

Avantika Shastri (California Bar #233453)
Chloe Czabaranek (California Bar #336258)
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

Attorneys for Petitioner-Plaintiff
Hiren Jagdish PATEL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Hiren Jagdish PATEL,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San
Francisco 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. 3:25-cv-7667

**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, Hiren Jagdish PATEL, by and through 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 returning him to an immigration jail without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that his custody is justified by clear and convincing evidence. Mr. Patel is a native and citizen from India who has lived in the United States since 1999. He has been under ICE supervision via an Order of Supervision (OSUP) or bond since 2012 when he was first put into removal proceedings. Mr. Patel's removal order became final in 2019, and he is currently on an OSUP. He is scheduled for an ICE check-in on September 11, 2025, and fears that he will be re-detained at that check-in.

2. In his case, Mr. Patel applied for a stay of removal from ICE in January 2025 based on a pending criminal court appeal, his serious health conditions, and the hardship that his family would suffer without him. Unexpectedly, he underwent a Coronary Artery Bypass Grafting (CABG) (a triple bypass) surgery on March 12, 2025. He was admitted into the ICU for a full week, and a full recovery can take up to a year according to his doctors. Mr. Patel is currently being cared for by his U.S. citizen family. He has also cooperated with ICE in seeking documents for his removal, but it appears that India has not yet issued him a travel document. Thus, his removal from the United States is not reasonably foreseeable. Even if ICE were to obtain a passport, Mr. Patel is not a danger to the community nor a flight risk, and further detention is unnecessary to effectuate his removal. Any re-detention by ICE would thus be unlawful as it would be limitless in duration and unnecessary. Mr. Patel's re-arrest would be unconstitutional because it is indefinite and illegal, absent any pre-deprivation hearing before a neutral arbiter.

3. In 1999, Mr. Patel entered the United States on an H1-B visa. He has resided in the United States for the past 25 years. He adjusted his status to lawful permanent resident through a petition filed by his citizen wife on April 8, 2004.

1 4. On March 24, 2012, Mr. Patel was detained by Immigration and Customs Enforcement
2 (“ICE”) and subsequently issued a Notice to Appear, charging him removal under 8 USC §
3 1227(a)(2)(A)(iii) for having been convicted of an aggravated felony offense in 2007. He
4 applied to readjust his status (i.e. apply for a second green card) with the Immigration Judge
5 (“IJ”) along with a waiver of inadmissibility pursuant to INA § 212(h). On June 8, 2017, the IJ
6 granted his adjustment with the accompanying waiver. However, the Department of Homeland
7 Security (“DHS”) subsequently appealed this decision, and the Board of Immigration Appeals
8 (“BIA”) sustained the appeal in 2018. Mr. Patel appealed this decision to the Ninth Circuit
9 Court of Appeals, which found it did not have jurisdiction to review the decision and therefore
10 dismissed the petition for review in 2019. Mr. Patel also subsequently filed a motion to reopen
11 with the BIA based on his deficient Notice to Appear. That motion and a subsequent appeal
12 were denied as of February 2023. Throughout this time, since 2012, Mr. Patel has been under
13 ICE supervision either through an OSUP or pursuant to a bond. He is currently on an Order of
14 Supervision. 

15 5. Currently, Mr. Patel is litigating an appeal of his criminal court case based on legal errors
16 made in respect to his prior conviction before the California Court of Appeals. His criminal
17 defense counsel anticipates the case to take approximately one year to resolve, and if he were to
18 be removed while the appeal was pending, the court may dismiss his appeal. *See* Declaration of
19 Avantika Shastri (“Shastri Decl.”) at Exhibit (“Ex.”) A (ICE Stay of Deportation of Removal
20 filed January 6, 2025, Tab B Evidence of Pending Criminal Court Appeal); *see also id.* at Ex. C
21 (Request to reschedule ICE appointment filed June 11, 2025, Tab F ‘Additional Documentation,’
22 California Court of Appeal Docket, dated June 10, 2025).

23 6. Since 2012, Mr. Patel has been at liberty under ICE supervision. At present, he continues
24 to live and work part-time in the United States while recovering from his triple bypass surgery.
25 *Id.* at Ex. B (Request to reschedule ICE appointment filed March 12, 2025, Tab E ‘Additional
26 Documentation’); *see also id.* at Ex. C (Request to reschedule ICE appointment filed June 11,
27 2025, Tab F ‘Additional Documentation’). He plays an integral role in the life of his U.S. citizen
28 family. *See id.* at Ex. A (ICE Stay of Deportation of Removal filed January 6, 2025, Tab A

1 ‘Identification Documents’, Tab C ‘Evidence of Hardship to Hiren Patel and His Family,’ and
 2 Tab D ‘Evidence of Mr. Patel’s Close Ties to the United States and Good Moral Character). Mr.
 3 Patel has continued to experience “extreme physical weakness, fluctuating blood pressure and
 4 blood sugar levels, and has lost approximately 20 pounds. His surgical wound is still healing,
 5 and he is currently enrolled in a supervised cardiac rehabilitation program to aid in his recovery.”
 6 *See id.* at Ex. C (Request to reschedule ICE appointment filed June 11, 2025, Tab F ‘Additional
 7 Documentation,’ Medical Letter by Dr. Beygui dated June 2, 2025).

8 7. Mr. Patel’s next in-person appointment with ICE is scheduled for Thursday, September
 9 11, 2025. Under current ICE policies and practices, he faces the very real possibility of being
 10 re-arrested and re-incarcerated even though he is not a flight risk or danger to the community,
 11 and despite the fact that it appears that ICE does not have a travel document that would enable
 12 the agency to effectuate his physical removal from the United States to India. In recent weeks,
 13 individuals in identical or substantially similar circumstances as Mr. Patel have been re-arrested
 14 and re-incarcerated absent notice and a hearing and even though ICE could not (and still cannot)
 15 physically them from the country. *See, e.g., Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025
 16 WL 2097470, at *2 (N.D. Cal. July 26, 2025) (stateless Palestinian on OSUP likely to be re-
 17 arrested despite no likelihood of removal); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
 18 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (Vietnamese national on OSUP rearrested even
 19 though government had not obtained travel document); *Phan v. Becerra*, No. 2:25-CV-01757-
 20 DC-JDP, 2025 WL 1993735, at *1 (E.D. Cal. July 16, 2025) (same).¹

21 8. ICE has refused to provide assurances that it will not re-arrest and re-incarcerate Mr.
 22 Patel on September 11, 2025. *See Shastri Decl.*

23 9. ICE has permitted Mr. Patel to remain free from custody, via an OSUP or bond, following
 24 his removal proceedings because his removal is not reasonably foreseeable, and he is otherwise

25
 26 ¹ *See also* “Immigrants at ICE check-ins detained, held in basement of federal building in Los
 27 Angeles, some overnight,” CBS News (June 7, 2025),
 28 [https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-
 of-federal-building-in-los-angeles/](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/); “They followed the government’s rules. ICE held them
 anyway,” LAist (June 11, 2025), [https://laist.com/news/politics/ice-raids-los-angeles-family-
 detained](https://laist.com/news/politics/ice-raids-los-angeles-family-detained).

1 neither a flight risk nor a danger to the community. The OSUP also required him to attend regular
2 check in appointments at the ICE San Francisco Field Office and permitted him to apply for
3 work authorization. 8 C.F.R. § 241.5. For the past thirteen years, Mr. Patel has complied with
4 the terms of his OSUP and bond, and attended his appointments as instructed. Mr. Patel is
5 currently healing from his triple bypass surgery. *See* Shastri Decl. at Ex. C (Request to reschedule
6 ICE appointment filed June 11, 2025, Tab F ‘Additional Documentation,’ Medical Letter by Dr.
7 Beygui dated June 2, 2025).

8 10. By statute and regulation, ICE has the authority to re-detain a noncitizen previously
9 ordered removed only in specific circumstances, including where an individual violates any
10 condition of release or the individual’s conduct demonstrates that release is no longer
11 appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed
12 by the Due Process Clause because it is well-established that individuals released from
13 incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the
14 particular facts of Mr. Patel’s case, due process requires notice and a hearing, *prior to any re-*
15 *arrest*, at which he would be afforded the opportunity to advance his arguments as to why he
16 should not be re-detained.

17 11. Here, Respondents created a reasonable expectation that Mr. Patel would be permitted to
18 live and work in the United States without being subject to arbitrary arrest and removal.

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

1 13. Further, the Supreme Court has limited the potentially indefinite post-removal order
2 detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas v.*
3 *Davis*, 533 U.S. 678, 701 (2001). Because ICE does not have a travel document for Mr. Patel,
4 his removal is not reasonably foreseeable in this case, and the government has not provided him
5 with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-
6 detaining him. His re-incarceration without any reasonably foreseeable end point would
7 therefore be unconstitutionally prolonged in violation of clear Supreme Court precedent.
8 Moreover, even if ICE had a travel document for him, Mr. Patel's liberty interests warrant a
9 hearing, where he is neither a danger to the community nor a flight risk, and re-arrest or detention
10 is not warranted to effectuate his removal.

11 14. The basic principle that individuals placed at liberty are entitled to process before the
12 government imprisons them has particular force here, where Mr. Patel has been at liberty
13 throughout his case. Under these circumstances, ICE is required to afford him the opportunity to
14 advance arguments in favor of his freedom before robbing him of his liberty. He must therefore
15 not be detained unless and until ICE proves to a neutral arbiter that his removal has become
16 reasonably foreseeable, and his detention is necessary because there has been a material change
17 in circumstances establishing that he is a flight risk or a danger to the community. Numerous
18 federal district courts in the Northern and Eastern Districts of California have already ordered
19 similar relief. *See, e.g., Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No.
20 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025
21 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10
22 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D.
23 Cal. July 24, 2025). During any custody redetermination hearing that occurs, the neutral arbiter
24 must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any
25 risk that ICE may establish.

26 CUSTODY

27 15. Mr. Patel is currently released from custody on an OSUP issued by ICE that sets forth a
28 number of restrictions on his liberty, including the requirement that he report to ICE whenever

1 instructed. Such stringent requirements “impose[] conditions which significantly confine and
 2 restrain his freedom; this is enough to keep him in the ‘custody’ of [the DHS] within the meaning
 3 of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also*
 4 *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (“*Rodriguez I*”) (holding that comparable supervision
 5 requirements constitute “custody” sufficient to support habeas jurisdiction).

6 JURISDICTION

7 16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
 8 federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*,
 9 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United
 10 States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the
 11 common law.

12 17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
 13 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner’s rights
 14 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
 15 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
 16 a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
 17 (2001); *Zadvydas*, 533 U.S. 678.

18 REQUIREMENTS OF 28 U.S.C. § 2243

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

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

20. 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

21. 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 Northern District of California; because Mr. Patel is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California²; and because there is no real property involved in this action.

22. Furthermore, because Mr. Patel is not challenging any present physical confinement but instead the likelihood of his future unlawful re-arrest and re-incarceration on September 11, 2025, during his ICE check-in appointment, the San Francisco ICE Field Office is the proper Respondent-Defendant.

INTRADISTRICT ASSIGNMENT

23. Any decision to re-arrest and re-incarcerate Mr. Patel will be made by the San Francisco Field Office of ICE, and Mr. Patel’s appointment is scheduled before the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco Division of this Court is proper under N.D. Local Rule 3-2(d).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. 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

² U.S. Immigration and Customs Enforcement, *ICE Field Office*, <https://www.ice.gov/contact/field-offices> (stating the San Francisco ICE Field Office’s area of responsibility is, as relevant here, “Northern California.”).

1 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
2 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
3 quotation marks omitted)). Petitioner asserts that exhaustion should be waived because
4 administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

5 25. No statutory exhaustion requirements apply to Mr. Patel’s claim of unlawful custody in
6 violation of his due process rights, and there are no administrative remedies that he needs to
7 exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
8 (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to
9 review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal.
10 2000) (same).

11 PARTIES

12 26. Mr. Patel was born in India and last entered the United States on an H1-B visa on January
13 5, 1999. On April 8, 2004, Mr. Patel adjusted status to lawful permanent resident (i.e., a green
14 card holder) through a petition filed by his United States citizen wife. *See* Shastri Decl. In 2012,
15 Mr. Patel was placed into removal proceedings and ultimately lost his green card. ICE placed
16 Mr. Patel on OSUP from 2012 to 2017 with an ankle monitor. In 2017, based on a request from
17 Mr. Patel for medical reasons, ICE removed the ankle monitor and OSUP, and required Mr. Patel
18 to pay a bond. In December 2024, pursuant to a national policy change, ICE cancelled the bond
19 and re-instated Mr. Patel’s OSUP. For those thirteen years, Mr. Patel has complied with all
20 conditions of release, including attending ICE check-ins and updating his address whenever
21 necessary. Mr. Patel’s next check-in with ICE is scheduled for September 11, 2025.

22 27. Respondent Polly KAISER is the Acting Field Office Director of ICE, in San Francisco,
23 California and is named in her official capacity. ICE is the component of the DHS that is
24 responsible for detaining and removing noncitizens according to immigration law and oversees
25 custody determinations. In her official capacity, she is the legal custodian of Mr. Patel.

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

1 he is the legal custodian of Mr. Patel.

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

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

14 STATEMENT OF FACTS

15 31. Mr. Patel is citizen and national of India who is the husband of a U.S. citizen and father
16 of a U.S. citizen son. His parents and his wife's parents are also United States citizens. He
17 currently lives in the Bay Area and recently underwent a Coronary Artery Bypass Grafting
18 (CABG), a triple bypass surgery, involving 3 to 4 grafts on March 12, 2025. He was admitted
19 into the ICU for a full week and a full recovery can take up to a year according to his doctors.
20 Mr. Patel is being cared for by his U.S. citizen family.

21 32. In 1999, Mr. Patel entered the United States on an H1-B visa. He has resided in the United
22 States for the past 25 years. He adjusted his status to lawful permanent resident through a petition
23 filed by his United States citizen wife on April 8, 2004.

24 33. On April 2, 2007, Mr. Patel was convicted of California PC §§ 664 and 288.2(b) and
25 sentenced to three years of probation and four months in county jail. He completed his sentence
26 and his probation on June 1, 2010, without incident.

27 34. On March 24, 2012, Mr. Patel was detained by Immigration and Customs Enforcement
28 ("ICE") and subsequently issued a Notice to Appear, charging him removal under INA §

1 237(a)(2)(A)(iii) for having been convicted of an aggravated felony offense. He applied to
2 readjust his status (i.e. apply for a second green card) with the Immigration Judge (“IJ”) along
3 with a waiver of inadmissibility pursuant to INA § 212(h). On June 8, 2017, the IJ granted his
4 application for adjustment with the accompanying waiver. However, the Department of
5 Homeland Security (“DHS”) subsequently appealed this decision, and the Board of
6 Immigration Appeals (“BIA”) sustained the appeal. Mr. Patel appealed this decision to the
7 Ninth Circuit Court of Appeals, which found it did not have jurisdiction to review the decision
8 and therefore dismissed the petition for review. Mr. Patel also subsequently filed a motion to
9 reopen with the BIA based on his deficient Notice to Appear. That motion and a subsequent
10 appeal were denied as of February 2023. During his proceedings, ICE placed Mr. Patel on an
11 OSUP from 2012 to 2017 with an ankle monitor. In 2017, based on a request from Mr. Patel
12 for medical reasons, ICE removed the ankle monitor and OSUP, and required Mr. Patel to pay
13 a bond. In December 2024, pursuant to a national policy change, ICE cancelled the bond and
14 re-instated Mr. Patel’s OSUP.

15 35. Currently, Mr. Patel is litigating an appeal of his criminal court case based on legal errors
16 made in respect to his prior conviction, before the California Court of Appeals. His criminal
17 defense counsel anticipates the case to take approximately one year to resolve, and if he were to
18 be removed while the appeal was pending, the court may dismiss his appeal. *See* Shastri Decl. at
19 Ex. A (ICE Stay of Deportation of Removal filed January 6, 2025, Tab B Evidence of Pending
20 Criminal Court Appeal); *see also id.* at Ex. C (Request to reschedule ICE appointment filed June
21 11, 2025, Tab F ‘Additional Documentation,’ California Court of Appeal Docket, dated June 10,
22 2025).

23 36. Since 2012, Mr. Patel has exercised his right to liberty. He continues to live and work
24 part-time in the United States while recovering from his triple bypass surgery. *See id.* at Ex. B
25 (Request to reschedule ICE appointment filed March 12, 2025, Tab E ‘Additional
26 Documentation’); *see also id.* at Ex. C (Request to reschedule ICE appointment filed June 11,
27 2025, Tab F ‘Additional Documentation’). He plays an integral role in the life of his U.S. citizen
28 family. *Id.* at Ex. A (ICE Stay of Deportation of Removal filed January 6, 2025, Tab A

1 'Identification Documents', Tab C 'Evidence of Hardship to Hiren Patel and His Family,' and
2 Tab D 'Evidence of Mr. Patel's Close Ties to the United States and Good Moral Character). Mr.
3 Patel has continued to experience "extreme physical weakness, fluctuating blood pressure and
4 blood sugar levels, and has lost approximately 20 pounds. His surgical wound is still healing,
5 and he is currently enrolled in a supervised cardiac rehabilitation program to aid in his recovery."
6 *Id.* at Ex. C (Request to reschedule ICE appointment filed June 11, 2025, Tab F 'Additional
7 Documentation,' Medical Letter by Dr. Beygui dated June 2, 2025).

8 37. Mr. Patel's next in-person appointment with ICE is scheduled for Thursday, September
9 11, 2025.

10 38. For more than thirteen years, Mr. Patel has remained in full compliance with his OSUP
11 following his release from brief detention in 2012, and ICE has not sought his re-detention. Mr.
12 Patel has secured employment, rebuilt his life, and become a productive and well-respected
13 member of the community. Shastri Decl. He is not at all the type of person for whom re-
14 incarceration is required.

15 39. Due to his medical emergency and recovery, Mr. Patel has successfully rescheduled his
16 ICE check in-appointments. He last physically appeared at his ICE check-in on January 6, 2025.
17 After his triple bypass surgery on March 12, 2025, his wife appeared on his behalf for his April
18 8, 2025 and June 12, 2025 ICE check-in appointments with updated documents to prove his
19 medical condition and pending appeal. On June 12, 2025, ICE scheduled him to appear again
20 on September 11, 2025. *See* Ex. D (OSUP and bond documents).

21 40. On information and belief, on January 25, 2025, officials in the new Trump
22 administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically,
23 each field office was instructed to make seventy-five arrests per day.³

24 41. Multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the
25 Sacramento Area, San Francisco Bay Area, Los Angeles, and across the country who have
26

27
28 ³ *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan.
26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.⁴

2 42. In recent months, ICE has engaged in highly publicized arrests of individuals who
3 presented no flight risk or danger, often with no prior notice that anything regarding their status
4 was amiss or problematic, whisking them away to faraway detention centers without warning.⁵

5 43. Decisions issued by other courts in this District and the Eastern of District of California
6 further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight
7 risks or dangers to the community, including when their removals from the United States are not
8 reasonably foreseeable. *See, e.g., Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2
9 (“Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either
10 country because he is stateless, the officer told Petitioner-Plaintiff that
11 ‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7;
12 *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d -
13

14 ⁴ *See supra* n.2; “ICE arrests at Sacramento immigration courts raises fear among immigrant
15 community,” KCRA (June 3, 2025), [https://www.kcra.com/article/ice-arrests-sacramento-](https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405)
16 [immigration-courts-lawyers-advocacy-groups/64951405](https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405); “ICE confirms arrests made in South
17 San Jose,” NBC Bay Area (June 4, 2025), [https://www.nbcbayarea.com/news/local/ice-agents-](https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/)
18 [san-jose-market/3884432/](https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/) (“The Rapid Response Network, an immigrant watchdog group, said
19 immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program
20 – for what are usually routine appointments to check on their immigration status. But the
21 immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for
22 processing and apparently to be taken to a detention center, the Rapid Response Network said.”);
23 “ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say,” San
24 Francisco Chronicle (June 5, 2025), [https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-](https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php)
25 [immigration-trump-20362755.php](https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php); “Cincinnati high school graduate faces deportation after
26 routine ICE check-in,” ABC News (June 9, 2025), [https://abcnews.go.com/US/cincinnati-high-](https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262)
27 [school-graduate-faces-deportation-after-routine/story?id=122652262](https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262).

28 ⁵ *See, e.g.,* McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y.
Times (Mar. 15, 2025), *available at*
<https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
(Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the
Tufts University PhD student detained by federal agents,” CNN (Mar. 28, 2025),
<https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
(Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein,
Trump is seeking to deport another academic who is legally in the country, lawsuit says, Politico
(Mar. 19, 2025), *available at* [https://www.politico.com/news/2025/03/19/trump-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
[deportationgeorgetown-graduate-student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington,
Virginia and transferred to Texas).

---, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

44. On September 2, 2025, undersigned Counsel contacted the U.S. Attorney's Office for the Northern District of California to request assurances from ICE that it would not re-arrest and re-incarcerate Mr. Patel on September 11, 2025. Shastri Decl. ICE did not provide any such assurances. *Id.*

45. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and the fact that ICE has not provided assurances that it will not re-arrest and re-incarcerate Mr. Patel, it is highly likely Mr. Patel will be arrested and incarcerated at his appointment. This is true even though Mr. Patel is neither a flight risk nor a danger to the community and despite ICE not having a travel document that would enable the agency to effectuate his removal from the United States. He faces the very real possibility of being re-incarcerated and transferred out of the District, far away from his family and community.

46. Intervention from this Court is therefore required to ensure that Mr. Patel is not (1) unlawfully re-arrested and re-incarcerated and (2) held in unjustified, prolonged, and indefinite custody.

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

47. Following a final order of removal, ICE is directed by statute to detain an individual for ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

48. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic

1 reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the
2 alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist.
3 Specifically, ICE “may” detain an individual beyond ninety days if the individual was ordered
4 removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. §
5 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under
6 such circumstances is not boundless. Rather, it is constrained by the constitutional requirement
7 that detention “bear a reasonable relationship to the purpose for which the individual [was]
8 committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order
9 detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if
10 removal cannot be effectuated. *Id.* at 697.

11 49. Post-final order detention is only authorized for a “period reasonably necessary to secure
12 removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701.
13 After this six (6) month period, if a detainee provides “good reason” to believe that their removal
14 is not significantly likely in the reasonably foreseeable future, “the Government must respond
15 with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the
16 individual must be released.

17 50. That said, detainees are entitled to release even before six months of detention, as long
18 as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after
19 ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-
20 order detention grows, what counts as “reasonably foreseeable” must conversely shrink.
21 *Zadvydas*, 533 U.S. at 701.

22 51. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
23 detention violates the Due Process Clause unless it is “reasonably related” to the government’s
24 purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal
25 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
26 further crimes as a factor potentially justifying confinement within that reasonable removal
27 period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
28 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing

1 flight and protecting the community). In this case, Mr. Patel does not pose a danger or flight risk
2 that warrants post-final-order detention, regardless of whether his removal can be effectuated
3 within a reasonable period of time, and thus should not be taken into custody. This is especially
4 so because ICE has *already* released Mr. Patel from detention because he is neither a flight risk
5 nor a danger to the community. *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL
6 1918679, at *2 (“DHS, at least implicitly, made a finding that petitioner was not a flight risk
7 when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3
8 & n.6 (S.D.N.Y. June 18, 2025)).

9 52. The government’s own regulations contemplate this requirement. They dictate that even
10 after ICE determines that removal is reasonably foreseeable—and that detention therefore does
11 not per se exceed statutory authority—the government must still determine whether continued
12 detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that
13 where removal is reasonably foreseeable, “detention will continue to be governed under the
14 established standards” in 8 C.F.R. § 241.4).

15 53. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even
16 before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE
17 to conduct “90-day custody reviews” prior to expiration of the ninety-day removal period and to
18 consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among
19 the factors to be considered in these custody reviews are “ties to the United States such as the
20 number of close relatives residing here lawfully”; whether the noncitizen “is a significant flight
21 risk”; and “any other information that is probative of whether” the noncitizen is likely to “adjust
22 to life in a community,” “engage in future acts of violence,” “engage in future criminal activity,”
23 pose a danger to themselves or others, or “violate the conditions of his or her release from
24 immigration custody pending removal from the United States.” *Id.*

25 54. Individuals with final orders who are released after a post-order custody review are
26 subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been
27 released on an OSUP, as Mr. Patel was, ICE cannot revoke such an order without cause or
28 adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

1 **Mr. Patel's Protected Liberty Interest in His Release**

2 55. Mr. Patel's liberty from immigration custody is protected by the Due Process Clause:
 3 "Freedom from imprisonment—from government custody, detention, or other forms of physical
 4 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533
 5 U.S. at 690 (2001).

6 56. Since 2012, Mr. Patel exercised that freedom pursuant to his prior release from custody
 7 by ICE and placement on an OSUP and bond. *See* Shastri Decl. at Ex. D (OSUP and bond
 8 documents). He thus retains a weighty liberty interest under the Due Process Clause of the Fifth
 9 Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997);
 10 *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483
 11 (1972); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("even when ICE has the initial
 12 discretion to detain or release a noncitizen pending removal proceedings, after that individual is
 13 released from custody she has a protected liberty interest in remaining out of custody").

14 57. Detainees in civil ICE custody are held in "prison-like conditions" which have real
 15 consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the
 16 Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on
 17 the individual. It often means loss of a job; it disrupts family life; and it enforces idleness."
 18 *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v.*
 19 *INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in
 20 "concrete terms the irreparable harms imposed on anyone subject to immigration detention"
 21 including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens
 22 imposed on detainees and their families as a result of detention, and the collateral harms to
 23 children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the
 24 government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.,*
 25 DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE
 26 Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental
 27 health and safety standards; staffing shortages affecting the level of care detainees received for
 28 suicide watch, and detainees being held in administrative segregation in unauthorized restraints,

1 without being allowed time outside their cell, and with no documentation that they were provided
2 health care or three meals a day). In this case, Mr. Patel's health conditions, including his triple
3 bypass surgery on March 12, 2025, also place him at greater risk for contracting disease or dying
4 at an ICE detention facility with delayed or substandard medical care on record.⁶

5 58. Moreover, the Supreme Court has recognized that post-removal order detention is
6 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
7 701. In this case, in the absence of a travel document from India that actually permits Mr. Patel's
8 removal to India, his removal is not foreseeable at all, let alone reasonably. With his health
9 condition, an indefinite detention would be detrimental and likely lethal. Therefore, his re-
10 detention would be unconstitutional.

11 59. Just as importantly, Mr. Patel continued presenting himself before ICE for his regular
12 check-in appointments for the past thirteen years, where ICE did not seek to re-arrest him during
13 this time. ICE instead gave him a future date and time to appear again.

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

24 61. This basic principle—that individuals have a liberty interest in their conditional release—
25 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
26 *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created
27

28 ⁶ AILA's Deaths at Adult Detention Centers: <https://www.aila.org/deaths-at-adult-detention-centers> (last visited September 8, 2025)l.

1 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation
2 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation
3 have a protected liberty interest requiring pre-deprivation process). As the First Circuit has
4 explained, when analyzing the issue of whether a specific conditional release rises to the level
5 of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
6 conditional release in the case before them with the liberty interest in parole as characterized by
7 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
8 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683
9 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
10 lawfully revocable—has a liberty interest that entitles him to constitutional due process before
11 he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
12 408 U.S. at 482).

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

21 63. Here, when this Court “compar[es] the specific conditional release in [Mr. Patel’s case],
22 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
23 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Patel’s
24 release “enables him to do a wide range of things open to persons” who have never been in
25 custody or convicted of any crime, including to live at home, work, and “be with family and
26 friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

27 64. Mr. Patel has complied with all conditions of release or bond for over thirteen years. He
28 has a pending appeal before the California Court of Appeals. In addition, his medical condition

1 from having received triple bypass surgery on March 12, 2025 requires constant medical
2 attention.

3 **Mr. Patel's Liberty Interest Mandates a Hearing Before any Re-Arrest**

4 65. Mr. Patel asserts that, here, (1) where his detention would be civil, (2) where he has been
5 at liberty for over thirteen years, during which time he has complied with all conditions of
6 release, (3) where he has a substantial claim for post-conviction relief and possible reopening
7 and restoration of his green card status, (4) where no change in circumstances exist that would
8 justify his detention, and (5) where the only circumstance that has changed is ICE's move to
9 arrest as many people as possible because of the new administration, due process mandates that
10 he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

11 66. "Adequate, or due, process depends upon the nature of the interest affected. The more
12 important the interest and the greater the effect of its impairment, the greater the procedural
13 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769
14 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court
15 must "balance [Mr. Patel's] liberty interest against the [government's] interest in the efficient
16 administration of" its immigration laws in order to determine what process he is owed to ensure
17 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set
18 forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing
19 test: "first, the private interest that will be affected by the official action; second, the risk of an
20 erroneous deprivation of such interest through the procedures used, and the probative value, if
21 any, of additional or substitute procedural safeguards; and finally the government's interest,
22 including the function involved and the fiscal and administrative burdens that the additional or
23 substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews*
24 *v. Eldridge*, 424 U.S. 319, 335 (1976)).

25 67. The Supreme Court "usually has held that the Constitution requires some kind of a
26 hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S.
27 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies
28 are "the only remedies the State could be expected to provide" can post-deprivation process

1 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
2 of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible
3 in preventing the kind of deprivation at issue” such that “the State cannot be required
4 constitutionally to do the impossible by providing predeprivation process,” can the government
5 avoid providing pre-deprivation process. *Id.*

6 68. Because, in this case, the provision of a pre-deprivation hearing is both possible and
7 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Patel
8 with notice and a hearing *prior* to any re-incarceration and revocation of his release. *See*
9 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
10 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
11 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
12 proceedings may not constitutionally be held in jail pending the determination as to whether they
13 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Mr.
14 Patel’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

15 **Mr. Patel’s Private Interest in His Liberty is Profound**

16 69. Under *Morrissey* and its progeny, individuals conditionally released from serving a
17 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
18 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
19 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
20 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
21 force to individuals like Mr. Patel, who have been released pending civil removal proceedings,
22 rather than parolees or probationers who are subject to incarceration as part of a sentence for a
23 criminal conviction. Parolees and probationers have a diminished liberty interest given their
24 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*,
25 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have
26 held that the parolee cannot be re-arrested without a due process hearing in which they can raise
27 any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-*
28 *Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Patel retains a truly weighty

1 liberty interest even though he is under conditional release.

2 70. What is at stake in this case for Mr. Patel is one of the most profound individual interests
3 recognized by our legal system: whether ICE may unilaterally nullify a prior release decision
4 and be able to take away his physical freedom, i.e., his “constitutionally protected interest in
5 avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal
6 quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty
7 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also*
8 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
9 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
10 Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

14 **The Government’s Interest in Re-Incarcerating Mr. Patel Without a Hearing is Low and**
15 **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

16 72. The government’s interest in detaining Mr. Patel without a due process hearing is low,
17 and when weighed against his significant private interest in his liberty, the scale tips sharply in
18 favor of enjoining Respondents from re-arresting Mr. Patel unless and until the government
19 demonstrates by clear and convincing evidence that he is a flight risk or danger to the community.
20 It becomes abundantly clear that the *Mathews* test favors Mr. Patel when the Court considers
21 that the process he seeks—notice and a hearing regarding whether his OSUP should be revoked
22 given that ICE lacks a travel document for him and he is neither a flight risk nor a danger—is a
23 standard course of action for the government. Providing Mr. Patel with a hearing before this
24 Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence
25 that he is a flight risk or danger to the community would impose only a *de minimis* burden on
26 the government, because the government routinely provides this sort of review to individuals in
27 Mr. Patel’s same circumstances. 8 C.F.R. § 241.4(e)-(f).

28 73. Because immigration detention is civil, it can have no punitive purpose. The

1 government's only interests in holding an individual in immigration detention can be to prevent
2 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*
3 *Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention
4 of noncitizens who cannot be removed to the country of the removal order is unconstitutional.
5 In this case, the government cannot plausibly assert that it has a sudden interest in detaining Mr.
6 Patel due to alleged dangerousness, or due to a change in the foreseeability of his removal to
7 India, as his circumstances have not changed since his release from ICE custody in 2012, his
8 removal order in 2019, or his most recent OSUP issuance in December 2024.

9 74. Mr. Patel has continued to appear before ICE on a regular basis for each and every
10 appointment that has been scheduled. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to
11 attach greater importance to a person’s justifiable reliance in maintaining his conditional freedom
12 so long as he abides by the conditions on his release, than to his mere anticipation or hope of
13 freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079,
14 1086 (2d Cir. 1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 (“the government’s
15 decision to release an individual from custody creates ‘an implicit promise,’ upon which that
16 individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ...
17 conditions [of release].’”) (quoting *Morrissey*, 408 U.S. at 482).

18 75. As to flight risk, ICE determined that reporting requirements were sufficient to guard
19 against any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*,
20 533 U.S. at 699. Mr. Patel’s post-release conduct in the form of full compliance with his check-
21 in requirements further confirms that he is not a flight risk and that he is likely to present himself
22 at any future ICE appearances, as he always has done. The government’s interest in detaining
23 him at this time is therefore low. That ICE has a new policy to make a minimum number of
24 arrests each day under the new administration does not constitute a material change in
25 circumstances or increase the government’s interest in detaining him.⁷ *See Singh*, No. 1:25-CV-
26 00801-KES-SKO (HC), 2025 WL 1918679, at *2 (“The law requires a change in relevant facts,
27 not just a change in [the government’s] attitude”) (internal quotations omitted). Moreover,

28 ⁷ *Id.*

1 nothing has changed regarding the lack of foreseeability of his removal to India.

2 76. Continued freedom from confinement until ICE assesses and demonstrated that Mr. Patel
3 is a flight risk or danger to the community, or that his detention is not going to be indefinite, is
4 far *less* costly and burdensome for the government than keeping him detained. As the Ninth
5 Circuit noted in 2017, which remains true today, “[t]he costs to the public of immigration
6 detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5
7 million.” *Hernandez*, 872 F.3d at 996.

8 77. Providing Mr. Patel with a hearing before this Court (or a neutral decisionmaker)
9 regarding any re-arrest is a routine procedure that the government provides to those in
10 immigration jails on a daily basis. At that hearing, the Court would have the opportunity to
11 determine whether circumstances have changed sufficiently to require some amount of bond—
12 or if his release should be revoked. But there is no justifiable reason to re-incarcerate Petitioner
13 prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the
14 State has an “overwhelming interest in being able to return [a parolee] to imprisonment without
15 the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of
16 his parole . . . the State has no interest in revoking parole without some informal procedural
17 guarantees.” 408 U.S. at 483. Moreover, the “fiscal and administrative burdens” that a pre-
18 deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
19 334-35. Mr. Patel does not seek a unique or expensive form of process, but rather a routine
20 hearing regarding whether his release should be revoked and whether he should be re-
21 incarcerated.

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

25 78. Providing Mr. Patel a pre-deprivation hearing would decrease the risk of him being
26 erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with
27 a hearing before a neutral adjudicator at which the government is held to show that there has
28 been sufficiently changed circumstances such that he should be detained, and that clear and
convincing evidence exists to establish that Petitioner is a danger to the community or a flight

1 risk.

2 79. Under the process that ICE maintains is lawful—which affords Mr. Patel no process
3 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk
4 that Mr. Patel will be erroneously deprived of his liberty is high if ICE is permitted to re-
5 incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. §
6 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate
7 Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for
8 an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination
9 and can decide whether the agency wants to hold Mr. Patel. 8 C.F.R. § 241.4(e)-(f).

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

24 81. Due process also requires consideration of alternatives to detention at any hearing that
25 may occur. The primary purpose of immigration detention is to ensure a noncitizen’s appearance
26 during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to
27 this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v.*
28 *Wolfish*, 441 U.S. 520, 538 (1979). In this case, Mr. Patel is prepared to leave on his own if

1 legally required, and thus no arrest or detention is needed to effectuate his removal. Accordingly,
2 alternatives to detention must be considered in determining whether Petitioner's re-incarceration
3 is warranted.

4 **FIRST CAUSE OF ACTION**

5 **Procedural Due Process**

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

7 82. Mr. Patel re-alleges and incorporates herein by reference, as is set forth fully herein, the
8 allegations in all the preceding paragraphs.

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

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

14 85. The Court must therefore order that, prior to any re-arrest, the government must provide
15 him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
16 evaluate, *inter alia*, whether clear and convincing evidence demonstrates that his removal is
17 reasonably foreseeable and that, taking into consideration alternatives to detention, Mr. Patel is
18 a danger to the community or a flight risk, such that his re-incarceration is warranted.

19 **SECOND CAUSE OF ACTION**

20 **Substantive Due Process**

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

22 86. Mr. Patel re-alleges and incorporates herein by reference, as is set forth fully herein, the
23 allegations in all the preceding paragraphs.

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

27 88. Mr. Patel has a vested liberty interest in his conditional release. Due Process does not
28 permit the government to strip him of that liberty without it being tethered to one of the two

1 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
2 community from danger.

3 89. Since 2012, Mr. Patel has complied with the conditions of release imposed on him by
4 ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would
5 be punitive and violate his constitutional right to be free from the unjustified deprivation of his
6 liberty.

7 90. For these reasons, Mr. Patel's re-arrest without first being provided a hearing would
8 violate the Constitution.

9 91. The Court must therefore order that, prior to any re-arrest, the government must provide
10 him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
11 evaluate, *inter alia*, whether clear and convincing evidence demonstrates that his removal is
12 reasonably foreseeable and that, taking into consideration alternatives to detention, Mr. Patel is
13 a danger to the community or a flight risk, such that his re-incarceration is warranted.

14 THIRD CAUSE OF ACTION

15 **Unlawful Re-Detention**

16 92. Mr. Patel re-alleges and incorporates herein by reference, as if set forth fully herein, the
17 allegations in all the preceding paragraphs.

18 93. Mr. Patel was previously released by Respondents because he did not pose a danger or
19 flight risk. As long as he complies with the conditions of his release, Respondents have authority
20 to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. §
21 1231(a)(6).

22 94. Were Respondents to revoke his release, their actions would be arbitrary, capricious, an
23 abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making
24 process involves discretion does not prevent an individual from having a protectable liberty
25 interest. *Young*, 520 U.S. at 150; *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D.
26 Cal 2018). Just like people on pre-parole, parole, probation status, bail, or bond have a liberty
27 interest, so too does Mr. Patel have a liberty interest in remaining out of custody on his Forms I-
28 220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019). He

should therefore be provided a full and fair hearing before a neutral arbiter where the government bears the burden of showing that circumstances have changed such that his removal is reasonably foreseeable, and otherwise evidence of his dangerousness and flight risk is established by clear and convincing evidence. *Id.*

FOURTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations

95. Mr. Patel re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

96. The INA provides for detention during the ninety (90) day “removal period” that begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(d), (f), (h) & (k).

97. Respondents are not permitted to detain Mr. Patel on the basis of his prior order of removal and without establishing to a neutral adjudicator, by clear and convincing evidence, that his removal is reasonably foreseeable and that he is a danger to the community or a flight risk. This is especially true where, as here, ICE has permitted Mr. Patel to live at liberty on OSUP or bond after his removal order for many years. 8 C.F.R. § 241.13(i)(2)-(3).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Enjoin ICE from re-arresting Mr. Patel 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 his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence;

1 a. At any such hearing, the neutral arbiter must consider whether, in lieu
2 of incarceration, alternatives to detention exist to mitigate any risk
3 established by the government;

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

9 a. At any such hearing, the neutral arbiter must consider whether, in lieu
10 of incarceration, alternatives to detention exist to mitigate any risk
11 established by the government;

12 (4) Award reasonable costs and attorney fees; and

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

14 Dated: September 9, 2025

Respectfully submitted,

15 /s/ Avantika Shastri

16 Avantika Shastri

17 Chloe Czabaranek

18 Attorneys for Mr. Patel
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this September 9, 2025, in San Francisco, California.

/s/ Avantika Shastri
Avantika Shastri
Attorney for Mr. Patel