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OF THE SAN FRANCISCO BAY AREA

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEX RIVERA GIORGES and SOKHA KHAN,

Petitioners-Plaintiffs,

v.

POLLY KAISER, in her official capacity, Acting  
San Francisco Field Office Director, U.S.  
Immigration and Customs Enforcement;

TODD M. LYONS, in his official capacity, Acting  
Director, U.S. Immigration and Customs  
Enforcement;

KRISTI NOEM, in her official Capacity, Secretary  
of the U.S. Department of Homeland Security; and

PAMELA BONDI, in her official capacity,  
Attorney General of the United States,

Respondents-Defendants.

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

Case No. \_\_\_\_\_

Petition for Writ of Habeas Corpus and Complaint  
For Declaratory and Injunctive relief

INTRODUCTION

1. Petitioners-Plaintiffs Alex Rivera Georges and Sokha Khan (“Petitioners”) bring this petition for writ of habeas corpus and complaint for injunctive and declaratory relief, and accompanying *ex parte* motion for a temporary restraining order, to prevent Respondents-Defendants, including the Department of Homeland Security (“DHS” or “the Department”) and Immigration and Customs Enforcement (“ICE”), from unlawfully re-detaining either of them absent any evidence that they pose a current flight risk or danger to the community, and without the process due to them under the Fifth Amendment to the U.S. Constitution. **Petitioners are also filing an *ex parte* motion for temporary restraining order, given that just yesterday ICE abruptly instructed Mr. Khan that he must appear at ICE’s office tomorrow for an unscheduled check-in and Mr. Rivera must check in on Monday. Thus, both are likely to be imminently arrested by ICE.**

2. Petitioners belong to a unique set of individuals who were released from ICE custody pursuant to the individualized bail evaluation process in *Zepeda Rivas v. Jennings*, No. 3:20-cv-2731 (N.D. Cal.) (hereinafter “*Zepeda Rivas*”), a class action lawsuit challenging crowded conditions of custody in the ICE San Francisco Field Office’s detention centers during the COVID-19 pandemic. The immigration statute, specifically 8 U.S.C. § 1226(c), would generally prevent review by an immigration judge of whether detaining Petitioners was necessary to prevent flight risk or danger. But due to COVID-19 and through the *Zepeda Rivas* case, the statutory presumption that their detention validly served those purposes was gave way to individualized review by a federal judge. *See Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 40 (N.D. Cal. 2020). Judge Chhabria noted that in the bail process, “care will be taken both to avoid releasing detainees

1 who are a danger to the community and to minimize the possibility that released detainees will  
2 fail to appear for their removal proceedings.” *Id.*

3 3. The judgment of the court in *Zepeda Rivas* has been borne out by these two Petitioners  
4 having stayed on the straight and narrow since being released. Indeed, even in the months since  
5 the settlement expired, ICE apparently has not deemed it necessary to re-detain them in service  
6 of preventing flight risk or danger. Now, however, undersigned counsel is informed that ICE has  
7 begun re-detaining *Zepeda Rivas* class members, ostensibly without regard to their individual  
8 circumstances, and each Petitioner here has an imminent ICE check-in at which their arrest is  
9 more likely than not.  
10

11 4. During the over five years Mr. Rivera has been free from ICE detention, he has remained  
12 employed at a non-profit organization that provides shelter to disabled and medically vulnerable  
13 unhoused people, volunteered at local food banks, and developed healthy friendships. Mr. Rivera  
14 has complied with conditions of release and does not have any new criminal arrests, charges, or  
15 convictions.  
16

17 5. Since being released from ICE detention, Mr. Khan lived with and assisted his mother,  
18 who is 66 years old. She suffers from high cholesterol, diabetes, and high blood pressure. These  
19 conditions require her to take medications three times a day, attend regular medical appointments,  
20 and monitor her symptoms closely. Mr. Khan is her primary caretaker. Mr. Khan has complied  
21 with conditions of his release and does not have any new criminal arrests, charges, or convictions.  
22

23 6. Petitioners’ conduct since their release has bolstered the finding inherent in their bail  
24 orders—further underscored by ICE’s decision to not seek their re-detention during the pendency  
25 of the Settlement Agreement and since its expiration three months ago—that neither is a danger  
26 or flight risk.  
27  
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7. Petitioners live in fear that the ICE will re-detain them and keep them detained indefinitely. It is well established, however, that immigration detention is unlawful when it lacks a “reasonable relation” to its two legitimate purposes: protecting the community and preventing flight. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Moreover, Petitioners have a liberty interest in their freedom, and the Fifth Amendment’s Due Process Clause mandates certain procedural protections be afforded to them prior to any re-detention. At a minimum, due process requires that they receive notice and a hearing *prior* to the deprivation of their liberty.

### JURISDICTION

8. This action arises under the Fifth Amendment to the United States Constitution.

9. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C. §§ 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the U.S. Constitution.

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

### VENUE

11. Venue is properly before this Court pursuant to 28 USC Section 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 or will occur in the Northern District of California; because one of the Respondents resides in this District; and because there is no real property involved in this action. *See* 28 USC § 1391(e)(1)(A).



**DIVISIONAL ASSIGNMENT**

12. Petitioners are at risk of re-detention by the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco or Oakland Division of this Court is proper under N.D. Local Rule 3-2(d).

**PARTIES**

13. Petitioner Alex Rivera Giorges was born in El Salvador and moved to the United States as a child at 11 years old. Mr. Rivera was released from ICE custody pursuant to this Court's order in *Zepeda Rivas*. Since that time, he has complied with all conditions of release and supervision. In his immigration case, most recently, the Ninth Circuit remanded Mr. Rivera's immigration case back to the Executive Office of Immigration Review ("EOIR"), which houses the immigration courts and the Board of Immigration Appeals ("BIA"), where his meritorious motion to reopen his proceedings to pursue protection from removal under the Convention Against Torture remains pending. Mr. Rivera is likely to be re-detained on September 15, 2025 at the San Francisco ICE Field Office.

14. Petitioner Sokha Khan was born in Phanat Nikhom Refugee Camp in Chonburi Province, Thailand, in 1980. His parents left Cambodia and fled with family to Thailand due to the violence, political instability, and persecution in their home country. Since the age of two, Mr. Khan has lived in the United States and has never returned to Thailand or Cambodia. Mr. Khan's immigration case is before the Concord Immigration Court, where his immigration attorney has filed a Motion to Terminate his proceedings due to a noncompliant notice to appear under *Matter of R-T-P*, 28 I&N Dec. 828 (BIA 2024). DHS must respond to this Motion to Terminate by September 26, 2025. His Immigration Attorney must respond by October 24, 2025. Immigration Judge Justin Price has set his next hearing to rule on the motion to terminate on December 23,

2025. If the Immigration Judge finds that Mr. Khan's Notice to Appear is defective then his case will be terminated, and he would be restored to Lawful Permanent Resident status. Mr. Khan also has an upcoming hearing before the Superior Court of California, County of San Joaquin on September 18, 2025, regarding his Motion to Vacate Conviction and Sentence Pursuant to Penal Code Section 1473.7. If the court vacates Mr. Khan's convictions, he could move to terminate his removal proceedings, and he would be restored to Lawful Permanent Resident status.

15. Respondent Polly Kaiser is the Acting Field Office Director of ICE, in San Francisco, California, and is named in her official capacity. She maintains her office in San Francisco, California, within this judicial district. The San Francisco Field Office is responsible for carrying out ICE's immigration detention operations throughout Northern California, where Mr. Rivera and Mr. Khan currently reside. Respondent Kaiser is a legal custodian of Petitioners.

16. Respondent Todd M. Lyons is the Acting Director of ICE and is named in his official capacity. ICE, a component of the DHS, is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the civil detention of immigrants. Respondent Lyons is a legal custodian of Petitioners.

17. Respondent Kristi Noem is the Secretary of the DHS and is named in her official capacity. She has authority over the detention and departure of noncitizens, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Given this authority, Respondent Noem is the ultimate legal custodian over Petitioners and is empowered to carry out any administrative order against them.

18. Respondent Pamela Bondi is the Attorney General of the United States and the most senior

1 official at the Department of Justice and is named in her official capacity. She is responsible for  
2 overseeing the implementation and enforcement of the federal immigration laws. The Attorney  
3 General delegates this responsibility to the EOIR, which administers the immigration courts and  
4 the BIA.  
5

### 6 7 **THE ZEPEDA RIVAS BAIL PROCESS**

8 19. At the outset of the *Zepeda Rivas* litigation, ICE released class members independently of  
9 court order, through its authority to release noncitizens who do not pose a risk of flight or danger  
10 to the community. 8 C.F.R. § 236.1(c)(8).  
11

12 20. This Court also considered bail applications for hundreds of class members. In the bail  
13 process, a class member was required to disclose detailed information regarding their individual  
14 circumstances, including all prior criminal convictions, any pending criminal charges or  
15 outstanding warrants, proposed residence, community ties, employment history. *Zepeda Rivas*,  
16 Draft Short Form Bail Application Template, Dkt. 65 (N.D. Cal. May 1, 2020).  
17

18 21. Class members bore a heavy burden to establish eligibility for release; the court ordered  
19 that “no detainee will be released unless they have demonstrated extraordinary circumstances  
20 justifying release while the habeas petition is pending, based on a consideration of the following  
21 factors: (i) the likelihood that the class will ultimately prevail on its habeas petition; (ii) the risk  
22 posed to the detainee by current conditions at the facilities; (iii) the likelihood that the detainee  
23 will not be a danger to the community if released with conditions; and (iv) the likelihood that the  
24 detainee will appear for subsequent immigration/removal proceedings as required.” *Zepeda Rivas*,  
25 Dkt. 90 (“Standard for Considering Bail Requests”) (N.D. Cal. May 4, 2020).  
26  
27  
28



22. After plaintiffs submitted a bail application for a class member, the government had the opportunity to respond (and vigorously contested release), and the court denied a number of applications. *Zepeda Rivas*, 465 F. Supp. 3d 1028, 1030 (N.D. Cal. 2020). The court imposed numerous conditions of release on class members granted bail, which included a requirement to submit to location monitoring as directed by ICE. *Zepeda Rivas*, Dkt. 108, 369, 502, 543. The Ninth Circuit upheld the district court's authority to release class members on bail and declined to reverse any bail orders the district court issued. *Zepeda Rivas v. Jennings*, 845 F. App'x 530, 535 (9th Cir. 2021).

23. On June 9, 2022, the district court approved a Settlement Agreement resolving the *Zepeda Rivas* litigation, which remained in effect until June 9, 2025. *Zepeda Rivas*, Dkt. 1205, Ex. A. Under the Settlement Agreement, ICE was permitted to re-detain class members if a class member "pose[d] a threat to public safety or national security, and/or a risk of flight" based on the satisfaction of certain criteria. *Id.* at III.A-B. At no point while the Settlement Agreement was in effect did ICE allege that Petitioners posed a flight risk or danger to the community or seek Petitioners' re-detention.

#### PETITIONERS' CUSTODY

24. Mr. Rivera was in ICE custody for over 11 months, from June 15, 2019 to June 4, 2020. This Court in *Zepeda Rivas* ordered ICE to release Mr. Rivera on May 23, 2020. Declaration of Jordan Wells ("Wells Dec.") at Ex. A. At that time, the only condition that Judge Chhabria saw fit to impose on Mr. Rivera's bail grant was for "class counsel [to] certify to ICE that space [wa]s available for . . . [Petitioner] at the transitional facility" that was identified for him. *Id.* Upon Mr. Rivera's release, ICE installed an ankle monitor on Mr. Rivera. Declaration of Kathleen Kavanagh ("Kavanagh Dec."), ¶ 10. Less than four years later, ICE served Mr. Rivera with an



1 Order of Supervision and enrolled him in the Intensive Supervision Appearance Program  
2 (“ISAP”). *Id.* Pursuant to Mr. Rivera’s Order of Supervision, ICE requires him to appear at the  
3 San Francisco ICE Field Office, located at 630 Sansome Street San Francisco, CA 9411, on  
4 designated dates. *Id.* ICE also monitors Mr. Rivera through ISAP through a smartphone  
5 application, virtual check-ins, and in-person check-ins. *Id.* He is required to appear at a check-in  
6 appointment in person soon on September 15, 2025. Such stringent requirements “impose[]  
7 conditions which significantly confine and restrain his freedom; this is enough to keep him in the  
8 ‘custody’ of [DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371  
9 U.S. 236, 243 (1963); *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (“*Rodriguez F*”) (holding  
10 that comparable supervision requirements constitute “custody” sufficient to support habeas  
11 jurisdiction).

14 25. Mr. Khan’s bail application pursuant to the *Zepeda Rivas* bail process explained that he  
15 was not a danger, since, among other things, the California Parole Board found that he did not  
16 pose a risk to public safety. The application also explained that Mr. Khan was not a flight  
17 risk. Judge Chhabria granted Mr. Khan’s bail application on July 21, 2010, after which ICE  
18 released him. A few months after his release, ICE imposed more monitoring conditions upon Mr.  
19 Khan. ICE served Mr. Khan with an Order of Supervision and enrolled him in ISAP, both of  
20 which require regular in-person check-in appointments with ICE. Mr. Khan has always reported  
21 as required for his Order of Supervision and ISAP check-ins. Mr. Khan has endured life with the  
22 ankle monitor for over four years, which makes him socially isolated and physically  
23 uncomfortable. Yesterday, ICE abruptly instructed Mr. Khan that he must appear at ICE’s office  
24 tomorrow for an unscheduled check-in.

**ADDITIONAL BACKGROUND**

**Alex Rivera Giorges**

***Childhood and Early Life***

26. Mr. Rivera was born in El Salvador. His parents left El Salvador to the United States when he was very young, so he lived with an aunt during his early childhood.

27. Life in El Salvador was traumatic for Mr. Rivera. Mr. Rivera's aunt neglected him both emotionally and physically. His parents rarely inquired about his wellbeing, and when they did, they only spoke with Mr. Rivera's aunt and never directly to him. Outside of his aunt's home, Mr. Rivera witnessed shootings, murders, and he endured physical abuse.

28. At age 11, he entered the United States as a Lawful Permanent Resident on August 6, 1980. Mr. Rivera went to live with his parents in Los Angeles, California, but even in the new environment, Mr. Rivera continued to suffer neglect and physical abuse.

29. To cope with loneliness and his lack of safety, Mr. Rivera sought protection among a gang of other young kids in his neighborhood. He began to engage in unlawful conduct, including theft and fighting, and he spent time at a juvenile correctional facility.

30. Mr. Rivera's negative associations and conduct continued into young adulthood, when at only 22 years old in July 1992, he was convicted of second-degree murder and conspiracy. Mr. Rivera spent over two decades in criminal custody.

31. While incarcerated, Mr. Rivera was diagnosed with follicular lymphoma in 2014. He underwent about six months of chemotherapy.

32. During his treatment and remission, Mr. Rivera cut all associations with gang members. He began participating in self-help and rehabilitations groups, earned his G.E.D., took classes on criminal thinking, anger management, denial management, Careless Youth Corrected

1 by Lifers' Experiences (CYCLE), Criminals & Gang Members Anonymous (CGA), and many  
2 others. Mr. Rivera also participated in Alcoholics Anonymous and has been sober for 25 years.

3 33. In March 2019, the California Parole Board found that Mr. Rivera was suitable for release  
4 into the community and granted him parole. Petty Dec. Ex. X. But upon his release from criminal  
5 custody, ICE arrested and detained Mr. Rivera on June 25, 2019.

7 ***ICE Detention and Release***

8 34. ICE detained Mr. Rivera at Yuba County Jail in Marysville, California, a facility notorious  
9 for lack of medical care, inadequate hygiene, excessive solitary confinement use, and other abuses.  
10 *See, e.g., Tyche Hendricks, 'Waste of Federal Funds': ICE Ends Contract with Northern*  
11 *California Jail After Years of Outage Over Conditions*, KQED (Dec. 9, 2022),  
12 [https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-](https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions)  
13 [jail-after-years-of-outrage-over-conditions](https://www.kqed.org/news/11934879/waste-of-federal-funds-ice-ends-contract-with-norcal-jail-after-years-of-outrage-over-conditions).

15 35. On April 20, 2020, a class action was filed regarding unlawful conditions of confinement  
16 at Yuba County Jail and Mesa Verde ICE Processing Center that exposed people detained there  
17 to COVID-19 infection and health complications. *Zepeda Rivas v. Jennings*, No. 20-cv-02731-  
18 VC, ECF 1 (N.D. Cal. filed April 20, 2020).

20 36. On April 29, 2020, Judge Chhabria granted provisional class certification and a temporary  
21 restraining order. *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36 (N.D. Cal. 2020). The order  
22 created a process for individual class members to submit bail applications for the court's  
23 consideration, with specific information including the applicants' criminal history. *Id.* at 41-42.  
24 In granting release on bail after careful evaluation, the court stated that it would "avoid releasing  
25 detainees who are a danger to the community and . . . minimize the possibility that released  
26 detainees will fail to appear for their removal proceedings." *Id.* at 40.



1 37. Mr. Rivera submitted his bail application pursuant to the *Zepeda Rivas* temporary  
2 restraining order on May 13, 2020. The application explained that Mr. Rivera was not a danger  
3 especially since, among other things, the California Parole Board found that he did not pose a risk  
4 to public safety. The application also explained that Mr. Rivera was not a flight risk because of  
5 his extensive family network in California, enrollment in transitional housing and re-entry  
6 programs, pending applications for immigration relief, and ongoing support from his *pro bono*  
7 attorney and social worker.  
8

9 38. Judge Chhabria granted Mr. Rivera's bail application ten days later on May 23, 2020, and  
10 only imposed the condition that class counsel certify to ICE that space in the transitional housing  
11 facility was available for him. Wells Dec. at Ex. A.  
12

13 39. ICE fitted Mr. Rivera with an ankle monitor and released him on June 4, 2020.  
14

15 ***Life after ICE Detention***

16 40. Almost immediately after his release, Mr. Rivera started working for a non-profit  
17 organization in the Bay Area that provides safe shelter to people with disabilities and medical  
18 vulnerabilities who lack access to stable housing. In just his first year, he was recognized as  
19 "Employee of the Month" twice and he was later promoted to a supervisory position. Mr. Rivera  
20 remains employed at the organization to this day.  
21

22 41. In addition to his work, Mr. Rivera also volunteers at local food banks, rides his bike, and  
23 keeps in touch with friends. He took courses to earn back his driver's license and diligently saved  
24 money until he was able to purchase himself a car and pay for car insurance. He has a bank  
25 account, pays taxes, and rents his apartment.  
26

27 42. A few months after his release, on October 1, 2024, ICE imposed more monitoring  
28 conditions upon Mr. Rivera. ICE served Mr. Rivera with an Order of Supervision and enrolled



1 him in the Intensive Supervision Appearance Program (“ISAP”), both of which require regular  
2 in-person check-in appointments with ICE. Additionally through ISAP, ICE monitored Mr.  
3 Rivera via a smartphone application that also enabled virtual check-in appointments. Mr. Rivera  
4 has always reported as required for his Order of Supervision and ISAP check-ins.  
5

6 43. Mr. Rivera endured life with the ankle monitor for over four years, which made him  
7 socially isolated and physically uncomfortable.

8 44. Due to the geographic restrictions imposed by ICE, Mr. Rivera has had to turn down  
9 opportunities at his workplace to transport unsheltered people to their medical appointments,  
10 which he finds to be important and meaningful work.  
11

12 45. Finally, in February 2025, ICE removed Mr. Rivera’s ankle monitor. After the ankle  
13 monitor was removed, Mr. Rivera continued to comply with his check-in requirements.

14 *Immigration Proceedings*

15 46. ICE initiated removal proceedings against Mr. Rivera back in June 2019 when ICE  
16 detained him upon his release on parole from criminal custody. ICE filed a Notice to Appear  
17 (“NTA”) with the Immigration Court. The NTA charged Mr. Rivera-Giorges as removable from  
18 the United States due to his July 29, 1992 conviction under California Penal Code § 187(a).  
19

20 47. Since then, Mr. Rivera’s immigration proceedings have proceeded before the immigration  
21 court, the Board of Immigration Appeals (“BIA”), and the Ninth Circuit. Most recently at the  
22 Ninth Circuit, the Government filed an Unopposed Motion to Remand Mr. Rivera’s proceedings  
23 to the BIA for further consideration of his claim for protection under the Convention Against  
24 Torture (“CAT”). The Ninth Circuit granted the unopposed motion and remanded Mr. Rivera’s  
25 case to the BIA on November 25, 2024.  
26

27 48. Now back at the BIA, Mr. Rivera is seeking relief that would reopen his immigration  
28

1 proceedings such that he can supplement his application for CAT protection. The matter is  
2 awaiting decision.

3 49. In addition to his pending request to reopen his immigration proceedings, Mr. Rivera is  
4 preparing to file an Application for Gubernatorial Pardon with the Governor of California. If  
5 granted, Mr. Rivera would have grounds to terminate his removal proceedings because he would  
6 no longer be removable and could restore his Lawful Permanent Resident status.

7 50. Since November 2019, Mr. Rivera has been represented *pro bono* by Kathleen Kavanagh,  
8 who has diligently represented him countless matters including his *Zepeda Rivas* bail application,  
9 immigration proceedings, and pardon application. Ms. Kavanagh believes that Mr. Rivera's  
10 pending BIA motion and soon-to-be-filed request for a governor's pardon to be meritorious.  
11

12  
13 **Sokha Khan**

14 51. Mr. Khan was born in Phanat Nikhom Refugee Camp in Chonburi Province, Thailand, in  
15 1980. His parents left Cambodia and fled with family to Thailand due to the violence, political  
16 instability, and persecution in their home country. Since the age of two, Mr. Khan has lived in  
17 the United States and has never returned to Thailand or Cambodia.  
18

19 52. On June 15, 1983, Mr. Khan was admitted to the United States at San Francisco, California  
20 as a Refugee. He adjusted to Lawful Permanent Resident status on November 29, 1989,  
21 retroactive to June 15, 1983, under section 209(a) of the Immigration and Nationality Act.  
22

23 53. Mr. Khan is a single father of three children ranging from 3 to 22 years old, all born in Stockton,  
24 California. Mr. Khan's mother is a United States Citizen, and his father is a Lawful Permanent  
25 Resident. Mr. Khan was convicted before the Superior Court of California, County of San Joaquin,  
26 of felonies under Section 211, CPC 212.5 (A), and CPC 188.22 (B)(1) on January 4, 2006. When  
27 he entered his nolo contendere pleas, he was 25 years old and had been residing in the United  
28

1 States continually for the previous 22 years. He was married and had two daughters who were  
2 four and two years old. When he pled nolo contendere to the charges, he had no prior criminal  
3 history.

4  
5 54. On June 22, 2020, Mr. Khan was released from prison, and he received a notice to appear  
6 for removal proceedings. He was transferred from prison directly to ICE custody, and he was  
7 released on an ankle monitor about one month later pursuant to the *Zepeda Rivas* bail process.  
8 Wells Dec. at Ex. B.

9  
10 55. Since being released from ICE detention, Mr. Sokha has lived with his mother, who is 66  
11 years old. She suffers from high cholesterol, diabetes, and high blood pressure. These conditions  
12 require her to take medications three times a day, attend regular medical appointments, and  
13 monitor her symptoms closely. Mr. Khan is her caretaker.

14 56. As stated above, Mr. Khan's case is before the Concord Immigration Court, where his  
15 immigration attorney has filed a Motion to Terminate his proceedings due to a noncompliant  
16 notice to appear under *Matter of R-T-P*, 28 I&N Dec. 828 (BIA 2024). The Department of  
17 Homeland Security must respond to this Motion to Terminate by September 26, 2025. His  
18 Immigration Attorney must respond by October 24, 2025. Immigration Judge Justin Price has set  
19 his next hearing to rule on the motion to terminate on December 23, 2025. If the Immigration  
20 Judge finds that Mr. Khan's Notice to Appear is defective then his case will be terminated, and  
21 he will restore his Lawful Permanent Resident status. Mr. Khan also has a court hearing before  
22 the Superior Court of California, County of San Joaquin on September 18, 2025, regarding a  
23 Motion to Vacate Conviction and Sentence Pursuant to Penal Code Section 1473.7. If the court  
24 vacates Mr. Khan's convictions, he could move to terminate his removal proceedings, and he  
25 would return to having lawful permanent residency.  
26  
27  
28



**ICE Has Begun Re-Detaining Zepeda Rivas Class Members**

57. The *Zepeda Rivas* settlement expired on June 9, 2025. On information and belief, after initially abstaining from re-detaining class members unless they had an executable order of removal, in recent weeks, ICE has re-detained multiple *Zepeda Rivas* class members. Undersigned counsel is aware of three such sudden re-detentions, including one that took place over this past weekend, ostensibly without any precipitating event. In two of the cases, courts granted temporary restraining orders. *See, e.g., Duong, v. Kaiser*, No. 25-CV-7598, 2025 WL 2578275 (N.D. Cal. Sept. 6, 2025); *Carballo v. Andrews*, No. 1:25-CV-978, 2025 WL 2381464 (E.D. Cal. Aug. 15, 2025). Against this backdrop, Mr. Sokha and Mr. Rivera are at imminent risk of unlawful re-arrest by ICE.

**LEGAL BACKGROUND**

**I. Absent Evidence Contradicting this Court’s Order that Petitioners Are Neither Present Dangers or Flight Risks, Re-detention Is Arbitrary and Unconstitutional.**

58. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

59. *First*, “[t]he touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

60. These protections extend to noncitizens facing detention, as “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from imprisonment—from



1 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty  
2 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 61. Substantive due process thus requires that all forms of civil detention—including  
4 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v.*  
5 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-  
6 punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration  
7 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*  
8 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

9 62. Petitioners present neither of the only two legitimate bases for detention, so their re-  
10 detention is unconstitutional.

11 63. In the *Zepeda Rivas* bail process, Petitioners were required to disclose detailed  
12 information regarding their individual circumstances, including all prior criminal convictions, any  
13 pending criminal charges or outstanding warrants, proposed residence, community ties, and his  
14 employment history. *Zepeda Rivas*, Dkt. 65. Judge Chhabria set a high standard for release: “no  
15 detainee will be released unless they have demonstrated *extraordinary circumstances* justifying  
16 release while the habeas petition is pending, based on a consideration of the following factors: (i)  
17 the likelihood that the class will ultimately prevail on its habeas petition; (ii) the risk posed to the  
18 detainee by current conditions at the facilities; (iii) the likelihood that the detainee will not be a  
19 danger to the community if released with conditions; and (iv) the likelihood that the detainee will  
20 appear for subsequent immigration/removal proceedings as required.” *Id.*

21 64. In granting their bail applications, Judge Chhabria determined that they presented neither  
22 a flight risk nor a danger to the community. *See Wells Dec. Exs. A and B.*

23 65. As of the time of this filing, ICE has not claimed to have new grounds to claim that Petitioners  
24

1 present either a danger or flight risk. Petitioners have no new criminal arrests charges, or  
2 convictions. They have diligently complied with all ICE monitoring requirements and are  
3 pursuing meritorious defenses and avenues for relief.

## 4 **II. Petitioners' Constitutional Right to a Pre-Deprivation Bond Hearing.**

### 5 **a. Petitioners Have a Protected Liberty Interest in Conditional Release.**

6  
7 66. "Freedom from imprisonment—from government custody, detention, or other forms of  
8 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."  
9 *Zadvydas*, 533 U.S. at 690. Over the past five years, Petitioners have exercised that freedom  
10 pursuant to Judge Chhabria's bail orders. While that freedom *may* ultimately be revocable should  
11 circumstances materially change, *see Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N. D.  
12 Cal. 2017), Petitioners retain a weighty liberty interest under the Due Process Clause of the Fifth  
13 Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997);  
14 *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83  
15 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70 (N.D. Cal. 2019) (holding that a  
16 noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond  
17 determination).

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19  
20 67. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has  
21 in "his continued liberty." 408 U.S. at 481-82. The Court observed that subject to parole  
22 conditions, "[a parolee] can be gainfully employed and is free to be with family and friends and  
23 to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that  
24 when freed, "the parolee has relied on at least an implicit promise that parole will be revoked only  
25 if he fails to live up to the parole conditions." *Id.* Given this, the Court reasoned that "the liberty  
26 of a parolee, although indeterminate, includes many of the core values of unqualified liberty and  
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28

1 its termination inflicts a grievous loss on the parole and often others.” *Id.* In turn, “[b]y whatever  
2 name, the liberty is valuable and *must* be seen within the protection of the [Constitution].” *Id.*  
3 (emphasis added).

4 68. *Morrissey*’s basic principle—that individuals have a liberty interest in their conditional  
5 release—has been reinforced by both the Supreme Court and circuit courts on numerous  
6 occasions. *See Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program  
7 created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation  
8 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have  
9 a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 690 (holding  
10 that due process protects “all ‘persons’ within the United States . . . whether their presence here  
11 is lawful, unlawful, temporary or permanent” who face immigration detention). As the First  
12 Circuit has explained, when analyzing the issue of whether a specific conditional release rises to  
13 the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific  
14 conditional release in the case before them with the liberty interest in parole as characterized by  
15 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation  
16 marks and citation omitted); *see also, e.g., Hurd*, 864 F.3d at 683 (noting that “a person who is in  
17 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty  
18 interest that entitles him to constitutional due process before he is re-incarcerated) (citing *Young*,  
19 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

20 69. Here, when this Court “compar[es] the specific conditional release in [Petitioners’  
21 cases], with the liberty interest in parole as characterized by *Morrissey*,” they are on all fours.  
22 *See Gonzalez-Fuentes*, 60 F.3d at 887. Just as in *Morrissey*, Petitioners’ release “enables [them]  
23 to do a wide range of things open to persons” who have never been in custody or convicted of  
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1 any crime, including to live at home, work, attend church, and “be with family and friends and  
2 to form the enduring attachments of normal life.” *See Morrissey*, 408 U.S. at 482. Since their  
3 release from immigration custody, Petitioners have been working hard to support themselves  
4 and their families and communities. Mr. Rivera provides vital support services to the unhoused.  
5 He has also strengthened his relationships friends. Mr. Khan has provided essential medical  
6 support to his mother. Both Petitioners have been seeking post-conviction relief in the pursuit of  
7 restoring their permanent residence status. In sum, Petitioners’ post-release conduct has  
8 bolstered the Judge Chhabria’s original findings that they presented neither a danger nor a  
9 significant flight risk.  
10

11  
12 **b. Petitioners’ Liberty Interests Require that They Receive Hearings *Before***  
13 **Any Re-arrest.**

14 70. If a petitioner identifies a protected liberty interest, the Court must then determine what  
15 process is due. “Adequate, or due, process depends upon the nature of the interest affected. The  
16 more important the interest and the greater the effect of its impairment, the greater the procedural  
17 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d  
18 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). To determine the  
19 process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*,  
20 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d  
21 at 1055.  
22

23 71. Under the *Mathews* test, the Court balances three factors: “first, the private interest that  
24 will be affected by the official action; second, the risk of an erroneous deprivation of such interest  
25 through the procedures used, and the probative value, if any, of additional or substitute procedural  
26 safeguards; and finally the government’s interest, including the function involved and the fiscal  
27 and administrative burdens that the additional or substitute procedural requirements would entail.”  
28

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1 *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

2 72. Generally, “the Constitution requires some kind of a hearing *before* the State deprives a  
3 person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in  
4 cases where that freedom is lawfully revocable. *See Hurd*, 864 F.3d at 683 (citing *Young*, 520  
5 U.S. at 152)(re-detention after pre-parole conditional supervision requires pre-deprivation  
6 hearing)).

7  
8 73. After an initial release from custody on conditions, even a person paroled following a  
9 conviction for a criminal offense for which they may lawfully have remained incarcerated has a  
10 protected liberty interest in that conditional release. *Morrissey*, 408 U.S. at 482. As the Supreme  
11 Court recognized, “[t]he parolee has relied on at least an implicit promise that parole will be  
12 revoked only if he fails to live up to the parole conditions.” *Id.* “By whatever name, the liberty is  
13 valuable and must be seen within the protection of the [Constitution].” *Id.*

14  
15 74. Under the *Mathews* factors, this Court has consistently found that due process required a  
16 pre-deprivation hearing to determine whether an individual that ICE seeks to re-detain poses a  
17 flight risk or danger. *See, e.g., Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at  
18 \*3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and  
19 required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-  
20 NW, 2025 WL 1382859, at \*3 (N.D. Cal. May 12, 2025) (temporary injunction warranted  
21 preventing re-arrest at plaintiff’s ICE interview when he had been on bond for more than five  
22 years); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, \*4 (E.D. Cal. Mar. 3,  
23 2025) (holding the Constitution requires a hearing before any re-arrest); *Guillermo M.R. v. Kaiser*,  
24 No. 25-cv-05436, 2025 WL 1983677 (N.D. Cal. July 17, 2025) (granting TRO enjoining ICE  
25 from re-detaining the petitioner without a bond hearing); *Ortega v. Kaiser*, No. 25-cv-05259,  
26  
27  
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2025 WL 1771438 (N.D. Cal. June 26, 2025) (same); *Rodriguez Diaz v. Kaiser*, No. 25-cv-05071, ECF 4 (N.D. Cal. June 24, 2025) (same); *Zakzouk v. Becerra*, No. 25-cv-06254, ECF 3 (N.D. Cal. July 26, 2025) (same).

75. Here too, the *Mathews* factors all favor Petitioners and establish that the government is required to provide them notice and a hearing *prior* to any re-incarceration. *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at 1055.

76. **First**, as explained *supra* Section II.a, Petitioners' private interest in their liberty is substantial.

77. **Second**, the risk of erroneous deprivation of liberty is high if ICE can unilaterally re-detain Petitioners without a hearing before a neutral adjudicator that would determine whether detention serves a permissible purpose, *i.e.* preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690. After the California parole board deemed each suitable for release on parole, Judge Chhabria reviewed Petitioners' cases and found that they should be released from ICE custody, taking flight risk and dangerousness (among other factors) into consideration. In the five years since, Judge Chhabria's decision to release Petitioners has proven correct: Petitioners have complied with bail conditions, reported as required to ICE check-ins, remained law-abiding and contributed to their respective communities. In the case of Mr. Rivera, ICE itself de-escalated Petitioner's monitoring requirements on the basis of his compliance by removing his ankle monitor.

78. By contrast, the value of a pre-deprivation hearing before a neutral decision-maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody

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determinations. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to determine whether Petitioner actually poses a current flight risk or danger such that detention is justified. *See, e.g., Pinchi*, ---F. Supp. 3d---, 2025 WL 2084921, at \*5 ("Ms. Garro Pinchi was detained after more than two years of attending every required immigration hearing and despite her deep community ties and lack of any criminal record. Under these circumstances, there is a significant risk that even the two-day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not justified by any valid interest. Providing her with . . . a pre-detention hearing will have significant value in helping ensure that any future detention has a lawful basis"). Ordering that Respondents hold such a hearing *before* Petitioners are re-detained serves to protect their profound liberty interests, facilitate the right to counsel and to gather evidence, and ensure that ICE's decision to revoke Petitioners' release does not evade review. *See Zinerman*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

79. Third, the government's interest in detaining Petitioners without a hearing is low. Providing Petitioners with a hearing before a neutral decisionmaker to determine whether there is evidence that they currently pose any risk of flight or danger to the community imposes a *de minimis*, if any, burden on the government. *See Singh v. Barr*, No. 18-cv-2471-GPC-MSB, 2019 WL 4168901, at \*12 (S.D. Cal. Sept. 3, 2019) ("The government has not offered any indication that a second bond hearing would have outside effects on its coffers"); *see also Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Lopez Reytez v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). Such a hearing is far less costly and burdensome for the government than keeping Petitioners detained at what the Ninth Circuit described as a "staggering" cost to the public of \$158 each day per detainee in 2017, "amounting to a total daily cost of \$6.5 million," *Hernandez*, 872 F.3d at 996—the current cost is likely significantly higher. In any event, it is



1 “always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*  
2 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations omitted); *cf. Doe v. Kelly*, 878  
3 F.3d 710, 718 (9th Cir. 2017) (the government “suffers no harm from an injunction that merely  
4 ends unconstitutional practices and/or ensures that constitutional standards are implemented”).  
5 The government cannot plausibly assert it has any urgent basis for re-detaining Petitioners without  
6 a pre-deprivation hearing, given their record of consistent compliance with reporting  
7 requirements over the past more than five years and no new criminal history. *See Pinchi*, ---F.  
8 Supp. 3d---, 2025 WL 2084921, at \*5 (“Detention . . . because the government has not yet  
9 established constitutionally required pre-detention procedures is not a legitimate government  
10 interest”).  
11  
12

13 80. Thus, the three *Mathews* factors all weigh in Petitioners’ favor and demonstrate that due  
14 process requires notice and a hearing before a neutral adjudicator prior to Petitioners’ re-  
15 incarceration to determine if such re-incarceration is justified.  
16

17 81. At a pre-deprivation hearing, due process requires that the government justify re-detention  
18 of Petitioners by establishing, by clear and convincing evidence, that they pose a flight risk or  
19 danger. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a  
20 heightened burden of proof *on the State* in civil proceedings in which the individual interests at  
21 stake . . . are both particularly important and more substantial than mere loss of money.”) (internal  
22 quotation marks omitted and emphasis added); *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055,  
23 1062 (N.D. Cal. 2020) (noting the “consensus view” among District Courts concluding that,  
24 “where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears  
25 the burden of proving that such detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where  
26 noncitizen was due a pre-deprivation hearing before being returned to custody, ordering that the  
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28



1 government bear the burden at the hearing by clear and convincing evidence).

2 82. The hearing must also consider whether alternatives to detention—such as the ISAP  
3 program—would adequately ensure Petitioners’ appearance (as it already has). Detention is not  
4 warranted if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*,  
5 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in  
6 determining whether Petitioners’ re-incarceration is warranted. *Cf. G.C. v. Wofford*, No. 1:24-cv-  
7 01032-EPG-HC, 2025 WL 711190, at \*10 (E.D. Cal. Mar. 5, 2025) (ordering bond hearing at  
8 which IJ considers alternative conditions of release).  
9

## 10 CAUSES OF ACTION

### 11 COUNT ONE

#### 12 *Violation of the Fifth Amendment to the United States Constitution* 13 *(Substantive Due Process)*

14 83. Petitioners re-allege and incorporate by reference the paragraphs above.

15 84. Civil detention is permissible only to mitigate flight risk or prevent danger to the  
16 community. Neither purpose would be met here if Petitioners were to be detained. Respondents’  
17 re-detention of Petitioners would violate rights guaranteed by the Due Process Clause of the Fifth  
18 Amendment of the U.S. Constitution.  
19

### 20 COUNT TWO

#### 21 *Violation of the Fifth Amendment to the United States Constitution* 22 *(Procedural Due Process)*

23 85. Petitioners re-allege and incorporate by reference the paragraphs above.

24 86. The Due Process Clause of the Fifth Amendment forbids the government from depriving  
25 any person of liberty without due process of law. U.S. Const. Amend. V.

26 87. Petitioners have a vested liberty interest in their current conditional release, and Due  
27 Process does not permit the government to strip them of that liberty without first having a fair  
28

1 opportunity to be heard. Five years since their court-ordered release, Respondents cannot  
2 lawfully re-detain Petitioners without a hearing—before this Court, or in the alternative, before  
3 an immigration judge—at which the government must bear the burden to demonstrate, by clear  
4 and convincing evidence, that they pose a flight risk or danger to the community. *See Singh v.*  
5 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).  
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners request this Court grant the following relief:

- 9 1. Exercise jurisdiction over this matter;
- 10 2. Enjoin Respondents from re-detaining either Petitioner unless his re-detention is ordered  
11 at a custody hearing before a neutral arbiter at which the government bears the burden of  
12 proving by clear and convincing evidence that he is a flight risk or danger to the  
13 community;
- 14 3. Declare that Respondents may not re-arrest either Petitioner absent a pre-deprivation  
15 custody hearing, at which the government bears the burden of proving by clear and  
16 convincing evidence, that he is a flight risk or a danger to the community;
- 17 4. Award reasonable costs and attorney fees as provided for by 28 U.S.C. § 2412; and  
18
- 19 5. Grant further relief as the Court deems just and proper.  
20

21 Dated: September 9, 2025

By: Jordan Wells

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**Verification Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioners because I am their attorney in the instant habeas petition. As their attorney, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

s/ Jordan Wells

Jordan Wells

*Attorney for Petitioner*