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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Francisco ANGEL ROBLERO,

Petitioner-Plaintiff,

v.

John CANTU, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

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

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

Respondents-Defendants.

Case No.

A-[redacted]

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

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

## INTRODUCTION

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

2. Petitioner also seeks an order enjoining DHS from continuing to violate the undisturbed bond release of $25,000 order issued by an Immigration Judge.

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

4. As background, on October 25, 2024, the Ninth Circuit Court of Appeals issued a stay of removal ("Roblero v. Bondi, Case No. 24-6556, Dkt. 3). The stay order states "REMOVAL STAYED pending further order of the court." The government filed an opposition on November 22, 2024. Petitioner timely replied on December 2, 2024. To date, the Ninth Circuit court has not issued any further order. The automatic stay issued remains in effect. Despite this order from the Ninth Circuit Court, ICE detained and removed Petitioner to Mexico on February 12, 2025. Petitioner was returned to the U.S. on March 28, 2025 and has been in custody at Eloy Detention Center, AZ since then.

5. Petitioner's record reflects: a 2006 misdemeanor conviction for fraud/false statement (1-day sentence), a 2011 conviction related to identity theft, and a 2019 DUI arrest. He has no disqualifying violent convictions.

6. On July 7, 2010, the Board of Immigration Appeals (BIA) found that convictions like Petitioner's did not constitute a crime involving moral turpitude, as the Ninth Circuit has repeatedly held that the use of a false social security number for the purposes of employment is

not a crime of moral turpitude. *See Matter of Gomez-Segura*, A087 540 725 (BIA July 7, 2010) (unpublished) (citing *Beltran-Tirado v. INS,* 213 F.3d 1179 (9th Cir. 2000). ***Exhibit A.***

7. Following proceedings in immigration court and the Board of Immigration Appeals, the BIA dismissed Petitioner's appeal on September 27, 2024. Petitioner timely filed a Petition for Review in the Ninth Circuit, docketed October 25, 2024, and the automatic stay of removal remains in effect. ***Exhibit B.***

8. Petitioner was unlawfully removed despite the stay and redetained upon return without notice or a hearing. On February 12, 2025, ICE removed Petitioner to Mexico despite the operative stay. After he returned on March 28, 2025, ICE returned Petitioner to the United States and immediately redetained him without a hearing explaining any alleged change in circumstances, danger, or flight risk.

9. The arresting ICE officers did not articulate a reason as to why Petitioner was being re-detained, such as how he is now a flight risk, a danger to his community, or for any purported violations related to his immigration process.

10. In addition, an Immigration Judge's order granted his release on bond set at $25,000. The IJ's bond determination was based on a comprehensive review of the relevant factors under 8 C.F.R. §1236.1, including a determination that Petitioner was not a flight risk nor a danger to the community. This valid bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body. ***Exhibit C***

11. Indeed, there have been no changes in Petitioner's circumstances. For years, Petitioner has been the primary financial provider for his household and a devoted father to his three U.S. citizen children, now approximately ages 17, 7, and 6. One child has speech development issues requiring ongoing support, and another has a thyroid condition requiring daily medication. Petitioner's wife is a lawful permanent resident. Petitioner's continued detention inflicts significant hardship on his family. In addition, through undersigned counsel, Petitioner submitted an application with USCIS for T nonimmigrant status (Form I-914) based on severe labor trafficking, supported by documentary evidence and his sworn declaration, and is currently awaiting the issuance of his receipt notice. This status and the underlying equities further negate

any flight risk and weigh in favor of immediate release. ***Exhibit D***

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

13. That basic principle, that individuals placed at liberty are entitled to process before the government imprisons them, has particular meaning here, where Petitioner's detention was *already* found to be unnecessary to serve its purpose. An Immigration Judge previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed since Petitioner posted bond that would justify re-arrest.

14. Therefore, at a minimum, in order to lawfully re-arrest Petitioner, the government must first establish, by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. ICE's re-arrest of Petitioner violated these regulations, laws, and due process.

**CUSTODY**

15. Petitioner is currently in the custody of ICE at the Eloy Detention Center in Eloy, Arizona. Petitioner is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

**JURISDICTION**

16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331,

general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

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

**VENUE**

20. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona. Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE unlawfully re-arrested him in his Phoenix, Arizona neighborhood, just a block from his home, in violation of 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640

(BIA 1981), and he is being imprisoned in Arizona. There is no real property involved in this action.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

23. Petitioner is currently detained by ICE at Eloy Detention Center in Eloy, Arizona. He remains in custody, without any finding by a neutral adjudicator that he is a flight risk or danger to the community. Petitioner's continued detention also follows his unlawful removal to Mexico on February 12, 2025, despite an operative Ninth Circuit stay of removal, and his re-detention after return to the United States on March 28, 2025 without a hearing.

**PARTIES**

24. Petitioner is a citizen and national of Mexico, A-Number A[redacted] born [redacted] 1984. He first came to the United States in April 2002, was voluntarily returned that same month, re-entered approximately 15 days later, and later received voluntary departure in October 2011 before returning again.

25. Petitioner was never deemed neither a danger to his community or a flight risk. On October 25, 2024, the Ninth Circuit Court of Appeals issued a stay of removal ("Roblero v. Bondi, Case No. 24-6556, Dkt. 3). The stay order states "REMOVAL STAYED pending further order of the court."

26. Petitioner is the primary financial provider for his household, including his three U.S. citizen children (approximately ages 17, 7, and 6), and his wife, a lawful permanent resident.

27. Respondent John CANTU is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

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

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

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

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## STATEMENT OF FACTS

31. Petitioner is a citizen and national of Mexico, A-Number A[redacted] born on [redacted] 1984. He first came to the United States in April 2002. He was voluntarily returned to Mexico that same month, re-entered approximately 15 days later, and later received voluntary departure in October 2011 before returning again.

32. Petitioner has meritorious applications for relief and protection from removal. In In May 2025 he submitted an application for T nonimmigrant status (Form I-914) based on severe labor trafficking he endured in the United States and is currently awaiting USCIS to issue his receipt notice. In his sworn declaration, he describes being coerced into exploitative work under threat and abuse, suffering significant harm, and continuing to experience the lasting effects of this trauma. He has established deep ties to the United States, where he has lived for over two decades. He is the primary provider for his three U.S. citizen children, now approximately ages 17, 7, and 6, one of whom has speech development issues requiring therapy and another with a thyroid condition requiring daily medication. His wife is a lawful permanent resident. The family relies on his support not only financially but also for stability and care. The harsh living conditions he faces in detention and the disruption of his family's life underscore the equities in favor of his release.

33. On September 27, 2024, the Board of Immigration Appeals dismissed Petitioner's appeal from the denial of his application for cancellation of removal. On October 24, 2024, Petitioner filed a timely Petition for Review in the United States Court of Appeals for the Ninth Circuit. On October 25, 2024, the Ninth Circuit issued a docketing notice in Roblero v. Bondi, Case No. 24-6556, confirming that a stay of removal is in effect under General Order 6.4(c) pending adjudication of the stay request. The government filed its opposition to the stay on November 22, 2024, and Petitioner filed his reply on December 2, 2024. No further order has issued; the stay remains.

34. An Immigration Judge previously granted Petitioner release on a $25,000 bond after finding he was neither a danger to the community nor a flight risk. This bond order remains undisturbed; DHS may not re-detain him absent a material change in circumstances.

35. Despite the operative stay of removal, ICE removed Petitioner to Mexico on February 12, 2025. In the immediate aftermath, Respondent's LPR partner traveled to Mexico, leaving the U.S.-based children temporarily without their daily caregivers and disrupting medication management and therapy schedules.

36. After he returned on March 28, 2025, ICE re-detained him at Eloy Detention Center in Arizona without a bond hearing, or any explanation of a change in circumstances, danger, or flight risk.

37. The absence of Petitioner from his home has placed his family in a precarious position. When Petitioner was deported, both he and his partner left, leaving their three U.S.-citizen children in the United States, which has caused substantial emotional, educational, and financial hardship. His three U.S. citizen children, approximately ages 17, 7, and 6, have lost their primary source of financial support and daily care. One child's speech therapy has been disrupted, and another's thyroid treatment requires ongoing management that his wife, a lawful permanent resident, now must shoulder alone.

38. Petitioner has filed an application for T nonimmigrant status (Form I-914) with USCIS based on severe labor trafficking, supported by documentary evidence and his sworn declaration, issuance of his receipt notice is pending.

39. Petitioner's continued detention is not justified by any finding that he poses a danger to the community or a flight risk. An Immigration Judge previously granted Petitioner release on a $25,000 bond after finding he was neither a danger to the community nor a flight risk There has been no material change in his circumstances to warrant re-detention, and ICE has not provided any evidence to the contrary.

40. The government's actions in removing Petitioner to Mexico on February 12, 2025, despite the operative Ninth Circuit stay of removal, and immediately re-detaining him upon his return on March 28, 2025, constitute a violation of his due process rights. At no time did ICE provide a hearing before a neutral adjudicator to assess whether his continued detention was lawful.

41. Petitioner remains detained at Eloy Detention Center in Arizona. His detention separates him from his U.S. citizen children and his legal permanent resident wife, disrupts his ability to

prepare his immigration case, and causes ongoing harm to his family's well-being. The equities strongly favor his immediate release.

42. Petitioner has resided in the United States for more than twenty years. During that time, he has established a life centered on his family, work, and community. His U.S. citizen children have never known life without their father in the home, and his absence has been deeply disruptive to their emotional stability and development. Petitioner's wife has been forced to take on all caregiving responsibilities for the three children in his absence. She has expressed difficulty balancing work, childcare, and medical appointments, especially given the children's special needs.

43. The separation from their father has caused the children to experience stress, anxiety, and a noticeable decline in their sense of security. These harms worsened when both parents left, leaving the children without their primary caregivers. One child's speech therapy progress has slowed due to the absence of consistent parental involvement, and the other's thyroid treatment regimen requires attentive coordination that Petitioner previously provided.

44. Petitioner has asked ICE to release him. ICE has not done so. Continued detention serves no legitimate government interest and undermines the principles of due process. The government has not met, and cannot meet, its burden to justify holding Petitioner without a bond hearing.

45. Federal law strictly limits prolonged immigration detention. Under 8 C.F.R. § 241.4 and ICE's Post-Order Custody Review procedures, DHS must conduct a custody review no later than 90 days after detention begins to determine whether continued custody is justified. See Zadvydas v. Davis, 533 U.S. 678, 701 (2001) (holding that detention beyond six months is presumptively unreasonable absent special justification).

46. Here, Petitioner has been detained well over 90 days without any meaningful custody review. ICE issued a notice after the 90-day period had already elapsed, stating it intended to conduct a review, but no review was ever held. This failure to follow its own mandatory review procedures violates both the governing regulations and the Due Process Clause.

47. The public interest is best served by respecting court-ordered stays of removal and bond orders and allowing families to remain united while immigration proceedings are pending.

Releasing Petitioner would restore stability to his household and allow him to pursue his legal claims without the undue hardship and constitutional violations caused by his current detention.

48. Intervention from this Court is therefore required to ensure that Petitioner is released from his current custody based his unlawful arrest and that he is returned to his home in Phoenix, Arizona, where ICE can then provide him with a hearing before determining to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

## LEGAL BACKGROUND

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

49. In Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

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

51. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F.

Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

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

53. The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of erroneous deprivation; and 3) the burden on the government – to assess whether the Petitioner was afforded "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista,* CV-18-00285-PHX-GMS at 4; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Id.* at 4.

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

2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

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

55. 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).

56. Petitioner retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

58. This basic principle—that individuals have a liberty interest in their conditional release—

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

59. 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).

60. Here, when this Court "'compar[es] the specific release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, care for his children, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*,

408 U.S. at 482.

61. Petitioner is the financial provider and caretaker for his wife and children. His three U.S. citizen children, approximately ages 17, 7, and 6, have lost their primary source of financial support and daily care. One child's speech therapy has been disrupted, and another's thyroid treatment requires ongoing management that his wife, a lawful permanent resident, now must shoulder alone.

62. Petitioner's past circumstances likely meet the qualifications for T nonimmigrant status. This status is designed for individuals who have endured severe hardships, and in his case, it is based on a harrowing history of labor trafficking which underscores the urgent need for his release from detention and for protection from further harm.

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

63. Petitioner asserts that, here, (1) where his detention would be civil; (2) where the Ninth Circuit Court stay of removal is still pending, (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, (5) where an Immigration Judge has already issued a $25,000 bond order after finding that Petitioner was neither a danger nor a flight risk; and (6) where DHS has failed to provide a custody review within 90 days of his detention as required by regulation and due process, instead delaying and issuing notice only after the deadline without ever conducting a bona fide review—due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

64. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure

that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

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

**Petitioner's Private Interest in His Liberty is Profound**

67. Under *Morrissey* and its progeny, individuals conditionally released from serving

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

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

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

**The Government's Interest in Re-Incarcerating Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal**

70. The government's interest in detaining Petitioner without a due process hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release Petitioner from his unlawful custody and refrain from re-arresting Petitioner unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process he seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Petitioner.

71. As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis for detaining Petitioner..

72. The government's interest in detaining Petitioner at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[1]

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

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

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

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

76. Releasing Petitioner from unlawful custody and enjoining his re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained.

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day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

**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**

77. Releasing Petitioner from unlawful custody and providing him a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that Ninth Circuit Courts decision 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.

78. By contrast, the procedure Petitioner seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

**FIRST CAUSE OF ACTION**

**Procedural Due Process**

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

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

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

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

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

84. Prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

**SECOND CAUSE OF ACTION**

**Substantive Due Process**

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

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

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

87. Petitioner has a vested liberty interest in his conditional release. Due Process

does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

88. Petitioner has fully complied with the court's conditions, and is neither a flight risk nor a danger to the USA. Re-arresting him now—while he is the sole caretaker for his family, would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

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

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

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

## THIRD CAUSE OF ACTION

### APA - Unreasonably Delayed Bona fide Determination for T Nonimmigrant Visa Application

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

93. On May 5, 2025, Petitioner, through undersigned counsel, properly filed a Form I-914, Application for T Nonimmigrant Status as a victim of severe labor trafficking, with requisite supporting evidence establishing a prima facie case for relief, including his sworn declaration describing being coerced into exploitative work under threat and abuse.

94. To date, more than three months after filing, USCIS has failed to issue even a receipt notice for Petitioner's T visa application, let alone make the required BFD determination that would establish his status as a trafficking victim and impact his detention.

95. Petitioner remains detained at Eloy Detention Center while USCIS fails to act on his trafficking victim application, causing his three U.S. citizen children to suffer without their father's presence, with one child's speech therapy disrupted and another's thyroid medication management compromised.

96. Since 2002, USCIS has maintained the authority to conduct an initial review of each T nonimmigrant status application package to determine if the application is bona fide. See Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS, Deferred Action for Aliens with Bona Fide Applications for T Nonimmigrant Status (May 8, 2002).

97. Pursuant to 8 C.F.R. § 214.11(e), "Once an alien submits an application for T-1 nonimmigrant status, USCIS will conduct an initial review to determine if the application is a bona fide application for T-1 nonimmigrant status."

98. According to USCIS policy, "in the event that processing times should exceed 90 days, USCIS will conduct bona fide determinations for the purpose of issuing employment authorization." See Memorandum from Richard Aytes, Acting Deputy Director Response to Recommendation 39: "Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas" (May 22, 2009) (emphasis added).

99. More critically for detained individuals like Petitioner, a BFD provides deferred action status, which directly impacts detention decisions and eligibility for release, as trafficking victims are recognized as a vulnerable population deserving of protection rather than incarceration.

100. Under the Administrative Procedure Act ("APA"), federal agencies must act "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b).

101. The necessity is particularly acute here where Petitioner remains separated from his U.S. citizen children while detained, and where USCIS's delay in making a BFD determination prevents ICE from recognizing his status as a bona fide trafficking victim entitled to protection.

102. Under the extraordinary circumstances presented—a detained trafficking victim separated from his three U.S. citizen children, one with special medical needs—USCIS has unlawfully withheld or unreasonably delayed action in violation of the APA. 5 U.S.C. § 706(1).

103. A court may "compel agency action unlawfully withheld or unreasonably delayed." Id. § 706(1).

104. USCIS has a nondiscretionary duty to make a bona fide determination for T nonimmigrant status applicants. See 8 C.F.R. § 214.11(e) ("USCIS will conduct an initial review to determine if the application is a bona fide application for T-1 nonimmigrant status.").

105. As a matter of policy, USCIS has stated it "will" make BFDs whenever processing times exceed 90 days. See Memorandum from Richard Aytes, Acting Deputy Director Response to Recommendation 39: "Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas" (May 22, 2009).

106. Courts typically use the TRAC factors to determine whether an administrative delay is unreasonable. *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) ("TRAC").

107. The non-exclusive list of typical factors assessed are: (1) "the time an agency takes to make a decision should be governed by a 'rule of reason'"; (2) "[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act"; (3) "the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation"; (4) "the effect of expediting delayed actions on agency activity of a higher or competing priority ... [and] the extent of the

interests prejudiced by the delay"; and (5) "a finding of unreasonableness does not require a finding of impropriety by the agency." Id.

108. A preliminary review of the TRAC factors weighs heavily in favor of compelling a BFD on Petitioner's application, particularly given his detention status.

109. First, there is no rhyme or reason to USCIS's BFD decisions, particularly for detained applicants who face immediate and ongoing harm from delay.

110. USCIS has not announced any rule for prioritizing BFDs for detained trafficking victims, despite the obvious humanitarian concerns and Congressional intent to protect such individuals. Unlike the cap on annual T visas, there is no cap for BFDs, and no justification for leaving a detained trafficking victim in limbo while his children suffer without him. From what is publicly available, USCIS has no demonstrable rule of reason for making BFDs in T nonimmigrant visa cases, and certainly none that accounts for the urgency of detained applicants.

111. The first TRAC factor weighs heavily in favor of Petitioner who has been detained for months while USCIS fails to act on his trafficking victim application filed May 5, 2025. The second TRAC factor favors Petitioner as Congress created the T visa specifically to protect trafficking victims, not to allow them to languish in detention while agencies delay. The third TRAC factor overwhelmingly favors Petitioner—this delay affects human health and welfare in the most direct way possible: a father is imprisoned away from his children, including one requiring speech therapy and another with daily medical needs.

112. USCIS's delay in making a BFD while Petitioner remains detained is unconscionable and directly contradicts the humanitarian purpose of the Trafficking Victims Protection Act. Every day USCIS delays is another day Petitioner's 6-year-old child goes without speech therapy progress, another day his 7-year-old's thyroid condition must be managed without him, another day his 17-year-old lacks their father's support. Without a BFD, Petitioner cannot establish his status as a trafficking victim deserving of protection rather than detention, leaving him vulnerable to continued incarceration and potential removal despite the Ninth Circuit's stay.

113. Petitioner remains susceptible to the very harms Congress sought to prevent when creating T visa protections—detention and removal of trafficking victims who come forward.

The detention context makes Petitioner's harms exponentially "weighty." *Barrios Garcia v. U.S. Dep't of Homeland Sec.*, 25 F.4th 430, 452 (6th Cir. 2022) (internal quotation marks and citation omitted); *Gonzalez v. Cuccinelli*, 985 F.3d 357, 375 (4th Cir. 2021).

114. Turning to the Fourth TRAC factor, compelling USCIS to make a BFD for a detained trafficking victim would have no negative effect on agency priorities—indeed, it would further them. USCIS claims that protecting trafficking victims is a priority. Compelling agency action for a detained victim would epitomize that priority.

115. Moreover, Petitioner is not asking to jump any line—he is asking USCIS to follow its own regulations and policies that require action within 90 days, particularly for detained individuals. The de minimis effort required to review Petitioner's application and issue a BFD pales in comparison to the ongoing constitutional violations and family separation caused by USCIS's inaction.

116. Further, USCIS's failure to deconflict with ICE as required by its own policies has directly contributed to Petitioner's continued detention, making immediate action even more critical.

117. At this stage, Petitioner has shown USCIS has not acted with due regard to the necessity of his situation—a detained trafficking victim separated from his U.S. citizen children—and has failed to make a BFD in a reasonable amount of time. 5 U.S.C. § 555(b). The complete failure to even issue a receipt notice after three months while Petitioner sits detained demonstrates not just unreasonable delay, but abandonment of USCIS's duty to trafficking victims.

118. For these reasons, USCIS's failure to issue a BFD on Petitioner's T visa application while he remains detained violates the APA and must be remedied immediately by this Court.

## PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's apprehension and detention of Petitioner after return to the US on March 28th, 2025, was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is a flight risk;

(3) Order ICE to immediately release Petitioner from his unlawful detention, as his continued detention violates due process and disregards the prior $25,000 bond order absent any material change in circumstances.

(4) Enjoin re-arresting Petitioner unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;

(5) Declare that ICE failure to provide Petitioner with a timely custody review withing 90 days of his detention, as required by as required by 8 C.F.R. § 241.4 and due process, renders his ongoing detention unlawful;

(6) Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e.,whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(7) Declare that USCIS's delay in making a bona fide determination on Petitioner's properly filed T nonimmigrant visa application is unreasonable and violates the Administrative Procedure Act, 5 U.S.C. § 706(1);

(8) Order USCIS to issue a bona fide determination on Petitioner's T visa application within 14 days;

(9) Order USCIS to immediately issue a receipt notice for Petitioner's Form I-914 application filed May 5, 2025;

(10) Order USCIS to deconflict Petitioner's T visa application with ICE regarding his detention status, as required by USCIS policy for detained trafficking victims;

(11) Declare that USCIS's failure to make a BFD within 90 days while Petitioner remains detained violates its own policies and the APA's requirement to act within a reasonable time;

(12) Award reasonable costs and attorney fees; and

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

Dated: August 21, 2025

Respectfully submitted,

/s/ *Hillary Walsh*
Hillary Walsh
Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

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

Executed on this 21st day of August, 2025, in Phoenix, AZ.

*/s/ Hillary Walsh*
Hillary Walsh
Attorney for Petitioner