BRENDON WOODS (CA SBN #189910)
Public Defender

RAHA JORJANI (CA SBN #240941)
Managing Immigration Attorney
LYDIA SINKUS (CA SBN #321559)
Immigration Attorney
KELSEY MORALES (CA SBN #312362), *Designation of Counsel for Service*
Immigration Attorney
Office of the Alameda County Public Defender
312 Clay Street, 2nd Floor
Oakland, CA 94607
Telephone: 510 268-7429
Facsimile: 510 268-7462
Email: kelsey.morales@acgov.org

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JUAN CUEVAS GUZMAN,

Petitioner,

v.

TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex; ORESTES CRUZ, in official capacity, Field Office Director of ICE's San Francsico Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States,

Respondents.

Case No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Immigration Habeas Case

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases **Pages**

Agency Cases

Statutes

Regulations

INTRODUCTION

1. Petitioner Juan Cuevas Guzman ("Mr. Cuevas Guzman"),[1] by and through undersigned counsel, hereby files this petition for writ of habeas corpus to compel his immediate release from the immigration jail where he has been held by the Department of Homeland Security ("DHS") since being unlawfully re-detained on January 25, 2025, without first being provided a due process hearing to determine whether his incarceration is justified. Moreover, without the intervention of this Court, Mr. Cuevas Guzman faces continued unlawful detention without any review by a neutral arbiter because DHS and the Executive Office of Immigration Review ("EOIR") – namely immigration prosecutors and Immigration Judges – have in coordination with each other, newly "revisited" their "legal position" regarding DHS's detention authority and concluded Petitioner is subject to mandatory detention.

2. DHS initially detained Petitioner on December 5, 2011, charging him as removable for being present in the United States without admission or parole, or for arriving at a time or place not designated by the Attorney General, 8 U.S.C. § 1182(a)(6)(A)(i). DHS determined Petitioner was not a danger or a flight risk that could not be mitigated by a bond, and set a bond in the amount of $10,000, pursuant to Immigration and Nationality Act ("INA") § 236; 8 U.S.C. § 1226(a) and implementing regulations. *See* 8 C.F.R § 236. Petitioner sought review of this custody redetermination by an immigration judge ("IJ"). On December 20, 2011, an IJ ordered Petitioner released on a bond of $6,000, finding he was not a danger and this amount sufficient to mitigate any flight risk. Importantly, DHS did not appeal the IJ's order.

---

[1] Mr. Cuevas Guzman 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-l-suggestion_cacm_0.pdf. *See also Walter A.T., v. Facility Administrator*, 2025 WL 1744133, at *10 (E.D. Cal. June 24, 2025).

3. Petitioner was released from ICE custody and spent the next thirteen years at liberty, pursing his immigration case, caring for his two U.S. citizen children, spending time with his extended family, and maintaining employment and work authorization to support his family. Petitioner's immigration case was administratively closed in 2014.

4. On January 25, 2025, ICE re-detained Petitioner pursuant to an administrative warrant issued under § 1226(a) and determined he would be held without a bond. When Petitioner requested a bond hearing before an IJ, the IJ denied him a hearing, following a new DHS policy, issued "in coordination with the Department of Justice (DOJ)," which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. Despite the absence any binding precedent finding the same, the IJ concluded that notwithstanding Petitioner's 30 years of residence in the United States and a prior ruling finding that he was subject to detention under 8 U.S.C. § 1226(a), he will now be considered an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A).

5. Petitioner now finds himself unlawfully redetained with no access to prompt review before the agency. These actions by the executive branch violate Petitioner's constitutional and statutory rights and effectively and unlawfully deny him review of his detention by a neutral arbiter.

6. First, it is well-established that individuals released from incarceration have a significant liberty interest in their freedom. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025). To protect that interest on the particular facts of Petitioner's case, due

process required notice and a hearing, *prior* to any redetention, at which he would be afforded the opportunity to advance his arguments as to why his bond should not be revoked. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where an IJ previously found Petitioner does not need to be incarcerated to prevent flight or to protect the community.

7. Second, Petitioner has been unlawfully denied the opportunity to seek a new bond hearing and request release from custody from a neutral arbiter while his immigration case proceeds. The IJ's holding that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the INA. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond. This statutory provision expressly applies to people, like Petitioner, who are charged as inadmissible for being present without admission or parole. Respondents' new legal theory set forth in the policy is plainly contrary to the statutory framework and decades of agency practice applying § 1226(a) to people like Petitioner, and even to Petitioner himself in both his 2011 and 2025 detentions. DHS can point to no published case that supports their position. Moreover, it is contrary to law and practice for an IJ, bound to follow precedent, to accept these novel arguments with the bare minimum analysis and no legal authority to support this radical change in legal interpretation.

8. Petitioner seeks immediate relief from this Court for these constitutional and statutory violations. Due process requires that any redetention of Petitioner happen only *after* a neutral adjudicator has determined that he poses a present danger and unmitigable flight risk. Moreover, even if Petitioner had been lawfully redetained, he had a statutory right to a bond

hearing before an IJ. As such, this Court should order Petitioner's immediate release until a neutral decisionmaker determines that DHS has met its burden of justifying his renewed incarceration by clear and convincing evidence, or in the alternative should order Petitioner released if not granted a bond hearing within seven days of an order from this Court.

CUSTODY

9. Petitioner is in the physical custody of Respondents. Petitioner 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 outside of his home. Since being arrested by ICE, Petitioner has not been provided with a constitutionally compliant hearing to determine whether his redetention is justified.

JURISDICTION

10. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 500 et seq.

11. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C. § 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

12. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2241, 1651, 2201-02, and 5 U.S.C. § 702. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

17. Petitioner Juan Cuevas Guzman was born in Mexico and came to the United in 1995. He was initially detained by ICE over fifteen years after his entry and imprisoned in immigration custody for two weeks in December 2011, upon which he was released on a $6,000 IJ bond. Petitioner remained out of custody as his case proceeded in immigration court. On January 25, 2025, ICE, without prior notice or hearing, took Petitioner into custody near his home. Petitioner has been denied a constitutionally compliant hearing before a neutral adjudicator as to whether his redetention is necessary or proper.

18. Respondent TONYA ANDREWS is the facility administrator of Golden State Annex, a detention center located in McFarland, California run by GEO Group Inc., a private, for-profit company. Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), Tonya Andrews is the proper respondent because she is the *de facto* warden of the facility at which Petitioner is detained. The mandate has yet to issue in that case, however, so the other respondents are named herein to ensure effective relief and continued jurisdiction in this case.

19. 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 Golden State Annex. Accordingly, he has legal custody over Petitioner.

20. Respondent TODD M. LYONS ("Acting Director Lyons") is the current Acting Director of ICE. As the head of ICE, an agency within the DHS that detains and removes certain noncitizens, Acting Director Lyons is a legal custodian of Petitioner, and is named in his official capacity.

21. 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 Petitioner and is empowered to carry out any administrative order issued against him.

22. 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 the ultimate legal custodian of Petitioner.

FACTS

23. Petitioner is currently detained at Golden State Annex in McFarland, California. Declaration of Lydia Sinkus ("Sinkus Decl") at ¶ 7. He is forty-nine years old, and has resided in Oakland, CA since he arrived in the United States in 1995. Sinkus Decl.[2], Exhibit ("Exh.") A, Declaration of Mr. Cuevas Guzman at ¶¶ 1, 3. Petitioner has raised two U.S. citizen children, who are currently 18 and 24 years old. *Id.* at ¶ 1. He lives near extended family, including his sister, nieces and nephews, and lifelong friends born in the same town, who now reside in Oakland. *Id.* at ¶ 3; Exh O, Letters of Support.

Petitioner's Detention and Release by Immigration Authorities in 2011

24. ICE first detained Petitioner in Oakland, CA on December 5, 2011, more than 15 years after he entered the United States. Exh. D, 2011 Form I-213. DHS issued a Notice to Appear ("NTA") initiating removal proceedings. Exh. B, Notice to Appear. The NTA alleged that Petitioner was not a citizen of the United States and had not been admitted or paroled into the United States and charged him as removable on this basis under 8 U.S.C. § 1182(a)(6)(A)(i).

25. The same day, DHS issued a Notice of Custody Determination stating that pursuant to INA § 236 (8 U.S.C. § 1226) and 8 C.F.R. § 236, Petitioner should be released on a $10,000 bond pending a final determination by the IJ in his case. Exh. E, Form I-286, DHS Notice of Custody Determination. In so determining, DHS concluded that Petitioner was not a

[2] Facts asserted in this motion are drawn from the attached declaration of Lydia Sinkus and exhibits to that declaration. Further citations will be directly to the individual exhibits attached to the declaration, or to the declaration itself.

danger and that any flight risk could be mitigated this bond amount. Sinkus Decl. at ¶ 3. Petitioner sought IJ review of this custody determination, and on December 20, 2011, an IJ ordered him released on a $6,000 bond, similarly finding he did not pose a danger to others and this amount sufficient to mitigate any flight risk during immigration proceedings. *Id.*; Exh. F, 2011 IJ Order Granting Bond; *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999) (a respondent in a custody redetermination hearing under section 236 of the INA must establish to the satisfaction of the IJ that he does not pose a present danger or flight risk). Bond was paid and Petitioner released on December 22, 2011. Exh. G, 2011 Bond Receipt.

Mr. Cuevas Guzman's Period of Liberty from December 2011 to January 2025

26. Petitioner continued to pursue his immigration case once released from ICE custody. On May 10, 2012, he applied for Cancellation of Removal and Adjustment of Status on the basis of hardship to his U.S. citizen children and on December 3, 2012, he applied for asylum, withholding of removal, and protection under the Convention Against Torture based on his fear of return to his country of origin. Sinkus Decl. at ¶ 4. He attended all immigration court hearings until the immigration court administratively closed his proceedings on July 23, 2014, based on his pending U visa petition filed with U.S. Citizenship and Immigration Services ("USCIS") on July 23, 2014. *Id.*; Exh. A at ¶ 38.

27. Since his 2011 release, Petitioner has lived with his children in Oakland, CA. Exh. A, at ¶¶ 3, 5. He has been the primary financial provider for his family, working in jobs from cleaning, restaurants, furniture assembly, to most recently, training as a FedEx driver. *Id.* at ¶ 4. His employers describe him as hard-working and reliable. *See* Exh. O. In 2019, he separated from his wife and spent a year with sole custody of his children, after which he shared custody of his minor daughter. Exh. A at ¶ 5.

28. Petitioner has suffered four convictions during his time in the United States, one of which was vacated as legally invalid, all for misdemeanor offenses. Sinkus Decl. at ¶ 23. At the time DHS and an IJ found him suitable for release from custody, he had three misdemeanor convictions on his record: a 2000 conviction under Cal. Pen. Code § 273.5(a), for corporal injury on a spouse; a 2007 conviction under Cal. Pen. Code § 415, for disturbing the peace; and a 2011 conviction under Cal. Pen. Code § 243(e)(1), for domestic battery. *Id.* The 2000 Cal. Pen. Code § 273.5(a) conviction was vacated in May 2025 based on legal invalidity. *Id.* In 2022, Petitioner pled no contest to an additional misdemeanor conviction under Cal. Pen. Code § 243(e)(1), for domestic battery by offensive touching, arising out of a 2020 incident. *Id.*; Exh. A at ¶ 17.[3]

29. Petitioner describes his past convictions as arising out of his unhealthy relationship with his ex-partner. Exh. A at ¶ 14. After the 2020 arrest, he stopped having contact with his former partner and has had no new criminal incidents. *Id.* at ¶¶ 19, 20. His family describes a positive change for Petitioner after leaving this relationship. Sinkus Decl. at ¶ 16; Exh. O. Following his 2022 conviction, Petitioner completed a year of court-assigned domestic violence classes, which he and the class facilitator describe as highly beneficial in growing his conflict management and interpersonal skills. Exh. A at ¶¶ 19-29; Exh. P, Domestic Violence Class Provider Reports.

Petitioner has focused in the past five years on rebuilding his life as a single parent and providing support and stability for his children. Exh. A at ¶¶ 13, 28, 29. He was the parent who took his daughter to school and medical appointments and supported her in planning for her educational future. *Id.* at ¶¶ 10, 11, 35; Exh. O. In recent years, Petitioner has been the primary

[3] Petitioner was charged in one other criminal case in 2015 under Cal. Pen. Code § 647.6(a)(1) for annoying or molesting a child; the charge was dismissed in 2020. Sinkus Decl. at ¶ 23; Exh. A at ¶ 18.

caretaker for his adult son who suffers from [redacted]. Exh. A at ¶ 8, 9, 30. Petitioner has had a work permit for over ten years, through which he worked to support his family. *Id.* at ¶ 38.

Petitioner's Re-detention by ICE on January 25, 2025

30. On December 6, 2024, DHS issued an administrative warrant for Petitioner's arrest, which was served on Petitioner when ICE detained him in front of his home on January 25, 2025. Exh. I, 2024 Form I-200. On the same day, ICE performed a custody determination review as provided for in 8 U.S.C. § 1226. Exh. J, 2025 Form I-213. ICE summarily determined that Petitioner would be detained without bond, noting he had failed to establish that a bond and/or alternatives to detention would mitigate flight risk. *Id.* DHS did not provide Petitioner information regarding what evidence formed the basis of this determination. *Id.*; Exh. A at ¶ 39.

31. Petitioner was transferred to ICE custody at Golden State Annex ("GSA"). Exh. A at ¶ 39. GSA is a private detention center located in McFarland, California, owned and operated by GEO Group, Inc. ("GEO"). GEO is a private prison company that has facilities on three continents.[4] While GSA is now used as an immigration detention center it was "previously used as a correctional facility." *Martinez Leiva v. Becerra*, No. 23-02027-CRB, 2023 WL 3688097, at *2 (N.D. Cal. May 25, 2023). For years, immigrants detained at GSA have raised the alarm about unlivable and unsanitary housing conditions, as well as concerns regarding their treatment.[5]

32. DHS moved to Recalendar Petitioner's removal proceedings. Sinkus Decl. at ¶ 7. Petitioner retained me for removal and custody proceedings on March 18, 2025. *Id.* at ¶ 1. He

[4] The GEO Group, Inc., https://www.geogroup.com/facilities/golden-state-annex/ (last visited June 18, 2025).

[5] *See e.g.*, "Advocacy Letter: Urgent request to stop new intakes at Golden State Annex," CCIJ (March 11, 2024) at https://www.ccijustice.org/advocacy-gsa-population-increase (highlighting a rise in reports regarding failure to provide drinking water, timely and adequate medical care, soap or underwear and shoes, and disruptions to means and programming).

filed updated applications for relief on April 25, 2025. *Id.* at ¶ 9. His 2000 misdemeanor conviction under Cal. Pen. Code § 273.5 was vacated for legal invalidity on May 5, 2025. *Id.* at ¶ 11. With this change, Petitioner confirmed his eligibility for a bond hearing under 8 U.S.C. § 1226(a) and became *prima facie* eligible for Cancellation of Removal. *Id.* at ¶ 12. The Immigration Court set an individual hearing on Petitioner's applications for relief for July 22, 2025. *Id.* at ¶ 13.

On July 3, 2025, Petitioner requested a bond redetermination hearing before an IJ. *Id.* at ¶ 14. On July 16, 2025, the Immigration Court vacated Petitioner's individual hearing and set a bond hearing in the hearing slot. *Id.* at ¶ 15. At the July 22, 2025, hearing before the Adelanto Immigration Court, the IJ summarized and summarily accepted DHS's position that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner "meets the definition of 235(a) for an applicant for admission." *Id.* at ¶¶ 17-18; Exh. V, July 22, 2025, DAR Transcript.[6] The IJ made this ruling having heard no substantive argument from DHS and before allowing Petitioner's counsel to argue this novel issue. Exh. V. Indeed, DHS did not identify what section of the INA they believed stripped the court of jurisdiction based on the asserted "applicant for admission" classification, mentioning neither § 1225(b)(2), the section relied on in the IJ's written order, nor any specific subsection of § 1225 that would mandate detention. Exh.

[6] The IJ made her ruling based on the following exchange in court:
IJ: Is the government arguing jurisdiction in this matter?
DHS: Yes.
IJ: And let me look at the NTA. And the NTA is indicating that respondent entered without permission, so government is arguing that he is an applicant for admission despite having been in the U.S. for many years since his alleged illegal entry. Is that what the government is arguing?
DHS: Correct, your honor. I can expand on that if needed, but that's essentially what we are arguing. He meets the definition of 235(a) applicant for admission, despite however long he's been here.

V; Exh. L, 2025 IJ Order Denying Bond Hearing. Petitioner's counsel requested and was denied an opportunity to brief the issue. Exh. V. The IJ also rejected Petitioner's argument that his re-detention without a prior hearing violated the existing IJ order mandating his release on bond. Exh. V. The IJ subsequently issued a written order clarifying the court's ruling that Petitioner was subject to mandatory detention pursuant to § 1225(b)(2)(a). Exh. L.

33. DHS's position was based on a new policy issued July 8, 2025, "in coordination with DOJ," which oversees immigration courts, asserting that all noncitizens who entered without inspection are subject to 8 U.S.C. § 1225(b)(2)(A). Exh. M, ICE Interim Guidance Regarding Detention Authority.

34. As a result of this policy and IJ ruling, Petitioner remains in detention. On August 4, 2025, his individual hearing was reset with the Immigration Court for September 8, 2025. *Id.* at ¶ 20. Thus, he must wait an additional month for his first individual hearing and will likely require multiple hearings to have his case heard, which can occur over as many months given the growing number of cases on the detained court docket. *Id.* at ¶ 21.

35. Petitioner filed an appeal of the IJ's bond decision with the Board of Immigration Appeals ("BIA") on July 23, 2025. Sinkus Decl. at ¶ 19. However, an appeal to the BIA of the 2025 IJ bond decision is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Exh. Q, AXXX-XXX-269 (BIA May 22, 2025). Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under §

1225(b)(2)(A). *See* Exh. R, Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

36. Moreover, the BIA can take three to over six months to render a decision on a bond appeal. Sinkus Decl. at ¶ 19; Exh. N, BIA Appeal Processing Times. By this time, many appeals become moot because a final decision has been entered, and the noncitizen has either been released or deported. Sinkus Decl. at ¶ 19. Without relief from this Court, Petitioner faces the prospect of months, or even years, in ICE custody, separated from his family and community. *See Id.* at ¶¶ 21-22; Exh. N.

37. Petitioner's detention has caused him physical and emotional harm and has significantly impacted the well-being of his children. Exh. A at ¶¶ 30-37. Unsatisfactory medical care has exacerbated Mr. Cuevas Guzman's chronic back pain. *Id.* at ¶¶ 36-37. He has experienced emotional distress due to the vulnerability his children face without his presence and support. *Id.* at ¶ 30-35. Petitioner's former partner is unable to permanently and stably shelter their children, both of whom moved into homeless shelters after he was detained. *Id.* at ¶¶ 30, 34; Exh. O. Petitioner was unable to attend his daughter's high school graduation and is unable to help her meet her goal of continuing her education while in ICE custody. Exh. A at ¶¶ 34, 35. In his absence, his son has struggled [redacted] *Id.* at ¶ 30; Exh. O.

38. If released from custody, Petitioner plans to move back to his former residence, and his children will return to live with him. Exh. A at ¶ 44. His goal is to return to work as soon as possible and provide a safe, stable living environment for his kids. *Id.* at ¶¶ 35, 42, 44, 45. His priorities are his immigration case, which he will pursue with the help of his attorney, the care of

his son, who needs help managing his health, and financially supporting his daughter as she pursues a career as a nurse. *Id.*; Exh. O.

LEGAL FRAMEWORK

I. Due Process Right to a Custody Redetermination Hearing Prior to Re-Detention

39. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before the IJ to determine whether circumstances have materially changed since his release on bond in December 2011, such that re-detention would now be warranted.

40. The statute and regulations grant ICE the ability to revoke a noncitizen's immigration bond and re-arrest the noncitizen. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). However, in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), 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 v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

41. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*,

280 F. Supp. 3d at 1197 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See id.* at 1176; *Matter of Sugay*, 17 I. & N. Dec. at 640.

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

43. Federal district courts in California have repeatedly recognized that noncitizens released from immigration custody retain a strong liberty interest in their release, and that DHS's authority to revoke a noncitizen's bond or parole is subject to the constraints of due process; these courts have repeatedly granted temporary restraining orders requiring a pre-deprivation hearing for a noncitizen released from custody, like Petitioner, *before* ICE re-detains him.[7] As

[7] *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *3 (E.D. Cal. June 30, 2025); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *10 (N.D. Cal. July 14, 2025); *Quoc Chi Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at 3 (E.D. Cal. July 16, 2025); *Soto Garcia v. Andrews*, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at * 5 (E.D. Cal. July 14, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Zakzouk v. Becerra*, No. 3: 25-CV-06254 (RFL), 2025 WL 2097470, at *4 (N.D. Cal. July 26,

the court in *Guillermo M.R.* recently noted, the court could not "identify any other context in which government agents could permissibly take someone who has been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter." 2025 WL 1983677, at *7. Courts have agreed that DHS does not get a free pass from the requirements of due process. *See e.g. Pinchi*, 2025 WL 2084921, at *3 ("[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause].") (*citing Morrissey*, 408 U.S. at 482)).

44. As for the process due to noncitizen following their re-detention by ICE, the Court's decision in *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179 (N.D. Cal. July 14, 2025), is illustrative. In this case, Mr. Domingo, a noncitizen from Guatemala, had been re-detained by ICE twelve years after his release on a bond. *Id.* at *1. Notably, Mr. Domingo had been arrested in 2019 following his release on bond, but ICE required no supervision, check-ins, or additional monitoring since his conviction. *Id.* at *3. Mr. Domingo challenged his mandatory detention, arguing that his re-detention without review by a neutral adjudicator violated his due process rights. *Id.* at *1. In granting a preliminary injunction, the Court held that even with the new facts, Mr. Domingo had established a strong likelihood of success in showing that he had an interest in his continued liberty and that mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due process rights unless he was afforded adequate process. *Id.* at *4. The Court further held that, after applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Domingo was entitled to a hearing before a neutral decision maker to determine whether his detention is warranted. *Id.* At this hearing, the government bore

---

2025); *Salam v. Maklad*, No. 1:25-CV-00946, 2025 WL 2299376, at *9 (E.D. Cal. August 8, 2025).

the burden of establishing, by clear and convincing evidence, whether Mr. Domingo posed a danger or a flight risk.

a. Petitioner Has a Protected Liberty Interest in His Conditional Release

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

46. For thirteen years preceding his re-detention on January 25, 2025, Petitioner exercised that freedom under the IJ's 2011 order granting him release on a $6,000 bond. *See* Exh. F; Exh. J. Although he was released on bond (and thus under government custody), he retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding 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.

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

48. 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*, 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*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *sse 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).

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

50. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Noncitizens released on a bond have a similar liberty interest, which "grows over time." *Guillermo M. R.*, 2025 WL 1983677, at *5; s*ee also Diaz*, 2025 WL 1676854, at *2 ("Courts have previously found that individuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond."); *Jorge M.F.*, 2021 WL 783561, at *3 (holding that a Mexican citizen with pending removal proceedings who had been released on bond had "a substantial private interest in remaining on bond"); *Doe*, 2025 WL 691664, at *5 ("Petitioner, having been released at a bond hearing over five years ago, has a similar liberty interest."); *Ortega*, 415 F. Supp. at 970 (finding "a substantial private interest in remaining on bond, and that interest has only grown in the 18 months since[.]").

51. Since his release in December 2011, Petitioner has spent 13 years living in California, supporting and caretaking for his children and maintaining close connections with his extended family. Exh. A at ¶¶ 4-12, 30, 38; Exh. O. He attended to his immigration case, not missing any immigration court hearings and renewing his work authorization. Exh. A. at ¶ 38. He maintained consistent employment and attended Sunday mass. *Id.* at ¶ 12; Exh. O. 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.

b. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond

52. Petitioner asserts that, here, due process mandates that he was required to receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of a bond.

53. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" immigration laws to determine what process he is owed to ensure ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews*, 424 U.S. at 335).

54. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required

constitutionally to do the impossible by providing pre-deprivation process," can the government avoid providing pre-deprivation process. *Id.*

55. 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 Petitioner 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; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

c. Petitioner's Private Interest in His Liberty is Profound

56. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which

they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest.

57. What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *see also Doe*, 2025 WL 691664, at *5 ("It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his out-of-custody status.").

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

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

59. The government's interest in keeping Petitioner in detention without a hearing is low; when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes

abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process he seeks—release from custody pending notice and a hearing regarding whether he should be re-detained or a new bond amount should be set—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government: the government routinely provides this sort of hearing to detained individuals like Petitioner.

60. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. ICE provided Petitioner with minimal information about why he was re-detained without bond. The Form I-213 issued upon his detention in 2025, states that he has been designated a "Priority B – Threat to Public Safety" due to his criminal history, and that is why his removal case was reopened. Exh. J. However, the notation on the form addressing his custody determination does not mention a specific danger finding, stating only that he "failed to establish that any bond amount and/or combination of ATD will appropriately mitigate his flight risk[.]" *Id.* No further details are provided about what information formed the basis of ICE's determination that Petitioner would be detained without bond.

61. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner in January 2025 due to his criminal history following his release on bond, a misdemeanor conviction from 2022 where charges were initially filed in 2020 and a 2015 charge that was dismissed in 2020. *See* Sinkus Decl. at ¶ 23. It has been aware of these events for at least a year because Petitioner renewed his work permit and was subject to a background check

in June 2023. *See id.* at ¶ 6; Exh. J. Indeed, DHS was likely aware of this history two years prior, as Petitioner applied for and was granted work authorization renewal in August 2021 (after his 2020 arrest) and April 2022 (after the 2022 conviction), respectively. Sinkus Decl. at ¶ 6.

62. If DHS believed a new arrest and misdemeanor conviction constituted a material change in circumstances that would justify revoking Petitioner's bond, ICE should have moved to re-detain him before the Immigration Court (subject to the demands of due process) when DHS first became aware of the arrest. That ICE did not move to re-arrest Petitioner for two or more years illustrates the absurdity of claiming now, years later, that these charges suddenly constitute a material change in circumstances that allows the government to re-incarcerate Petitioner without affording him due process.

63. As to flight risk, the IJ already determined that a bond of $6,000 was sufficient to guard against any possible flight risk, to "assur[e] [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699; Exh. F. Petitioner's post-release conduct in the form of the pursuit of multiple forms of relief from removal, appearance at all immigration court hearings, compliance with the terms of criminal sentences, and absolute dedication to his children's wellbeing further confirms that he is not a flight risk and that he is likely to present himself at any future hearings or ICE appearances. *See generally*, Exh. A.

64. At the very least, Petitioner had the right to a hearing prior to his detention where he could hear the government's evidence underlying this determination and present his argument as to why revocation of his bond is not justified. To hold otherwise is to allow a non-prevailing party to unilaterally decide when it is appropriate to override an IJ's bond decision. Not only are notice and an opportunity to respond basic due process safeguards (that have been denied here),

but this Court has previously recognized in *Doe* for a noncitizen facing similar circumstances of mandatory detention following a release on bond:

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

Doe, 2025 WL 691664, at *5. *See also Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *6 (E.D. Cal. Aug. 4, 2025) (granting TRO motion and ordering immediate release of detained noncitizen); *Soto Garcia*, 2025 WL 1927596, at * 5 (same, granting PI).

65. The government's interest in detaining Petitioner at this time is therefore low. The "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather his release from custody until a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated takes place.

66. In the alternative, providing Petitioner with an immediate hearing before this Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that the government provides to those in immigration jails on a daily basis. *See Doe*, 2025 WL 691664, at *6 ("The effort and cost required to provide Petitioner with procedural safeguards is minimal and indeed was previously provided in his case."). At that hearing, the Court would have the opportunity to determine whether there have been material changes here that shift the dangerousness and flight risk analysis sufficiently to require a different amount of bond—or if

bond should be revoked. But there was no justifiable reason to re-incarcerate Petitioner and ship him to GSA while his case, including two distinct applications for relief from removal, is pending. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole ... [it] has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

67. Release from custody until ICE (1) moves for a bond re-determination before an Immigration Judge and (2) demonstrates by clear and convincing evidence that Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering'" *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Petitioner at which the government bears the burden of justifying his continued detention, the government would bear no additional cost if the hearing is scheduled within seven days, rather than allowing Petitioner to sit in detention for weeks or months awaiting a hearing and decision on his applications for relief.

e. Without Release from Custody until the Government Provides a Due Process Hearing, Risk of an Erroneous Deprivation of Liberty is High; Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease Risk

68. Releasing Petitioner from custody until he is provided a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that the 2011 bond determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk. *See e.g. Diaz*, 2025

WL 1676854, at *3 (finding that "the three factors relevant to the due process inquiry set out in *Mathews*...support requiring a pre-detention hearing" for a petitioner released on an IJ bond).

69. Petitioner has already been erroneously deprived of his liberty, and the risk that he will continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain him. Petitioner was previously granted release on bond pursuant to ICE's authority under 8 U.S.C. § 1226. However, the IJ's recent holding that Petitioner is newly subject to mandatory detention under 8 U.S.C. § 1225(b)(2) deprives him of even post-deprivation process. There is no longer any statutory mechanism that would provide Petitioner any process before a neutral adjudicator following his re-detention. As a result, under current procedures, the validity or necessity of Petitioner's re-detention and continued imprisonment by ICE would evade any review by the IJ or any other neutral arbiter.

70. By contrast, the procedure Petitioner seeks—release from custody and reinstatement of his prior bond until he is provided a hearing in front of a neutral adjudicator at which the government proves by clear and convincing evidence that circumstances have changed to justify his re-detention, *see Doe*, 2025 WL 691664, *8, is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain circumstance constitutes a "materially 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"); *see also Doe*, 2025 WL 691664, at *1 ("A neutral judge is one of the most basic due process protections); *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of

an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). The Supreme Court has emphasized the importance of *pre-deprivation* hearings where available, as such an option is here. *See Zinermon*, 494 U.S. at 985 (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).

71. Due process also requires consideration of alternatives to detention and ability to pay at any custody redetermination hearing that may occur. *Hernandez*, 872 F.3d at 997; *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at *10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if alternatives to detention could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention and ability to pay must be considered in determining whether Petitioner's re-incarceration is warranted.

II. Alternative Grounds for Custody Hearing: Statutory Detention Authority

72. In the alternative, Petitioner is, at the very least, statutorily entitled to a bond hearing before an IJ under 8 U.S.C. § 1226(a). He has been deprived of this statutory right by a recent change in DHS policy, issued in coordination with DOJ.

73. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing after their detention, *see* 8 C.F.R. §§

1003.19(a), 1236.1(d), if they are not subject to mandatory detention based on certain criminal grounds provided for in the statute, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

74. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Both provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

75. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

76. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings, such as Petitioner, received bond hearings under § 1226(a), unless their criminal history rendered them ineligible under § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

The BIA has long concurred with this statutory reading in unpublished decisions. Exh. S, Collected BIA Decisions Re: § 1226.

77. Indeed, DHS and DOJ have repeatedly treated Petitioner as subject to § 1226(a), despite the fact that he is charged as present without admission in his NTA. *See* Exh. B. Upon his initial detention in 2011, DHS issued a Form I-286, Notice of Custody Determination. Exh. E. The regulations provide that issuance of this document is pursuant to INA § 236 (8 U.S.C. § 1226). 8 C.F.R. § 236.1(g) (cross-referencing 8 C.F.R. § 287.5(e)(2), (3). An IJ granted bond under this statute, and when Petitioner was re-detained in January 2025, DHS again processed him for an administrative warrant and custody determination under § 1226. Exh. F; Exh. J. In Petitioner's July 22, 2025, bond hearing, DHS neither gave a reason for the agency's change in position, nor even specified which part of § 1225 required Petitioner's detention. Exh. V.

78. However, on July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[8] claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades, like Petitioner. With this policy change, DHS purports to shift the statutory authority for detention and subject any individual who has not been

[8] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

admitted to the U.S. to mandatory ICE detention, regardless of how long they have been in the country or where they are initially detained.

79. In a May 22, 2025, unpublished decision from the BIA, EOIR adopts this same position. Exh. Q. That decision holds that all noncitizens who entered the United States without admission or parole are considered "applicants for admission" and are ineligible for immigration judge bond hearings.

80. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, Immigration Court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

81. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

82. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

83. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who, like Petitioner, have not been admitted or paroled. *See* 8 U.S.C. §

1226(c)(1)(E). Section § 1226(c) describes exceptions to § 1226(a)—individuals who cannot be released on bond. *Id.* at § 1226(c). These exceptions include noncitizens who are "inadmissible"—a designation applying specifically to individuals who have not been admitted to the United States—on certain criminal grounds. *Id.* at § 1226(c)(1)(A), (D), (E). Courts are required to interpret statutes "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023).

84. Indeed, Congress recently expanded this category of exceptions in § 1226(c)(1), adding subparagraph (E) to amend the statute to mandate detention for, among other categories, people who are charged as inadmissible pursuant to 8 U.S.C. § 1182(a)(6) (present without admission) *and* who have certain criminal histories. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). This statutory reference to individuals, like Petitioner, charged as present without admission under § 1182(a)(6), makes clear that individuals charged as removable under this provision still fall under § 1226 custody. As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Congress's recent addition of this provision reflects clear congressional intent to this end. Therefore, DHS and DOJ's new policy seeking to exclude individuals charged under § 1182(a)(6) from potential eligibility for a bond hearing under § 1226(a) contravenes both the letter and the intent of the law. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those present without admission or parole.

85. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

86. In sum, § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Instead, § 1226(a) covers those who, like Petitioner, are present within and residing within the United States at the time they were apprehended and who are not at an international border seeking admission.

CLAIMS FOR RELIEF

COUNT I

Violation of Due Process

87. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

88. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

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

90. For these reasons, Petitioner's re-arrest without a hearing violated the Constitution. The only remedy for this violation is his immediate release from immigration detention until DHS proves to a neutral adjudicator, by clear and convincing evidence, and taking into consideration alternatives to detention and ability to pay a bond, that he is a present danger to the community or an unmitigable flight risk, such that his re-incarceration is warranted.

COUNT II

Violation of the INA

91. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

92. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

93. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Eastern District of California pending the resolution of this case;

c. Order the immediate release of Petitioner from DHS custody on the conditions of his prior bond and the reinstatement of that bond until DHS proves to a neutral adjudicator by clear and convincing evidence that he is a present danger or an unmitigable flight risk after taking into consideration alternatives to detention and his ability to pay a bond, such that his re-incarceration is warranted.

d. In the alternative, order the release of Petitioner within 7 days, unless Respondents provide Petitioner with an individualized hearing at which a neutral adjudicator to determine the necessity of his detention.

e. Award reasonable costs and attorney fees; and

f. Grant such further relief as the Court deems just and proper

DATED this 13th day of August 2025.

Kelsey Morales
Kelsey Morales

Alameda County Public Defender's Office

Attorneys for Petitioner