ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available
 26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's
 27 Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025),
 28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
 and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White
 House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested
 more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,'
 reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

110. Releasing Mr. Paz Hernandez from unlawful custody and enjoining his re-arrest until ICE (1) moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by clear and convincing evidence that Mr. Paz Hernandez is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained goes to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

111. Releasing Mr. Paz Hernandez from unlawful custody and providing Mr. Paz Hernandez a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Paz Hernandez can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE’s May of 2024 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Paz Hernandez is a danger to the community or a flight risk.

112. On July 8, 2025, Mr. Paz Hernandez did not receive this protection. Instead, he was detained by ICE, without notice, as he walked out of his immigration court hearing, and there have been no material changes in his circumstances.

113. By contrast, the procedure Mr. Paz Hernandez seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”). “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has

1 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
2 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
3 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

4 114. Due process also requires consideration of alternatives to detention at any custody
5 determination hearing that may occur. The primary purpose of immigration detention is to ensure
6 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
7 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
8 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
9 must be considered in determining whether Mr. Paz Hernandez’s re-incarceration is warranted.

10 **FIRST CAUSE OF ACTION**

11 **Procedural Due Process**

12 **U.S. Const. amend. V**

13 115. Mr. Paz Hernandez re-alleges and incorporates herein by reference, as is set
14 forth fully herein, the allegations in all the preceding paragraphs.

15 116. The Due Process Clause of the Fifth Amendment forbids the government from
16 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

17 117. Mr. Paz Hernandez has a vested liberty interest in his lawful conditional release.
18 Due Process does not permit the government to strip him of that liberty without a hearing before
19 this Court. *See Morrissey*, 408 U.S. at 487-488.

20 118. The Court must therefore order that ICE release Mr. Paz Hernandez from his
21 current unlawful custody.

22 119. Prior to any re-arrest, the government must provide him with a hearing before a
23 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
24 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
25 that Mr. Paz Hernandez is a danger to the community or a flight risk, such that his re-incarceration
26 is warranted. During any custody determination hearing that occurs, this Court or, in the
27 alternative, a neutral adjudicator must consider alternatives to detention when determining
28 whether Mr. Paz Hernandez’s re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

120. Mr. Paz Hernandez re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

122. Mr. Paz Hernandez has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger. Since May of 2024, Mr. Paz Hernandez has attended all of his court hearings, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

123. For these reasons, Mr. Paz Hernandez's continued unlawful custody and any subsequent re-arrest without first being provided a pre-deprivation hearing would violate the Constitution.

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

125. The Court must order the government to not re-arrest him in any subsequent action without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Mr. Paz Hernandez is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody determination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Mr. Paz Hernandez's re-incarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, Mr. Paz Hernandez prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that ICE's July 8, 2025, apprehension and detention of Mr. Paz Hernandez was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;
- (3) Order ICE to immediately release Mr. Paz Hernandez from his unlawful detention;
- (4) Enjoin re-arresting Mr. Paz Hernandez unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;
- (5) Declare that Mr. Paz Hernandez cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;
- (6) Award reasonable costs and attorney fees; and
- (7) Grant such further relief as the Court deems just and proper.

Dated: August 6, 2025

Respectfully submitted,

/s/ Natalia Santanna

Natalia Santanna
Attorney for Petitioner Paz
Hernandez

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this August 6, 2025, in Oakland, CA.

/s/ Natalia Santanna

Natalia Vieira Santanna
Attorney for Petitioner Paz
Hernandez