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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL DE JESUS DIAZ,

Petitioner / Plaintiff,

vs.

MINGA WOFFORD Facility Administrator (Warden), Golden State Annex, POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents / Defendants

Case No.: 1:25-at-00729

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Manuel De Jesus Diaz ("Mr. Diaz") an auto mechanic is a long-time, law-abiding resident of Northern California, a husband of an asylee wife and father of three asylee children. ICE placed an Order of Supervision in 2019 and directed him to report to the San Francisco ERO office at 630 Sansome Street at regular intervals, which he has consistently done for over five years, at his last check-in on August 8, 2025 he was detained. *See* Declaration of Julio J. Ramos (Ramos. Dec.) Ex. A (Order of Supervision, 04/10/2019) listing 630 Sansome St. reporting, signature, and conditions). *see also* Ramos. Dec. Ex. B (OSUP continuation/personal report record, 04/10/2019). To be released on conditional parole/ own recognizance, there must be a finding that the immigrant does not pose a risk of flight or danger to the community. *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007).

2. On 04/09/2019, DHS issued a Notice of Intent/Decision to Reinstate Prior Order under 8 U.S.C. § 1231(a)(5); *See* Ramos Dec. Ex. B (Reinstatement Notice, 04/09/2019). Because the plaintiff alleges fear of return to his native El Salvador he has the right to a reasonable fear review by an Asylum Officer. In such cases, when an individual expresses fear, regulations require reasonable-fear screening and, if passed, withholding-only proceedings before an immigration judge. *8 C.F.R. § 208.31.* Mr. Diaz has never been scheduled for a reasonable fear interview.

3. On September 6, 2024, Mr. Diaz's family, including his spouse, Deysi Cristela Padilla de Diaz (aged 38), and their children, [redacted] Diaz Padilla (aged 11), [redacted] Diaz Padilla (aged 11), and [redacted] Diaz Padilla (aged 13) submitted asylum applications to USCIS. A Form I-589 was received from Ms. Padilla de Diaz, denoting Mr. Diaz as a derivative applicant;

a Receipt Notice was issued on September 6, 2024, confirming receipt of the application by the San Francisco Asylum Office as of August 26, 2024. *See* Ramos. Dec. Ex. D (I-797C Receipt Notice, dated September 6, 2024; receipt confirmed August 26, 2024), and Ramos. Dec Ex. D-1 (Vetting Center acknowledgment).

4. USCIS approved Mr. Diaz's C-18 employment authorization on 08/07/2024 (valid 10/07/2024–10/06/2025). *See* Ramos. Dec. Ex. E (I-765Work Authorization Card, C-18). Community attestations confirm his good moral character and ties to the community. *See* the California Highway Patrol letter (08/13/2025) and two employer letters (08/12/2025) detailing strong community ties. Ramos. Dec. Ex. F.

5. The record also shows Petitioner's continuous residence and further societal integration: the 2024 joint federal tax return (married filing jointly; three dependents; San Mateo address) corroborates that Mr. Diaz has been living, working, and supporting his family in the Bay Area well before his detention with community member support. *See* Ramos. Dec. Ex. G–H.

6. Notwithstanding his record of compliance, ICE seized Mr. Diaz without notice nor warrant at a scheduled check-in on 08/8/2025 in San Francisco California and ICE transferred him to DHS custody at Golden State Annex (McFarland, CA); the ICE Detainee Locator reflects his status and A-number (A200-002-937) Ramos Dec. ¶ 6. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025)—the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons therefore.

7. Because he has not been given pre-detention notice nor a prompt, individualized custody determination, Mr. Diaz has been denied due process as applied to him under the law. Mr. Diaz therefore petitions this Court under 28 U.S.C. § 2241 and the Suspension Clause for: (1) a declaration that his executive detention is unlawful; (2) an order enjoining removal until completion of the reasonable-fear/withholding-only process; and (3) immediate release.

JURISDICTION AND VENUE

8. Subject-matter jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), and 28 U.S.C. § 2241 (habeas corpus), as reinforced by Article I, § 9, cl. 2 (the Suspension Clause), the Fourth and Fifth Amendments, and the Administrative Procedure Act, 5 U.S.C. §§ 701–706. In addition, because Respondents purport to detain Petitioner incident to expedited-removal processing, this Petition also seeks the limited habeas review authorized by 8 U.S.C. § 1252(e)(2)—including § 1252(e)(2)(B) ("Unlawful Executive Detention")—while preserving Petitioner's independent constitutional and statutory claims cognizable under § 2241. He challenges the legality of his present civil immigration detention and the government's failure to process him under the reasonable-fear/withholding-only framework—not the validity of any final order of removal. The REAL ID Act does not strip habeas jurisdiction over detention-only claims. *See Nadarajah v. Gonzales, 443 F.3d 1069, 1075–76 (9th Cir. 2006)* (district courts retain § 2241 jurisdiction over challenges to immigration detention); *Zadvydas v. Davis,* 533 U.S. 678, 687–88 (2001) (§ 2241 provides jurisdiction to review the legality of executive detention); *Jennings v. Rodriguez,* 138 S. Ct. 830, 839–42 (2018) (addressing statutory authority

for civil detention, recognizing district-court jurisdiction). The Suspension Clause, U.S. Const. art. I, § 9, cl. 2, independently protects access to the writ for unlawful executive detention.

9. Mr. Diaz is currently in physical ICE custody at Golden State Annex McFarland, California the immediate custodian—the Warden/Facility Administrator of Golden State Annex (McFarland, CA)—together with any higher-level DHS/ICE officials named for complete relief. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992).

10. Venue lies in the district of confinement. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–47 (2004); ("the proper forum is the district of confinement"). Mr. Diaz is confined at Golden State Annex, 611 Frontage Rd., McFarland, CA 93250, which lies within the Eastern District of California. In the alternative, should the Court deem additional or different respondents necessary (e.g., field-office officials whose actions in San Francisco precipitated the detention), venue is also proper where "a defendant in the action resides" and "a substantial part of the events or omissions giving rise to the claim occurred," 28 U.S.C. § 1391(e)(1).

11. Mr. Diaz's detention creates an ongoing Article III controversy that § 2241 can redress through immediate release or a constitutionally adequate custody hearing. *See Zadvydas*, 533 U.S. at 687–88; *Nadarajah*, 443 F.3d at 1075–76.

12. If the Court concludes that a different ICE official or venue is technically required, the appropriate remedy is substitution under Fed. R. Civ. P. 25(d) and, if necessary, transfer under 28 U.S.C. §§ 1406(a) or 1631, rather than dismissal—so the Court can promptly address the legality of Mr. Diaz's ongoing confinement.

PARTIES

13. Petitioner Manuel de Jesús Díaz is a national of El Salvador who is currently in ICE custody at Golden State Annex, 611 Frontage Rd., McFarland, CA 93250 (Kern County). He is therefore detained within the Eastern District of California

14. Immediate Custodian, Tonya Andrews, Facility Administrator (Warden), Golden State Annex is her official capacity, is Manuel's immediate, day-to-day custodian with actual control over his detention at Golden State Annex in McFarland, California.

15. Respondent Polly Kaiser serves as the Acting Field Office Director for the San Francisco ICE Field Office and is the physical custodian of the Petitioner. In this role, she administers immigration laws and oversees enforcement and detention policy within ICE's San Francisco Area of Responsibility, including matters relating to the Petitioner's detention. Respondent Kaiser maintains an office and regularly conducts official business within this district. She is named in this action in her official capacity.

16. Respondent Todd M. Lyons is the Acting Director of ICE and the Senior Official Performing the Duties of the Director. He is charged with administering and enforcing the immigration laws of the United States, routinely conducts business within this District, and bears legal responsibility for all efforts related to the detention and removal of the Petitioner. Respondent Lyons is sued in his official capacity.

17. Respondent Kristi Noem is the Secretary of Homeland Security, holding ultimate authority over the Department of Homeland Security. In this role and through her agents, Respondent Noem exercises broad authority and responsibility for the operation and enforcement of immigration laws, conducts business within this District, and is legally

responsible for actions concerning the detention and removal of the Petitioner. Respondent Noem is sued in her official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States and the highest-ranking official within the Department of Justice. Through her position and agents, she holds oversight responsibility for the implementation and enforcement of federal immigration laws. This responsibility is delegated to the Executive Office for Immigration Review, which manages the immigration courts and the Board of Immigration Appeals. Respondent Bondi is named in her official capacity.

EXHAUSTION

19. Habeas review under 28 U.S.C. § 2241 is proper here because Petitioner challenges the lawfulness of his present civil detention, not the validity of any removal order. The statutory exhaustion provision in 8 U.S.C. § 1252(d)(1) applies to petitions for review filed in the courts of appeals—not to district-court habeas challenges to executive detention. *See,* e.g., *Zadvydas v. Davis,* 533 U.S. 678, 687–88 (2001) (permitting § 2241 custody challenges); *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–42 (2018) (channeling provisions do not foreclose detention challenges in district court).

20. No adequate administrative remedy exists to test the legality of Manuel's re-detention or to obtain the pre-deprivation hearing he seeks. Under the post-order framework (8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4–241.13), custody determinations are made internally by ICE; there is no immigration judge bond jurisdiction and no administrative appeal that can award the relief requested (immediate release or, at minimum, a neutral hearing before detention). Any later post-order custody review is discretionary, after-the-fact, and cannot cure the present

constitutional violation. Requiring Manuel—who was seized at a routine check-in after years of compliance—to await a paper review while in custody would defeat the point of the claim. *See McCarthy v. Madigan,* 503 U.S. 140, 147–49 (1992) (exhaustion not required where remedies are inadequate, futile, or where irreparable injury would result).

21. Under similar circumstances presented here; Courts in this District have recently granted TRO/PI relief for individuals re-detained after long periods on supervision, recognizing that there is no meaningful administrative avenue to adjudicate the due-process requirement of a pre-deprivation hearing and ordering release or a hearing with appropriate burdens. *Maklad v. Murray* (E.D.Cal. Aug. 8, 2025, No. 1:25-cv-00946 JLT SAB) 2025 U.S.Dist.LEXIS 153675 (Notably, already her I-589 petition has been summarily dismissed, and it appears that if she is not released, she will not receive the consideration of her derivative asylum claims. As other courts have done, the Court concludes that the government's interest in detaining Ms. Maklad or re-detaining her without a hearing is slight); *Arzate v. Andrews* (E.D.Cal. Aug. 19, 2025, No. 1:25-cv-00942-KES-SKO (HC)) 2025 U.S.Dist.LEXIS 161136.) (petitioner has consistently shown up for his check-ins and hearings, and petitioner has complied with the terms of supervision. In such circumstances, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.");*See Barrera v. Andrews (E.D.Cal. Aug. 21, 2025, No. 1:25-cv-01006 JLT SAB) 2025 U.S.Dist.LEXIS 162825.)(* parole allowed him to build a life outside detention, albeit under the terms of that parole. Mr. Garcia has a substantial private interest in being out of custody, which would allow him to continue in these life activities,

including supporting his family. As other courts have done, the Court concludes that the government's interest in detaining Mr. Garcia or re-detaining him without a hearing, is slight); *see also Castellon v. Kaiser* (E.D.Cal. Aug. 14, 2025, No. 1:25-cv-00968 JLT EPG) 2025 U.S.Dist.LEXIS 157841 (During her more than three years on parole, Ms. Arostegui Castellon obtained work, attended classes at a community college, and built connections with her community . . . Thus, parole allowed her to build a life outside detention, albeit under the terms of her parole. Ms. Arostegui Castellon has a substantial private interest in being out of custody, which would allow her to continue in these life activities, including obtaining necessary medical care. As other courts have done, the Court concludes that the government's interest in detaining Ms. Arostegui Castellon or re-detaining her without a hearing, is slight.)

22. To the extent the Government argues that Mr. Diaz could request a stay of removal or make informal pleas to the Field Office, those are purely discretionary measures that do not provide a channel to adjudicate the constitutional and statutory limits on detention and are therefore not required to be exhausted. *See McCarthy*, 503 U.S. at 147–49. Likewise, if Manuel has expressed or now expresses fear of return, 8 C.F.R. § 208.31 imposes a mandatory referral for a reasonable-fear interview; there is no administrative appeal to compel that referral, and habeas is an appropriate vehicle to prevent removal and ensure compliance with the regulation.

23. Finally, the claim is ripe. Petitioners are presently detained at Golden State Annex. The injury is ongoing and not speculative; the absence of any pre-deprivation process is complete, and continued custody inflicts irreparable harm on Petitioner and his family.

LEGAL BACKGROUND

A. Habeas review of immigration custody.

24. Federal courts retain authority under 28 U.S.C. § 2241 to review the legality of executive detention, including immigration custody that is independent of, or collateral to, any challenge to a removal order. The Supreme Court has repeatedly confirmed that habeas extends to challenges to "the fact or duration" of detention and to conditions governing release. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (core habeas challenges executive detention; immediate custodian is proper respondent); *Zadvydas v. Davis,* 533 U.S. 678, 687–88 (2001) (§ 2241 lies to review post-order immigration detention); *Clark v. Martinez,* 543 U.S. 371, 377–78 (2005) (same). The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not eliminate habeas review for detention claims that do not ask the court to adjudicate the validity of a final removal order. *See Jennings v. Rodriguez,* 138 S. Ct. 830, 839–42 (2018) (addressing detention authority under §§ 1225/1226; detainees may bring statutory and constitutional challenges to custody); *Demore v. Kim,* 538 U.S. 510, 516–17 (2003) (same). Accordingly, this Court may assess whether Manuel's re-detention and ongoing custody violate the Constitution, the INA, or DHS's own regulations.

B. The statutory framework: pre-order (§ 1226) and post-order (§ 1231) custody, and supervised release.

25. Congress authorized immigration arrest and custody during the pendency of removal proceedings under 8 U.S.C. § 1226 and after a final order under 8 U.S.C. § 1231. For individuals subject to a final order, DHS's authority is constrained by a 90-day "removal period" and implementing regulations that require custody reviews and, where appropriate, release on an Order of Supervision ("OSUP"). *See* 8 C.F.R. §§ 241.4 (post-order custody reviews), 241.5 (orders of supervision), 241.13 (procedures when removal is not reasonably foreseeable). These

rules recognize a constitutionally protected "conditional liberty" when DHS elects to supervise rather than confine, and they require reasoned decision-making before re-detaining a supervised noncitizen.

C. Constitutional due process limits on (re)detention and the need for procedures.

26. The Fifth Amendment applies to noncitizens in immigration custody and prohibits arbitrary deprivations of liberty. *Zadvydas*, 533 U.S. at 693–94. When the government seeks to deprive a person of conditional liberty previously granted (e.g., re-detaining someone on OSUP at a routine check-in), due process requires notice of the asserted basis and a meaningful opportunity to be heard, evaluated under the *Mathews v. Eldridge* balancing test, 424 U.S. 319, 334–35 (1976).

27. The Supreme Court's parole- and probation-revocation cases—*Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)—illustrate the baseline procedural protections before conditional liberty is revoked: advance notice, disclosure of evidence, an opportunity to present reasons and evidence, and a neutral decisionmaker. In the immigration context, the Ninth Circuit likewise requires individualized custody determinations that account for less restrictive alternatives and ability to pay when liberty is at stake. *See Hernandez v. Sessions*, 872 F.3d 976, 990–92 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011). Although those decisions addressed § 1226 custody, their due-process analysis applies a fortiori when DHS abruptly revokes supervision and jails a long-present, compliant supervisee without prior notice or hearing.

28. Even after the 90-day removal period, the government may not detain indefinitely without a significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. After approximately six months, continued detention must be justified with evidence that removal will be reasonably foreseeable; otherwise release under supervision is required. *Id.; Clark*, 543 U.S. at 378–79. Those constraints reinforce why DHS's own regulations (8 C.F.R. §§ 241.4, 241.13) require periodic review and reasoned decision-making tailored to the individual.

29. Where DHS invokes expedited removal at the border (8 U.S.C. § 1225(b)(1)), the statute and regulations require an immediate referral for a credible-fear interview if the individual indicates a fear or intent to seek asylum; DHS may not proceed to summary removal until the credible-fear process (including review by an immigration judge if negative) is complete. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. §§ 235.3(b)(4), 208.30, 208.31. The Ninth Circuit has recognized that protection-only processes (credible fear/withholding-only) must run their course before removal may lawfully occur. *See Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958–60 (9th Cir. 2012) (where an alien pursues reasonable fear and withholding of removal proceedings following the reinstatement of a prior removal order, the reinstated removal order does not become final until the reasonable fear of persecution and withholding of removal proceedings are complete).

D. All Writs Act and equitable power to preserve jurisdiction.

30. District courts may issue temporary restraining orders and preliminary injunctions to prevent irreparable harm and to preserve their prospective jurisdiction over claims. *See* 28 U.S.C. § 1651(a) (All Writs Act); Fed. R. Civ. P. 65; *Winter v. NRDC*, 555 U.S. 7, 20–24 (2008) (likelihood of success, irreparable harm, balance of equities, and public interest); *Nken v. Holder*, 556 U.S. 418, 434–35 (2009) (stay/removal context tracks *Winter* factors).

31. When DHS releases a person on supervision under 8 C.F.R. § 241.5, the agency imposes reporting conditions and creates a settled expectation of conditional liberty. Detention at a routine check-in, absent prior notice, disclosure, and an opportunity to respond, offends both the *Mathews* framework and the procedural norms recognized for revoking conditional liberty (*Morrissey, Gagnon)*—particularly where the individual has remained compliant for years and DHS previously determined supervision appropriate.

32. Under controlling precedent and DHS's own rules, this Court has jurisdiction to review Manuel's re-detention; the Constitution forbids revoking his conditional liberty without fair procedures; DHS may not short-circuit protection processes (credible fear / protection-only proceedings) or rely on unserved or incomplete expedited-removal paperwork to justify custodial arrest; and the Court may enter interim relief under Rule 65 and the All Writs Act to preserve jurisdiction and prevent irreparable harm while the merits are adjudicated of a federal question implicating the 5th Amendment substantive and procedural due process rights.

FURTHER ALLEGATIONS

DHS Dramatically Expands the Scope of Expedited Removal.

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

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

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

36. On August 1, 2025, the U.S. District Court for the District of Columbia in *Coal. for Humane Immigrant Rights v. Noem* (D.D.C. Aug. 1, 2025, No. 25-cv-872 (JMC)) 2025 U.S.Dist.LEXIS 148615) stayed government policies seeking to put individuals who entered on parole at a port of entry in expedited removal proceedings. The court found that the INA does not authorize expedited removal for people who were paroled at a port of entry even after their parole has been terminated. The government has appealed the case and the Court of Appeals for the D.C. Circuit has stayed the District Court Order however the stay **does not** apply to paroled individuals who have been in the United States longer than two years, Mr. Diaz has been in the United States in continuous fashion since April 2019.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

37. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "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 Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. 69. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.* 70. Petitioner is not a flight risk or danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

38. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas and transfer immigration court venue away from jurisdictions who refused to facilitate DHS's new expedited removal scheme. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Detention)

39. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. As part of the liberty protected by the Due Process Clause, Petitioner has a strong liberty interest in avoiding re-incarceration after his release. *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, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

40. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024). Petitioner's re-detention without a pre-deprivation hearing violated due process. Over 5 years after deciding to release Petitioner from custody on his own recognizance, Respondents re-detained

Petitioner with no notice, no explanation of the justification of her re detention, and no opportunity to contest the re-detention before a neutral adjudicator before being taken into custody.

41. Petitioner has a profound personal interest in his liberty. Because he received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of course in immigration proceedings, and nothing in Petitioner's record suggested that he would abscond or endanger the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and his continued employment during the pandemic as an essential agricultural worker").

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution

(Unlawful Arrest)

42. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause. It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable. . . . [T]he primary purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee

appears before the court, the purpose of the initial seizure has been accomplished. Further seizure requires a court order or new cause; the original probable cause determination is no justification. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (cleaned up); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.").

43. In the immigration context, this prohibition means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act

44. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A). The government's policy targeting people attending their immigration check-ins for arrest violates all notions of fair play. The government has provided no reasoned or adequate explanation for the policy, which is a dramatic shift from

recent and longstanding agency policy and practice. Additionally, in adopting the policy, the government failed to adequately consider all relevant factors and crucial aspects of the issue. The policy will deter individuals from appearing as parties and witnesses at immigration and other judicial proceedings, preventing the adjudication of meritorious claims, impeding the administration of justice, and hindering cooperation with law enforcement. Petitioner's arrest and detention pursuant to the government's policy is a final agency action that violates the Administrative Procedure Act. See 5 U.S.C. § 706(2).

FIFTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 706

(Dismissal/Expedited Removal)

Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. 100. 8 U.S.C. § 1225(b)(1) covers the "[i]nspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." 8 U.S.C. § 1225(b)(1). Section 1225(b)(1)(A)(iii)(II) further clarifies that "[a]n alien described in this clause is an alien who is not described in subparagraph (F), who has not ... been physically present in the United States continuously for the 2-year period." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Because Petitioner has been in the United States for more than two years, 8 U.S.C. § 1225(b)(1) cannot be applied to him. Placing Petitioner in expedited removal proceedings would be contrary to the Fifth Amendment's guarantee of due process in violation of 5 U.S.C. § 706(2)(A)-(B).

SIXTH CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Dismissal/Expedited Removal)

Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. Petitioner has a liberty interest in protection from deportation. *Landon v. Plasencia,* 459 U.S. 21, 34 (1982) (a noncitizen's interest in deportation proceedings "is, without question, a weighty one" because "she stands to lose the right 'to stay and live and work in this land of freedom'") (*quoting Bridges v. Wixon,* 326 U.S. 135, 154 (1945)); *Orantes-Hernandez v. Smith,* 541 F. Supp. 351, 377 n.32 (C.D. Cal. 1982) ("It is well-settled that the right to a deportation hearing is of constitutional scope because deportation 'involves issues basic to human liberty and happiness and, in the present upheavals in lands to which aliens may be returned perhaps to life itself.'") (*quoting Wong Yang Sung v. McGrath,* 339 U.S. 33, 50 (1950)). Accordingly, "[a] person who faces deportation is entitled under our constitution to a full and fair deportation hearing," *Hartooni v. I.N.S.,* 21 F.3d 336, 339–40 (9th Cir. 1994), because "without such a hearing, there would be no constitutional authority for deportation." *Wong Yang Sung,* 339 U.S. at 49. Depriving Petitioner of his liberty interest is unconstitutional under the Fifth Amendment unless it is "accompanied by sufficient procedural protections." *See Johnson v. Ryan,* 55D F.4th 1167, 1179–80 (9th Cir. 2022) (*citing Mathews v. Eldridge,* 424 U.S. 319, 335 (1976)). 107.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the First Amendment, and the Administrative Procedure Act;

4. Declare that failure to conduct a reasonable fear interview violates the Due Process Clause of the Fifth Amendment;

5. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;

6. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;

7. Order that Respondents may not place Petitioner in expedited removal proceedings or remove Petitioner except based on a final, executable removal order issued through Section 240 removal proceedings;

8. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and

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

Date: August 26, 2025

Respectfully Submitted,

/s/ Julio J. Ramos

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

I represent Petitioner, Manuel de Jesús Díaz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Julio J. Ramos