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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

8 Hector Lopez-Melo,
9 Petitioner,

Case No.: 25-CV-03394-PHX-DJH
(JZB)

10 vs.

File No: A 

11 Pamela Bondi, Attorney General of the
12 United States;

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

13 John Cantu, U.S. Immigration and
14 Customs Enforcement Phoenix Field
15 Office Director;

16 Kristi Noem, Secretary of the U.S.
17 Department of Homeland Security;

**ORAL ARGUMENT
REQUESTED**

18 Fred Figueroa, Warden, Eloy Detention
19 Center;

20 Todd M. Lyons, Acting Director,
21 Immigration and Customs Enforcement,
22 U.S. Department of Homeland Security;

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24 Respondents.
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3 **SUBMISSION OF AMENDMENT TO HABEAS**
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5 Petitioner, by and through undersigned counsel, begs the court's indulgence
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7 in accepting the filing of this amendment to his Petition for Writ of Habeas and
8 Complaint for Declaratory and Injunctive relief. Petitioner wants to add the
9 following corrections to his Habeas:
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11 **5. Respondents cannot re-arrest Petitioner based on the law and res**
12 **judicata**
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14 By statute and regulation, as interpreted by the Board of Immigration Appeals
15 (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only
16 where there has been a change in circumstances since the individual's release. 8
17 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640
18 (BIA 1981). The government has further clarified in litigation that any change in
19 circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197
20 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
21 Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due
22 Process Clause because it is well-established that individuals released from
23 incarceration have a liberty interest in their freedom. In turn, to protect that interest,
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1 on the particular facts of Amezcua-Penalosa's case, due process requires notice and
2 a hearing, *prior to any re-arrest*, at which he is afforded the opportunity to advance
3 his arguments as to why his release should not be revoked.
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5 That basic principle—that individuals placed at liberty are entitled to process
6 before the government imprisons them—has particular meaning here, where
7 Mr./Ms. Client Name's detention was *already* found to be unnecessary to serve its
8 purpose. An Immigration Judge previously found that he need not be incarcerated
9 to prevent flight or to protect the community, and no circumstances have changed
10 that would justify re-arrest. Therefore, at a minimum, in order to lawfully re-arrest
11 Mr. Lopez-Melo, the government must first establish, by clear and convincing
12 evidence and before a neutral decision maker, that he is a danger to the community
13 or a flight risk, such that his re-incarceration is necessary. ICE's re-arrest of Mr.
14 Lopez-Melo, violated these regulations, laws, and due process.
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19 Respondents indicate that Petitioner was previously released on a \$3,000 bond
20 during a prior detention. Response to Motion for TRO, p. 6. This is not something
21 of which Petitioner's attorney was previously aware.
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23 Respondents have not indicated that there is a material change in
24 circumstances that merit redetention. Bond hearings are collateral hearings that
25 determine whether a respondent should be released from custody. The bond
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1 hearings assess the respondent's eligibility for bond, Respondent's flight risk, and
2 whether the respondent poses a danger to the community. Bond hearings are
3 separate from removal proceedings, because the assessment for the bond is
4 conducted while removal proceedings are pending.
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7 Respondents did not argue that Petitioner was subject to mandatory detention
8 at his previous bond hearing, as he was granted a \$3,000 bond. Turning to the issue
9 of raising or re-raising issues that were or could have been addressed in a previous
10 proceeding is governed by the doctrine of *res judicata*.
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12 The doctrine of *res judicata* bars further litigation on a claim where there is
13 (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between
14 parties. *Mendoza v. Holder*, 606 F.3d 1137, 1140 (9th Cir. 2010); see also *Tahoe*
15 *Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077
16 (9th Cir. 2003). The defense of *res judicata* may be invoked in immigration
17 proceedings. See *Ramon-Sepulveda v. INS*, 824 F.2d 749, 750 (9th Cir. 1987). In
18 *Mendoza*, the convictions used in the two removal proceedings were different, and
19 the combination of these constituted a claim that could not have been litigated in the
20 first removal proceeding. Comparing our case to the analysis in *Mendoza*, DHS is
21 not alleging to different claims. *Mendoza*, 606 F.3d at 1140.
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1 Here, all three elements for *res judicata* have been met: the identity of the
2 claims, the privity between the parties, and a final judgement on the merits exist.
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4 There are no new circumstances which merit revisiting the bond request.

5 Though bond determinations are interlocutory, *res judicata* prevents DHS
6 from re-litigating an issue that was already adjudicated. This is particularly the case,
7 because the same parties were involved and the bond grant was a final judgment.
8 Moreover, DHS failed to raise any argument under § 236(c) in the original bond
9 proceeding, or appeal the bond decision in 2012.
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12 To go back and correct a past lawfully issued bond retroactively based on a
13 later decision goes against fundamental principles and due process rights.
14 “Immigration proceedings, although not subject to the full range of constitutional
15 protections, must conform to the Fifth Amendment’s requirement of due
16 process.” *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005) (as
17 amended); *see also Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020);
18 *Gonzaga-Ortega v. Holder*, 736 F.3d 795, 804 (9th Cir 2013) (as amended); *Vilchez*
19 *v. Holder*, 682 F.3d 1195, 1199 (9th Cir. 2012); *United States v. Reyes-Bonilla*, 671
20 F.3d 1036, 1045 (9th Cir. 2012); *Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir.
21 2009).
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1 The factors that were considered in the original hearing such as Respondent's
2 criminal history, ties to the community, flight risk and compliance with immigration
3 requirements remain the same. If DHS were allowed to re-raise the same issues and
4 relitigate the same claim, this would set a repetitive and dangerous precedent on
5 bond decisions. There is no newly discovered evidence, no material change in
6 circumstances, and no legal justification for revisiting the 2012 bond grant, and
7 should not be applied retroactively.
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12 10. Prayer for relief: Immediately order Petitioner to be released from
13 detention.
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16 Respectfully submitted,

17 /s/ Siovhana Ayala
18 Siovhana Ayala
19 Attorney for Petitioner
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3 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**
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5 I am submitting this verification on behalf of the Petitioner because I am one
6 of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the
7 events described in this Petition. Based on those discussions, on information and
8 belief, I hereby verify that the factual statements made in the attached Amended
9 Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and
10 Injunctive Relief are true and correct to the best of my knowledge.
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14 Dated: September 25, 2025,

15 Tucson, AZ,

16 By: /s/ Siovhana Ayala
17 Siovhana Sheridan Ayala
18 Attorney for the Petitioner
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