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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Jorge RIVERA LARIOS,

Petitioner,

v.

SERGIO ALBARRAN, in his official capacity, San Francisco Field Office 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.

Case No. 3:25-cv-8799

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jorge Rivera Larios is a 43-year-old citizen of Mexico who has lived in California since 2017, when he arrived fleeing persecution. Since then, he has built a life in Lakeport, California. He is married to a U.S. citizen and is a father to a U.S. citizen son. He works in the agricultural industry.

2. In September 2021, U.S. Immigration and Customs Enforcement (ICE) arrested Mr. Rivera Larios near his home in Lakeport, California. As Mr. Rivera Larios was previously removed, on September 29, 2021, ICE issued a reinstatement of removal order under 8 U.S.C. § 1231(a)(5). Because Mr. Rivera Larios fears torture if returned to Mexico, U.S. Citizenship and Immigration Services (USCIS) conducted a reasonable fear interview. Subsequently, a USCIS officer made a positive reasonable fear determination, and on October 20, 2021, Mr. Rivera Larios's case was referred to immigration court for withholding only proceedings.

3. On January 28, 2022, Mr. Rivera Larios was released from ICE custody on an Order of Supervision. He was released, in part, due to heighted COVID-19 risk factors pursuant to *Fraihat v. U.S. Immigr. & Customs Enf't*, 445 F. Supp. 3d 709, 750 (C.D. Cal. 2020), *order clarified*, No. EDCV 19-1546 JGB (SHKX), 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020), *rev'd and remanded,* 16 F.4th 613 (9th Cir. 2021). Mr. Rivera Larios was subject to ICE reporting requirements and initially was also on the Intensive Supervision Appearance Program (ISAP). Mr. Rivera Larios complied with both ICE and ISAP reporting obligations.

4. Mr. Rivera applied for U Nonimmigrant status, as he was a victim of a violent crime in the United States. USCIS received the application on July 31, 2023. On January 2, 2025, the San Francisco Immigration Court administratively closed his withholding only proceedings due to the pending application for U Nonimmigrant status.

5. On October 14, 2025, Mr. Rivera Larios presented himself at the San Francisco ICE Field Office for his annual in-person check-in with ICE. ICE arrested Mr. Rivera Larios and revoked his release under 8 U.S.C. § 1231, without providing any notice, or pre-deprivation hearing before a neutral arbiter. An ICE officer alleged that Mr. Rivera Larios was being arrested due to contact with law enforcement in August 2025, though no charges were filed against him. Mr. Rivera Larios was processed at the San Francisco ICE field office.

6. ICE's revocation of Mr. Rivera Larios's release and re-arrest of Mr. Rivera Larios was in violation of 8 U.S.C. § 1231(a)(2) and (6), which only allows for re-detention after the removal period upon a finding of flight risk or danger to the community.

7. After filing the initial petition for writ of habeas corpus, Mr. Rivera Larios moved for a temporary restraining order (TRO) and preliminary injunction. This Court granted his TRO and ICE released Mr. Rivera Larios from custody. Pursuant to this Court's preliminary injunction, on November 3, 2025, the immigration court held a pre-deprivation hearing. At that hearing, ICE presented no new evidence demonstrating a change in circumstances from the time it released Mr. Rivera Larios on an order of supervision, which took into account dangerousness and flight risk factors. The immigration judge (IJ) concluded , that: 1) Mr. Rivera Larios had not violated terms of his order of supervision but nonetheless that 2) Mr. Rivera Larios was a danger and flight risk. The IJ deferred to ICE as to whether or not the agency could re-detain him. After leaving the immigration court, plain clothes ICE officers detained Mr. Rivera Larios on a public sidewalk in San Francisco.

8. ICE's revocation of Mr. Rivera Larios's release and re-arrest of Mr. Rivera Larios was also in violation of the Due Process Clause of the Fifth Amendment. Likewise, ICE's re-arrest of Mr. Rivera Larios subsequent to the November 3, 2025 pre-deprivation hearing is in violation of the Due Process Clause of the Fifth Amendment. It is well-established that Mr. Rivera Larios has a liberty interest in his current freedom, and that the Due Process Clause mandates that immigration detention serves a legitimate purpose: to mitigate flight risk and prevent danger to the community. Neither of those purposes are served by Mr. Rivera Larios's detention, given that ICE already determined that Mr. Rivera Larios was neither a flight risk or a danger when releasing him over three-and-a-half years ago, and where there are no changed circumstances that would alter that analysis. The IJ's finding to the contrary at the pre-deprivation hearing is unsupported by the evidence.

9. Due process requires that Mr. Rivera Larios be immediately released from custody, and that the conditions of his Order of Supervision that were in place at the time of his October 14, 2025 arrest be reinstated.

10. Respondents' actions in revoking Mr. Rivera Larios's order of supervision, and holding a pre-deprivation hearing in which the IJ made contradictory findings regarding the justification for his

detention, found that the hearing was theoretical with no force or effect, with no appeal rights attaching, while incorrectly deferring to ICE, reflects Respondents' inability to afford Mr. Rivera Larios a hearing that comports with due process. For this reason, Mr. Rivera Larios asks this Court to order his release because immigration authorities previously determined that he is neither a danger nor a flight risk and nothing has materially changed since that determination.

JURISDICTION AND VENUE

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

13. 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.

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e)(1) 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.

15. Petitioner filed the present action while Respondents detained him in the Northern District of California. Although Respondents re-detained him and are currently housing him at the Mesa Verde Detention Center in Bakersfield, California, within the Eastern District of California, because his current detention is directly related to the original detention within this district, jurisdiction remains with this Court in the Northern District of California. Dkt. 7 at 6, n. 1.

16. The federal habeas statute establishes this Court's power to decide the legality of Mr. Rivera Larios's ongoing detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of [the habeas statute] as vesting a federal court with the largest power to control and direct

the form of judgment to be entered in cases brought up before it on habeas corpus") (internal quotation marks and citation omitted).

17. The Supreme Court, moreover, has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). In *Zadvydas v. Davis*, the Supreme Court confirmed a district court's habeas authority to review whether the government can justify continued immigration detention. *See* 533 U.S. 678, 699 (2001) (explaining that determining whether immigration detention is lawful fulfills the "historic purpose of the writ," i.e., "to relieve detention by executive authorities without judicial trial") (quoting *Brown v. Allen*, 344 U.S. 443, 533 (1953) (Jackson, J., concurring)).

18. This Court also has authority to conduct any fact-finding necessary to evaluate the constitutionality of Mr. Rivera Larios's re-detention. *See* 28 U.S.C. § 2243 (instructing federal habeas courts to "summarily hear and determine the facts"). District courts regularly exercise this authority in cases involving immigration detention. Indeed, courts have held that "the authority to conduct . . . bail proceedings in habeas proceedings brought by immigration detainees . . . has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction." *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Penn. 2012) (collecting cases).

PARTIES

19. Petitioner Jorge Rivera Larios is a national of Mexico who has lived in the United States since 2017. On January 28, 2022, ICE released Mr. Rivera Larios on an Order of Supervision. Between January 28, 2022 and today, he has lived in the community, in compliance with all supervision requirements imposed by ICE. Mr. Rivera Larios briefly served time in Lake County jail after his release from ICE custody, which was known to ICE and ISAP officers. He was required to report to county jail for a conviction that occurred prior to his September 2021 arrest by ICE. On October 14, 2025, ICE detained Mr. Rivera Larios at its San Francisco office, where he presented himself to comply with his annual check-in requirement. Mr. Rivera Larios filed the present action while being held at the San Francisco ICE field office and under the direct control of Respondents. While he was briefly at liberty,

on November 3, 2025, Respondents re-detained Mr. Rivera Larios after a pre-deprivation hearing held at the San Francisco Immigration Court.

20. Respondent Sergio Albarran is sued in his official capacity as the Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement. Respondent Albarran is a legal custodian of Petitioner and has authority to release him.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

22. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

Factual Background

23. Petitioner Jorge Rivera Larios was born in Mexico and is a resident of California. Dkt. 15-2 ¶ 1. In 2017, Mr. Rivera Larios fled Mexico after he was beaten and left for dead [redacted] Dkt. 15-2 ¶ 3. [redacted] forced Mr. Rivera Larios to work for them. [redacted] beat Mr. Rivera Larios three times causing lasting injuries to him. *Id.*

Mr. Rivera Larios was arrested multiple times in Lake County, California between 2017 and September 2021, though his only convictions are for a misdemeanor violation of California Vehicle Code §14601.5(a), one felony violation of California Health and Safety Code § 11379(a), a probation violation on the Section 11379(a) conviction, and a violation of Cal. Penal Code § 29800(a)(1). *See* Dkt. 14-1, ¶ 5, Ex. 6; Dkt. 5-4 ¶ 5. During this period, Mr. Rivera Larios struggled with substance abuse to cope with the physical violence and emotional trauma that he endured at the hands of [redacted] in Mexico. Dkt. 15-2 ¶ 6; see also Dkt. 15-1 ¶ 11, Ex. D.

24. In September 2021, ICE detained Mr. Rivera Larios and reinstated his prior removal order under 8 U.S.C. § 1231(a)(5). Dkt. 14-1 ¶ 18, Ex. 3. Because Mr. Rivera Larios fears torture in Mexico, a USCIS officer conducted a reasonable fear interview on October 15, 2021. Dkt. 5-4 ¶ 7. As he was found to have a reasonable fear of persecution or torture, he was referred to the immigration court for withholding only proceedings. *Id.*; Dkt. 14-1 ¶ 19, Ex. 1.

25. On January 28, 2022, ICE released Mr. Rivera Larios on an Order of Supervision. Dkt. 14-1 ¶ 20, Ex. 2. ICE released Mr. Rivera Larios in accordance with class litigation requiring ICE to "make timely *custody determinations* for detainees with [COVID] Risk Factors." *Fraihat*, 445 F. Supp. 3d at 751. At the time that ICE placed Mr. Rivera Larios on supervision, it was fully aware of his immigration and criminal history. *See e.g.* Dkt. 14-1 ¶¶ 7-17, 20. Relevant for these purposes, among the terms of his supervision, Mr. Rivera Larios was "not to commit any crimes." Dkt. 14-1 ¶ * Ex. 2.

26. For the three years and nine months he was at liberty, Mr. Rivera Larios complied with all reporting requirements with ICE and ISAP. Dkt. 5-4 ¶ 9.

27. Mr. Rivera Larios applied for withholding of removal and deferral of removal under the Convention Against Torture due to the harm he suffered in Mexico and due to the harm he fears if returned. Dkt. 5-4 ¶ 8; Dkt. 15-1 ¶ 11. That application remains pending with the immigration court. Dkt. 5-4 ¶ 8; Dkt. 15-1 ¶ 13. On January 2, 2025, the immigration court administratively closed Mr. Rivera Larios's proceedings due to a pending application for U nonimmigrant status. Dkt. 15-1 ¶ 12.

28. Mr. Rivera Larios was severely beaten in the United States on two occasions. Dkt. 15-2 ¶ 8. He applied for U Nonimmigrant Status based on one of the beatings, as he cooperated with law enforcement after the attack. Dkt. 5-4 ¶ 12. The application was received by USCIS on July 31, 2023 and remains pending. Dkt. 15-1 ¶ 10.

29. Mr. Rivera Larios suffered from headaches and dizziness due to the traumatic brain injuries that resulted from the beating in Mexico as well as in the United States. Dkt. 15-1 ¶ 11, Ex. D. Dkt. 15-2 ¶ 15. A psychological evaluation conducted in support of his application for protection found that, while in ICE custody, Mr. Rivera Larios suffered from various mental health diagnoses including, Post Traumatic Stress Disorder, chronic and Major Depressive Disorder. Dkt. 15-1 ¶ 11, Ex. D. Once

released from ICE custody, the severity of the disorders decreased, and he was diagnosed with Other Specified Trauma and Stressor-Related Disorder and Persistent Depressive Disorder. *Id.*

30. Since his release from ICE custody in January 2022, Mr. Rivera Larios married his U.S. citizen wife and together they had a son. Dkt. 15-2 ¶ 4. Mr. Rivera Larios has worked in agriculture, in the fields, in Lake County, California to support himself and his family. *Id.* at ¶ 12.

31. Mr. Rivera Larios's wife battles alcoholism and has been physically and verbally abusive on occasion. *Id.* at ¶ 7. One such occasion was in August of 2025, when she became violent. *Id.* at ¶ 13. Seeking protection and to de-escalate the situation, Mr. Rivera Larios called the Lake County Sheriff's Office. *Id.* at ¶¶ 13-14.

32. Lake County Sheriff's officers detained Mr. Rivera Larios instead. *Id.* They took him to the Sheriff's office only to release him the next day. *Id.* at ¶ 14. They did not file criminal charges against Mr. Rivera Larios. Dkt. 15-1 ¶ 7, Ex. B. The "Detention Certificate" that the Lake County Sheriff's Office issued to Mr. Rivera Larios indicates that there were "insufficient grounds" to file criminal charges and that the encounter was a detention, not an arrest. *Id.*

33. On October 14, 2025, Mr. Rivera Larios attended his ICE check-in at the San Francisco ICE Field Office. Dkt. 15-1 ¶ 3; Dkt. 15-2 ¶ 15. At his check-in, ICE officers arrested and detained Mr. Rivera Larios. Dkt. 15-1 ¶ 5; Dkt. 15-2 ¶ 16. An ICE officer informed Mr. Rivera Larios that he was being arrested because he had contact with law enforcement in August 2025 and therefore violated his order of supervision. *Id.*

34. Mr. Rivera Larios and his counsel learned after his release that ICE had purported to conduct an "informal interview" per 8 C.F.R. § 241.4(l)(1). Dkt. 14-1 ¶ 5, Ex. 5. Neither Mr. Rivera Larios nor his counsel were provided with advance notice by ICE that it intended to conduct an informal interview on the day of Mr. Rivera Larios's check-in. Dkt. 15-1 ¶ 9.

35. The ICE deportation officer who conducted the alleged informal interview told Mr. Rivera Larios that ICE was taking him into custody because of an arrest in August 2025. Dkt. 15-1 ¶ 5. However, she did not ask Mr. Rivera Larios or counsel any questions about the encounter nor did she provide Mr. Rivera Larios or his counsel an opportunity to respond to ICE's allegations as anticipated

by the regulation. *Id.* The ICE officer did not serve Mr. Rivera Larios with a copy of the revocation notice until after ICE detained him. Dkt. 15-2 ¶ 19.

36. On October 17, 2025, three days after ICE detained Mr. Rivera Larios, DHS filed a motion to recalendar his previously administratively closed withholding only proceedings before the immigration court. Dkt. 15-1 ¶ 13, Ex. E. In its one-page motion, DHS relied on Mr. Rivera Larios's criminal history and informed the immigration court that USCIS deemed his U visa application not bona fide. *Id.* Mr. Rivera Larios's counsel in the U visa case never received notice of any such finding by USCIS. Dkt. 15-1 ¶ 10.

37. Mr. Rivera Larios filed an opposition to DHS's motion to recalendar proceedings on October 20, 2025. *Id.*, Ex. F. Within approximately one hour of Mr. Rivera Larios filing the opposition, the immigration court granted DHS's motion to recalendar, stating only that the motion was, "Granted. Good cause shown." *Id.,* Ex. G. On October 22, 2025, the immigration court issued an in-person status hearing notice for November 19, 2025 in Mr. Rivera Larios's recalendared proceedings. *Id.* at ¶ 16.

38. Separately, on October 21, 2025, DHS moved the immigration court to schedule a pre-deprivation hearing. *Id.* at ¶ 15, Ex. H. Without waiting for a response from Mr. Rivera Larios, on October 23, the immigration court scheduled Mr. Rivera Larios's pre-deprivation hearing for November 5, 2025. *Id.* at ¶ 17, Ex. I. Also on October 23, 2025, the immigration court advanced Mr. Rivera Larios's status hearing to the same day as his pre-deprivation hearing, November 5, 2025. *Id.*, Ex. J.

39. Because counsel for Mr. Rivera Larios had travel for a conference scheduled on November 5, 2025, on October 23, 2025, counsel moved for a continuance of the November 5, 2025 status and pre-deprivation hearings. *Id.* at ¶ 18.

40. In response to counsel's motion for a continuance, the immigration court advanced both hearings to November 3, 2025. Dkt. 24-1 ¶ 4. Mr. Rivera Larios, through counsel, filed a motion to permit him and counsel to appear at his pre-deprivation hearing via WebEx, as Mr. Rivera Larios lives approximately 120 miles from the immigration court. *Id.* The immigration court issued an order allowing counsel to appear via WebEx, but requiring Mr. Rivera Larios to appear in person. *Id.*, Ex. A On November 3, 2025, Mr. Rivera Larios appeared with counsel in person at the immigration court for the pre-deprivation hearing. *Id.* at ¶ 7.

41. At the pre-deprivation hearing, the IJ asked the parties' position on a bond amount. *Id.* at ¶ 13; Declaration of Ilyce Shugall in Support of First Amended Petition for Writ of Habeas Corpus (Shugall Decl.) ¶ 5, Ex A. Counsel for DHS asked that the IJ find Mr. Rivera Larios to be a danger and flight risk and find that he should be held without bond. *Id.* Counsel for Mr. Rivera Larios argued that the IJ should follow this Court's order finding that Mr. Rivera Larios did not violate the terms of his release and order that he remain at liberty. *Id.*

42. The IJ questioned Mr. Rivera Larios about the August 2025 incident in which he was detained by the Lake County Sheriff's Office. *Id.* at ¶ 14. Mr. Rivera Larios testified that he called 911 because his wife was intoxicated and angry. *Id.* He also testified that he was caring for the couple's son while his wife was out drinking. *Id.* The IJ provided the parties the opportunity to present closing arguments. *Id.* at ¶ 15; Shugall Decl ¶ 5, Ex. A. Counsel for Mr. Rivera Larios argued he was not a flight risk or danger and stressed that his criminal and immigration history pre-dated his release from ICE custody and that he complied with all terms of release, including travel between Lakeport and San Francisco to meet obligations. *Id.*

43. Counsel for DHS argued that Mr. Rivera Larios is a danger because of his criminal history and a flight risk because of his immigration history, including multiple deportations and returns to the United States, all of which pre-dated his release by ICE in January 2022. *Id.* at ¶ 16; Shugall Dec. ¶ 5, Ex. A.

44. In reaching her decision, the IJ made alternate findings. She first found that she did not have jurisdiction to conduct a custody redetermination. Dkt. 24-1 ¶ 17; Shugall Decl. ¶ 5, Ex. A. In the alternative, she found that based on Mr. Rivera Larios's criminal history, relying primarily on arrests that did not result in convictions, all of which pre-dated his release by ICE in January of 2022, he is a danger to the community. *Id.* The IJ stated that she was not considering Mr. Rivera Larios's August 2025 detention by the Lake County police department in assessing whether he is a danger to the community. *Id.*

45. Likewise, the IJ found Mr. Rivera Larios to be a flight risk, relying exclusively on his prior removal orders, known to ICE at the time it released him on supervision. Dkt. 24-1¶ 18; Shugall Decl. ¶ 5, Ex. A. The IJ did not acknowledge or credit Mr. Rivera Larios's diligent compliance with his order of supervision for over three years and nine months. *Id.* The IJ also indicated that regardless of who bore

the burden of proof, the outcome would be the same. *Id.* The IJ further stated that the hearing was a "theoretical bond hearing with no force and effect at this point, so there's no appellate rights that are attaching to this." Shugall Decl. ¶ 5, Ex. A at 45-46.

46. Crucially, the IJ found that the record did not support a finding that Mr. Rivera Larios violated the conditions of his release. Dkt. 24-1 ¶ 19; Shugall Dec. ¶ 5, Ex. A. However, the IJ did not issue a finding as to whether DHS could re-detain Mr. Rivera Larios. When counsel for Mr. Rivera Larios asked for clarity on whether the IJ was ordering Mr. Rivera Larios's re-detention, the IJ indicated that she would defer to DHS. Dkt. 24-1 ¶ 20; Shugall Dec. ¶ 5, Ex. A. When counsel for Mr. Rivera Larios asked counsel for DHS whether DHS would detain him, counsel for DHS indicated that she could not comment on DHS' operations. Dkt. 24-1 ¶ 20.

47. After the hearing, Mr. Rivera Larios and counsel exited the building with three community observers. *Id.* at ¶ 22. While Mr. Rivera Larios, his counsel, and observers waited for the traffic light to change at a crosswalk, three plainclothes individuals surrounded Mr. Rivera Larios, grabbed his arms, and swiftly moved him to the side of a building near the street corner where they pushed him against the building and handcuffed him. *Id.* One of the three individuals eventually showed her ICE badge. *Id.* The officers quickly moved Mr. Rivera Larios across the street into an unmarked vehicle that sped away. *Id.*

48. After the conclusion of the pre-deprivation hearing, the immigration court issued a notice of the January 9, 2026 merits hearing; however, it issued no orders regarding the outcome of the pre-deprivation hearing. *Id.* at ¶ 23. The pre-deprivation hearing was recorded. *Id.* at ¶ 23; Shugall Dec. ¶ 4-5, Ex. A. On the afternoon of November 3, 2025, DHS filed a Form I-830 reflecting that it was holding Mr. Rivera Larios in its custody at the Mesa Verde ICE Processing Center (Mesa Verde) in Bakersfield, California. Dkt. 24-1 ¶ 24, Ex. E. Counsel for Mr. Rivera Larios subsequently confirmed that Mr. Rivera Larios is at Mesa Verde. *Id.* at ¶ 24.

49. On November 18, 2025, an IJ at the Adelanto Immigration Court conducted a master calendar hearing for Mr. Rivera Larios to set his case to a hearing on the merits of his application for protection. Shugall Decl. ¶ 6. The immigration court set a hearing on the earliest available date, February 11, 2026. *Id.*

ARGUMENT

I. Legal Framework

50. The Due Process Clause protects "all 'persons'"—including all noncitizens—against arbitrary detention. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Id.* at 690.

51. The INA allows ICE to detain individuals who have final orders of removal for the 90-day "removal period" following the date on which the order of removal became final for the purpose of effectuating removal. *See* 8 U.S.C. § 1231(a)(1)(A)–(B), (2)(A).

52. After this 90-day removal period, certain individuals may be detained *only* if they pose "a risk to the community" or are "unlikely to comply" with removal. *Id.* § 1231(a)(6). Otherwise, individuals with final orders of removal who are not removed within the 90-day removal period must be released subject to DHS supervision. *Id.* § 1231(a)(3).

53. Even individuals detained beyond the 90-day removal period pursuant to § 1231(a)(6) cannot be held indefinitely, pursuant to the Due Process Clause. *See Zadvydas*, 533 U.S. at 690, 697. Rather, post-final order detention is only authorized for a "period reasonably necessary to secure removal." *Id.* at 699–700. "[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700; *see* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable).

54. Noncitizens subject to a removal order may be released pursuant to 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13,[1] subject to an Order of Supervision. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025).

[1] 8 C.F.R. § 241.13 concerns detention and release procedures involving individuals for whom ICE must make a determination on whether there is a significant likelihood of removal in the reasonably foreseeable future. It does not appear that Mr. Rivera Larios was released pursuant to this regulation; therefore, this Petition focuses on 8 C.F.R. § 241.4. However, there is also no significant likelihood that Mr. Rivera Larios can be removed in the reasonably foreseeable future, as he has an application for deferral of removal pending in immigration court. Notwithstanding Respondents' recent actions to recalendar and accelerate his withholding only proceedings, he has the right to present his application to the immigration court, pursue an appeal at the Board of Immigration Appeals if necessary, and pursue a

55. These same regulations govern revocation of release. Under 8 C.F.R. § 241.4(l), noncitizens released under this provision can have their release revoked if they violate the conditions of release, *id.* § 241.4(l)(1), or if a district director determines that revocation is in the public interest, circumstances do not reasonably permit referral of the case to the ICE Executive Director, and the district director believes (i) the purposes of release have been served; (ii) the noncitizen violated any condition of release; (iii) it is appropriate to enforce a removal order or commence removal proceedings; or (iv) the conduct of the noncitizen or any other circumstance indicates release would no longer be appropriate, *id.* § 241.4(l)(2); *see Ceesay*, 781 F. Supp. 3d at 161 (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4).

56. The regulations only permit certain officials to revoke an order of supervision: the ICE Executive Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay*, 781 F. Supp. 3d at 161. And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. at 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

57. The regulations require that, upon revocation, the noncitizen be notified of the reasons for revocation, and that they be "afforded an initial information interview promptly" after re-detention, based upon which ICE may decide to release the noncitizen. *Id.* § 241.4(l)(1), (3).

II. Mr. Rivera Larios's Re-Detention Outside of the Removal Period Violates § 1231(a)(2) and (6).

58. ICE released Mr. Rivera Larios on January 28, 2022. Mr. Rivera Larios fully complied with all terms of supervision imposed by ICE since his release. Until he was arrested on October 14, 2025, ICE has not alleged otherwise. Moreover, ICE did not allege nor did the IJ find that Mr. Rivera Larios violated the terms of his release during the November 3, 2025 pre-deprivation hearing.

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petition for review at the Ninth Circuit Court of Appeals if the agency denies him relief. This process will likely last over one year.

59. Because Mr. Rivera Larios's 90-day removal period has run, ICE cannot detain him pursuant to 8 U.S.C. § 1231(a)(2). ICE released Mr. Rivera Larios pursuant to § 1231(a)(3). Mr. Rivera-Larios' custody determination notice also reflects that he was released pursuant to *Fraihat v. ICE*, 445 F.Supp.3d 709 (April 20, 2020 C.D. Cal.) as he was identified as having one or more risk factors for COVID-19, specifically, being a smoker. The *Fraihat* injunction did not require release for all individuals with risk factors but rather, required a custody determination for at risk individuals. *Id.* at 751. There has been no change in circumstances since Mr. Rivera Larios's January 2022 release from custody. Accordingly, there is no statutory basis for ICE's detention of Mr. Rivera Larios Rather, his re-detention is in violation of 8 U.S.C. § 1231(a)(6).

60. Additionally, ICE's failure to abide by its own regulations when the agency re-detained him on October 14, 2025 further underscores ICE's ongoing violation of § 1231. The regulations only allow ICE to revoke prior release where ICE has determined that the noncitizen has violated the conditions of release, or where a district director determines that it is in the public interest to revoke release. 8 C.F.R. § 241.4(l).

61. ICE alleged to have revoked Mr. Rivera Larios's supervision under 8 C.F.R. § 241.4(l) because it considered Mr. Larios Rivera to have violated the terms of his supervision based on his detention by Lake County Sheriff's officers in August 2025. However, both this Court and the IJ found that the detention did not violate the terms of Mr. Rivera Larios's order of supervision, as the detention did not prove that he committed a crime.

62. Where ICE made an erroneous determination, under its own regulations, to revoke supervision, and where Mr. Rivera Larios has not in fact violated the terms of his supervision, ICE has no statutory authority to detain Mr. Rivera Larios. Moreover, at the pre-deprivation hearing, the IJ did not authorize ICE to detain him, and in fact, the IJ concurred that he did not violate the order of supervision.

63. Because ICE previously released Mr. Rivera Larios on an Order of Supervision and there is no statutory basis to re-detain Mr. Rivera Larios, the Court should order that ICE immediately release Mr. Rivera Larios.

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III. Mr. Rivera Larios's Re-Detention Violates the Due Process Clause.

A. Violation of Substantive Due Process

64. Substantive due process "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (internal quotations omitted). "Freedom from bodily restraint" is at the core of liberty interests protected by the Due Process Clause. *Id.* "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

65. Substantive due process prohibits civil detention that is punitive in purpose or in effect, including civil detention that is excessively prolonged in relation to its purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise, "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"; otherwise, their commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).

66. Civil immigration detention is constitutionally justified only to the extent that it effectuates removal and safeguards the community. *See Zadvydas*, 533 U.S. at 690. Neither purpose is satisfied here, where Mr. Rivera Larios was living in the community for over three and a half years without violating the ICE imposed order of supervision at the time of his initial and second re-detention. Mr. Rivera Larios appeared at all required check-ins with ISAP and ICE as well as his pre-deprivation hearing. He also met filing deadlines to pursue protection in immigration court, and even moved to advance his hearing when the immigration court sua sponte continued his case after he filed supporting evidence. Mr. Rivera Larios also pursued U visa status with USCIS, showing his continued effort to legalize his status in the United States. Likewise, Mr. Rivera Larios did not commit any crimes while living in the community. Thus, his detention cannot be justified as ensuring his appearance at immigration proceedings, protecting the community, or effectuating his potential removal at sometime in the future.

67. In addition, the method by which ICE re-detained Mr. Rivera Larios subsequent to the pre-deprivation hearing reflects the punitive nature of his detention. After appearing in person at the pre-

deprivation hearing in San Francisco, where the IJ failed to make a definitive decision as to whether ICE could or should re-detain him, and where attorneys for ICE were present, plainclothes ICE offers waited until Mr. Rivera Larios existed the court building and thereafter surrounded him, grabbed him, moved him to the side of a building, handcuffed him, and drove away with him in an unmarked vehicle. Such actions were not justified, as they were not reasonably related to the purpose of effectuating potential removal. Therefore, the re-detention of Mr. Rivera Larios did not meet the justifications of civil detention and is punitive.[2]

B. Violation of Procedural Due Process

68. In the alternative, Respondents' re-detention of Mr. Rivera Larios on November 3, 2025 violated the Due Process Clause of the Constitution, as the pre-deprivation hearing did not comport with procedural due process.

69. Detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which in the immigration context is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 690–91 (discussing twin justifications of detention as preventing flight and protecting the community); *id.* at 699 (purpose of detention is "assuring the [noncitizen]'s presence at the moment of removal"). ICE previously released Mr. Rivera Larios on January 28, 2022 because he was neither a risk to the community or unlikely to comply with a removal order under 8 U.S.C. § 1231(a)(6). *See Singh v. Andrews*, No. 1:25-cv-801, 2025 WL 1918679, at *2 (E.D. Cal. July 11, 2025) ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him."); *see also Fraihat*, 445 F.Supp.3d at 751 (requiring custody determinations for detainees with risk factors).

70. Moreover, It is a fundamental component of due process that IJs be neutral and impartial adjudicators. *See Reyes-Melendez v. INS*, 342 F.3d 1001, 1006-09 (9th Cir. 2003) (holding that "[a] neutral judge is one of the most basic due process protections" and the IJ erred by failing to act as a neutral fact finder); *Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007) ("An IJ has a responsibility to

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[2] Mr. Rivera Larios's detention at the San Francisco field office after his detention on October 14, 2025 was also punitive and not reasonably related to the government's purpose. *See Sequen, et al., v. Albarran, et al.*, No. 25-cv-06487-PCP, Dkts. 33, 64, Order Provisionally Certifying Classes, Granting Preliminary Injunction, and Denying Stay (N.D. Cal. November 25, 2025) (granting preliminary injunction regarding the "conditions of confinement relating to sleep, hygiene, and medical care at 630 Sansome Street.")).

function as a neutral, impartial arbiter and must refrain from taking on the role of advocate for either party"); *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006) (noting the IJ's job is to be neutral and not be an advocate for either party); *see also* 8 C.F.R. § 1003.10(b) ("In all cases, IJs shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.").[3]

71. In Mr. Rivera Larios's case, Respondents' actions subsequent to this Court's TRO, including the immigration court's expedited treatment of Mr. Rivera Larios's removal proceedings, granting DHS' motion to set a pre-deprivation hearing without affording Mr. Rivera Larios time to respond, twice advancing the date of the hearing, and denying Mr. Rivera Larios's request to appear via WebEx, in conjunction with the IJ's "theoretical" finding and ultimate statement of deference to DHS, reflects the immigration court's lack of neutrality in this case. This Court's Preliminary Injunction order was clear that Respondents needed to conduct a pre-deprivation hearing before a "neutral arbiter." Dkt. 22 at 10, 12, 16. However, the IJ's deference to DHS to make its own decision as to whether Mr. Rivera Larios could be re-detained reflects the immigration court's lack of neutrality in administering the pre-deprivation hearing. Likewise, the IJ's statement that the hearing was only theoretical "with no force and effect" such that no appellate rights attach, reflects a lack of neutrality.[4]

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[3] The neutrality of the immigration courts, an agency within the Department of Justice, has been called into question, including by recruiting "deportation judges". *See* Department of Justice Recruitment Ad, https://join.justice.gov/ (last visited November 28, 2025); *see also* Ko Lyn Cheang, "*A Calculated Dismantling: Five More S.F. IJs Fired by Trump Administration*", San Francisco Chronicle, November 24, 2025, https://www.sfchronicle.com/sf/article/sf-immigration-judge-firings-21205744.php; Isabela Dias, *"'Fired for No Reason': Former IJs Speak Out Against Trump's Assault on the Courts," Mother Jones, Oct. 9, 2025*, motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/; E. Tammy Kim, *"Inside Donald Trump's Attack on Immigration Courts,"* The New Yorker, Oct. 23, 2025, newyorker.com/inside-donald-trumps-attack-on-immigration-court; Ximena Bustillo, *"A deep drive into the Trump administration's firing of IJs,"* NPR, Nov. 5, 2025, npr.org/2025/11/05/nx-s1-5584095/a-deep-dive-into-the-trump-administrations-firing-of-immigration-judges;Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025); *See* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024). Appellate judges "have suggested that the immigration courts are fundamentally incompetent, biased, or both." Adam B. Cox, *Deference, Delegation, and Immigration Law*, 74 U. Chi. L. Rev. 1671, 1682 (2007); *see, e.g.*, *Benslimane v Gonzales*, 430 F3d 828, 830 (7th Cir 2005) ("[T]he adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice.").

[4] The IJ's failure to issue an order memorializing her decision is contrary to required immigration court procedures. *See* 8 C.F.R. § 1003.37(a) ("A decision of the IJ may be rendered orally or in writing. If the decision is oral, it shall be stated by the IJ in the presence of the parties and *a memorandum summarizing the oral decision shall be served on the parties*. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification." (emphasis added)).

72. Likewise, the IJ's finding as to danger and flight risk is not supported by the record.

73. In *Matter of Guerra*, the BIA established several factors the IJ should consider when assessing an individual's risk of flight and dangerousness, including:

> (1) whether the immigrant has a fixed address in the United States; (2) the immigrant's length of residence in the United States; (3) the immigrant's family ties in the United States, (4) the immigrant's employment history, (5) the immigrant's record of appearance in court, (6) the immigrant's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses, (7) the immigrant's history of immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise escape from authorities; and (9) the immigrant's manner of entry to the United States.

24 I. & N. Dec. 37, 40 (BIA 2006). The decision was made in the context of discretionary release under 8 U.S.C. § 1226(a) and establishes the floor for factors to consider in immigration custody determinations.

74. More specifically regarding a dangerousness determination, even where an individual has been convicted of a criminal offense, criminal history "alone will not always be sufficient to justify denial of bond on the basis of dangerousness." *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (abrogated on other grounds by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). The "extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses" are also contemplated. *Matter of Guerra*, 24 I. & N. Dec. at 40. Courts must also consider the "remoteness" of the criminal activity as well as "intervening events that might undermine a finding of dangerousness." *Obregon v. Sessions*, No. 17-cv-01463, 2017 WL 1407889, *7 (N.D. Cal. April 20, 2017).

75. Federal courts have jurisdiction to review whether the agency properly assessed dangerousness. *Martinez v. Clark*, 124 F.4th 775, 783-85 (9th Cir. 2024) (asserting jurisdiction over whether the Board of Immigration Appeals erred in finding dangerousness)); *see also Y.S.G. v. Andrews*, No. 2:25-cv-1884-SCR, 2025 WL 2979309, *9-11 (E.D. Cal. October 22, 2025) (finding the IJ "failed to make a meaningful determination as to present dangerousness" and therefore concluding the IJ committed legal error in finding the petitioner was a danger to the community). The Court in *Martinez* further noted that where the agency decision raises "red flags," it need not take the agency "at its word" that it applied the correct standard. *Id* at 785. A "red flag" indicates that something is "amiss," such as where the agency misstates the record, fails to mention probative and potentially dispositive evidence, or fails to mention or apply relevant case law in its decision. *Id.* (*citing Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)).

Where, "there is any indication that the agency did not consider all the evidence before it, a catchall phrase does not suffice, and the decision cannot stand." *See Cole*, 659 F.3d at 771-72.

76. This Court ordered that Respondents were enjoined and restrained from re-detaining Mr. Rivera Larios without notice and a pre-deprivation hearing where an IJ was to evaluate whether his re-detention was warranted based on flight risk or danger to the community. Dkt. 22 at 18. In conducting Mr. Rivera Larios's pre-deprivation hearing, the IJ relied exclusively on facts that were known to ICE prior to his release on an order of supervision in January 2022. In fact, the IJ was clear that her dangerousness finding did not rely on Mr. Rivera Larios's detention by the Lake County Sheriff's Office in August 2025. Rather, in her finding regarding danger, the IJ recited Mr. Rivera Larios's arrest and charge history, all of which pre-dated his release from ICE custody, without regard to the fact that most of the charges did not result in convictions. Moreover, the immigration failed to engage in any forward-looking analysis, instead focusing exclusively on Mr. Rivera Larios's arrest history.

77. Danger must be assessed on a current basis before the agency may order someone's continued detention. *See Singh*, 638 F.3d at 1206 ("[A] conviction could have occurred years ago, and the [noncitizen] could well have led an entirely law-abiding life since then. In such cases, denial of bond on the basis of criminal history alone may not be warranted."); *see also Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) ("Due process is not satisfied…by rubberstamp denials based on temporally distant offenses. The process due even to excludable [noncitizens] requires an opportunity for an evaluation of the individual's current threat to the community and his risk of flight."). Due process also requires the agency to consider the "remoteness" of any criminal history, as well as "whether the immigrant's circumstances have changed such that criminal conduct is now less likely." *Ramos*, 293 F. Supp. 3d at 1029-30. This principle is also enshrined in agency case law. *See Matter of Guerra*, 24 I. & N. at 40 (requiring IJs to consider the "recency" of any criminal activity).

78. At the conclusion of the pre-deprivation hearing, in her dangerousness analysis, the IJ relied solely on Mr. Rivera Larios's prior criminal history, and failed to consider Mr. Rivera Larios's three years and nine months outside of ICE custody, wherein he did not violate the order of supervision and did not commit any crimes. The IJ therefore erred in relying exclusively on arrests and charges from

prior to Mr. Rivera Larios's release, without regard for his conduct subsequent to his release. As such, pursuant to *Martinez*, this Court can review the IJ's dangerousness finding and find that it is erroneous.

79. Likewise, the IJ erred in finding that Mr. Rivera Larios is a flight risk. Since his release from ICE custody in January of 2022, over three years and nine months ago, Mr. Rivera Larios has complied with all the terms of his release, including appearances at both Intensive Supervision and Reporting Program (ISAP) and ICE in San Francisco, California a distance of approximately 120 miles from his home in Lakeport, California. Mr. Rivera Larios never failed to appear.

80. In fact, his current detention stems from his attendance at what he believed to be a routine, annual appointment with ICE and subsequently, his appearance at the pre-deprivation hearing in immigration court. Yet, the IJ, relying exclusively on Mr. Rivera Larios' prior immigration history, all of which was known to ICE when he was released on an order of supervision, found him to be a flight risk. The IJ failed to consider or mention Mr. Rivera Larios's dutiful compliance with the order of supervision, his appearances at ICE and ISAP, and his appearance at the pre-deprivation hearing in making such a finding. This is legal error and an abuse of discretion. *Cole*, 659 F.3d at 771-72. Mr. Rivera Larios's compliance with the terms of his release is probative and material to the question of flight risk. The IJ's failure to consider this evidence – material and probative to the issue of flight risk is reversible error.

81. Where an IJ has failed to hold a hearing that comported with due process following a district court order, district courts have ordered release. For example, in *Mau*, the court initially ordered the government to provide the petitioner with a bond hearing. After the IJ committed "an error of law" by improperly "rel[ying] on two misdemeanor DUI convictions and one felony DUI conviction to deny bond," the court ordered the petitioner released. *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1118-19 (S.D. Cal. 2008). The court in *Judulang* ordered the petitioner released after finding that "the government did not meet [the] burden imposed" by the court's prior order requiring a hearing. *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126-27 (S.D. Cal. 2008). *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

82. District courts in the Ninth Circuit and across the country regularly grant detained noncitizen habeas petitioners release under adequate conditions of supervision when the government fails to provide them with a hearing consistent with orders of the court. *See, e.g., Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, *7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner's release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036 (N.D. Cal. 2018) (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden); *Y.S.G. v. Andrews,* 2:25-cv-1884-SCR, 2025 WL 2979309, *11 (Oct. 22, 2025) (granting the petitioner's motion to enforce the preliminary injunction, returning the petitioner to the position he was in after the preliminary injunction order and finding the IJ erred in concluding the petitioner was a danger to the community).

83. Respondents have had multiple opportunities to follow the law and afford Mr. Rivera Larios the due process to which he is entitled. They have failed to do. Thus, this Court should order him released or conduct a hearing to assess danger and flight risk.

84. "Courts analyze [ ] due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). Mr. Rivera Larios has both a protected liberty interest in his release, and the government was required to give him a pre-deprivation hearing that comported with due process before re-detaining him.

1. Mr. Rivera Larios Has a Protected Liberty Interest in His Release

85. Mr. Rivera Larios's liberty from immigration custody is protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

86. Between January 2022 and October 14, 2025, Mr. Rivera Larios exercised that freedom pursuant to his prior release from custody by ICE and placement on an Order of Supervision. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-

incarceration. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 788, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).

87. Moreover, Mr. Rivera Larios continued presenting himself before ICE and ISAP for regular check-in appointments for the past three-and-a-half years, where ICE did not seek to re-arrest him during. One year ago, when Mr. Rivera Larios last reported to ICE, ICE gave him a future date and time to appear. On October 14, 2025, he reported as required.

88. In *Morrissey v. Brewer*, 408 U.S. 471, the Supreme Court examined "the nature of the interest" that a parolee has in "his continued liberty": "[S]ubject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 481–82.

89. Accordingly, "the parolee has relied on at least an implicit promise that the parole will be revoked only if he fails to live up to the parole conditions." *Id.* at 482. The Court clarified that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of" due process. *Id.*

90. This basic principle – that individuals have a liberty interest in their conditional release – has been reinforced by the Supreme Court and circuit courts on numerous occasions. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process); *Hurd v. Dist. of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("[A] person who is in fact free of physical confinement – even if that freedom is lawfully revocable – has a liberty interest that entitles him to constitutional due process before he is re-incarcerated."). When analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as charactered by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2020).

91. Accordingly, courts in this Circuit, have recently and repeatedly held that noncitizens previously released by ICE have a liberty interest in their conditional release pursuant to *Morrissey*. *See Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) ("[T]he liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process Clause"); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL1771438, at *3 (N.D. Cal. June 26, 2025); *J.O.L.R. v. Wofford*, 1:25-cv-1241, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025); *Rodriguez Rodriguez v. Kaiser*, 1:25-cv-1111-KES-SAB, 2025 WL 2545359, at *4 (E.D. Cal. Sept. 4, 2025); *Maklad v. Murray*, 1:25-cv-946, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025); *Doe v. Becerra*, --- F. Supp. 3d ----, 2025 WL 691664, at *4–5 (E.D. Cal. Mar. 3, 2025).

92. Similarly, Mr. Rivera Larios has a liberty interest in his conditional release pursuant to *Morrissey*. For the last three-and-a-half years, Mr. Rivera Larios was able "to do a wide range of things open to persons" who have never been in custody, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Mr. Rivera Larios was able to live in Lakeport, California and spend time with his young U.S. citizen son and his wife. He has been a supportive parent to his son and a partner to his wife – "undoubtedly one of the most 'enduring attachments of normal life.'" *Rodriguez Rodriguez*, 2025 WL 2545359, at *4 (quoting *Morrissey*, 408 U.S. at 482).

93. DHS's release of Mr. Rivera Larios in 2022 reflected a determination that he did not pose a flight risk or danger to the community. *Rodriguez Rodriguez*, 2025 WL 2545359, at *4 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia ex rel. A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)); 8 C.F.R. § 1236.1 (c)(8); *see also Fraihat*, 445 F.Supp.3d at 751.

94. Mr. Rivera Larios followed all terms of his release and appeared at all check-ins as required. ICE rearrested Mr. Rivera Larios "without showing any changed circumstances, contradicting the 'implicit promise that [petitioner's freedom] will be revoked only if []he fails to live up to the [release] conditions.'" *Rodriguez Rodriguez*, 2025 WL 2545359, at *4 (quoting *Morrissey*, 408 U.S. at 482); 8 C.F.R. § 241.4(l).

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2. Mr. Rivera Larios's Liberty Interest Mandated a Hearing Before a Neutral Arbiter

95. Mr. Rivera Larios asserts that, here, (1) where he faces civil detention; (2) where he was at liberty for over three-and-a-half years, during which time he complied with all conditions of release; and (3) where no change in circumstances exist that would justify his detention, due process mandates that he receive a hearing before a neutral adjudicator.

96. Due process "is a flexible concept that varies with the particular situation." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). "The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards that [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355–56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481–82). The procedural protections required in a given situation are evaluated under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

97. Under the *Mathews* test, the government was required to give Mr. Rivera Larios procedural protections before depriving him of his freedom.

98. First, Mr. Rivera Larios has a profound private interest in remaining free from detention. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

99. Mr. Rivera Larios was at liberty for over three-and-a-half years, and during that time, continued his life in Lakeport with his family, including his son and wife. He was working lawfully, pursuant to employment authorization provided to him by DHS. His detention now denies him that freedom. *See Rodriguez Rodriguez*, 2025 WL 2545359, at *5; *Galindo Arzate*, 2025 WL 2230521, at *5. Thus, Mr. Rivera Larios has a profound private interest at stake in this case, which must be weighed heavily when determining what process is owed under the Constitution. *See Mathews*, 424 U.S. at 334–35.

100. Second, the risk of erroneous deprivation of liberty is high where Mr. Rivera Larios did not receive a pre-deprivation hearing that comported with due process. *See, e.g., Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, *7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner's release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036 (N.D. Cal. 2018) (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden); *Y.S.G. v. Andrews,* 2:25-cv-1884-SCR, 2025 WL 2979309, *11 (Oct. 22, 2025) (granting the petitioner's motion to enforce the preliminary injunction, returning the petitioner to the position he was in after the preliminary injunction order).

101. Because immigration detention is civil detention, it is "nonpunitive in purpose and effect," and is only justified when a noncitizen presents a risk of flight or danger to the community. *Zadvydas*, 533 U.S. at 690.

102. In releasing Mr. Rivera Larios in January 2022, ICE determined that he was neither a flight risk nor a danger to the community. There are no changed circumstances relating to Mr. Rivera Larios's risk of flight or dangerousness since ICE made such a determination three-and-a-half years ago. Mr. Rivera Larios attended every ICE check-in since he was released. In fact, Mr. Rivera Larios was arrested *at* his ICE check-in on October 14, 2025, without notice and without being provided any procedural safeguards to determine whether the circumstances had changed such that his re-detention was justified and again after his pre-deprivation hearing on November 3, 2025, at which the IJ found he did not violate the terms of the order of supervision. Instead, without making a finding as to whether ICE could re-detain him, the IJ found him to be a danger to the community and flight risk based on information that pre-dated his release from ICE custody in January 2022.

103. Furthermore Respondents have not shown any materially changed circumstances relating to their ability to remove Mr. Rivera Larios. Though Respondents swiftly acted to re-calendar Mr. Rivera Larios's previously administratively closed withholding-only proceedings, these proceedings remain pending in immigration court.

104. Additionally, ICE failed to follow its own procedural regulations for revocation, and the immigration court failed to follow proper procedures or provide a hearing that comported with due

process, further increasing the likelihood of erroneous deprivation and itself likely constituting a due process violation. *See Diaz v. Wofford*, No. 1:25-cv-01079 JLT EPG, 2025 WL 2581575, at *7 (E.D. Cal. Sept. 5, 2025) (citing *Zhu v. Genalo*, No. 1:25-cv-06523, 2025 WL 2452352, at *7 (S.D.N.Y. Aug. 26, 2025)); *Delkash v. Noem*, 2025 WL 2683988, at *5 (C.D. Cal. Aug. 28, 2025); *Santamaria Orellana v. Baker*, No. 1:25-cv-1788, 2025 WL 2444087, at *6–8 (D. Md. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-cv-01204, 2025 WL 2430267, at *12 (D. Or. Aug. 21, 2025); *Ceesay*, 781 F. Supp. 3d at 166.[5]

105. ICE's claim regarding the reasoning for revocation of Mr. Rivera Larios's release is erroneous, as a matter of fact and law, and the IJ's finding regarding danger and flight risk is unsupported by the record. Thus, neither the revocation of Mr. Rivera Larios's order of supervision nor his re-detention subsequent to the pre-deprivation hearing was justified. *See* 8 C.F.R. § 241.4(l)(1).

106. None of the reasoning that would justify revocation under the regulation applies to Mr. Rivera Larios, as he has not violated any condition of release, nor is it in the public interest to revoke his release. 8 C.F.R. § 241.4(l)(1)–(2). And his revocation was not effectuated by the ICE Executive Director, a district director, or another agent specifically delegated the authority to revoke his release. 8 C.F.R. § 241.4(l).

107. Third, the government's interest in detaining Mr. Rivera Larios without a hearing before a neutral adjudicator is low. Respondents scheduled and held a pre-deprivation hearing that failed to comport with due process.

108. Providing Mr. Rivera Larios with a hearing before a neutral decisionmaker, specifically, this Court, to determine whether there is clear and convincing evidence that he is a flight risk or danger to

[5] In these cases, courts outside of this district have detailed how violation of the procedures set forth in 8 C.F.R. § 241.4(l) constitute a due process violation. Mr. Rivera Larios contends that the procedures set forth in 8 C.F.R. § 241.4(l), as applied in his case, are sufficient to provide him with due process as required under the Fifth Amendment. *See Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 (2022); *Casas-Castrillon v. DHS*, 535 F.3d 942, 951–52 (9th Cir. 2008), *abrogated on other grounds in part by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *see also Zadvydas*, 533 U.S. at 701 (holding that indefinite detention under § 1231(a)(6) raised serious constitutional concerns, in part because "the sole procedural protections available to the [noncitizen] are found in administrative proceedings, where the [noncitizen] bears the burden of proving that his is not dangerous"). ICE has failed to meet even this bare minimum of process that it set out in its own regulations, further underscoring the violation of Mr. Rivera Larios's due process rights.

the community would impose only a *de minimis* burden on the government, as the evidence is already in the record. *See* Dkts. 5-4, 6-1, 14-1, 15-1, 15-2, 24-1; Shugall decl.. Here, the "fiscal and administrative burdens" that a pre-deprivation hearing before this Court would impose is nonexistent. *See Mathews*, 424 U.S. at 334–35.

109. The government's interest in detaining Mr. Rivera Larios is further diminished where Mr. Rivera Larios appeared before ICE and ISAP on a regular basis since his release, as well as before the immigration court for a pre-deprivation hearing. *See Morrissey*, 408 U.S. at 482 ("It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom.") (internal quotation omitted); *Pinchi v. Noem*, --- F. Supp. 3d ----, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("[T]he government's decision to release an individual from custody creates an 'implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[] to live up to the . . . conditions [of release].") (quoting *Morrissey*, 408 U.S. at 482); *see also Garcia-Ayala v. Andrews*, 2025 WL 2597508, at *4 (E.D. Cal. Aug. 8, 2025) (citing *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025)).

110. Mr. Rivera Larios's full compliance with the order of supervision and other obligations related to his immigration case, including the October 14, 2025 ICE check-in and the November 3, 2025 pre-deprivation hearing, where he was arrested by ICE, further confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he has always done. Thus, the government's interest in detaining Mr. Rivera Larios is particularly low.

111. In fact, continued freedom from confinement until ICE demonstrates that Mr. Rivera Larios is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The costs to the public of immigration detention are staggering."); *Pinchi*, 2025 WL 1853763, at *3.

112. As the Supreme Court noted, even where the government has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." *Morrissey*, 408 U.S. at 483.

113. Here, where Mr. Rivera Larios has abided by the conditions of his release and the cost of providing such a hearing is extremely low, the government's interest in detaining Mr. Rivera Larios is low and counsels heavily in favor of release or a hearing before this Court.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of 8 U.S.C. § 1231(a)

114. The allegations in the above paragraphs are realleged and incorporated herein.

115. The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2).

116. A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

117. While § 1231(a)(6) permits detention beyond the removal period in certain situations, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

118. No statute permits Respondents to re-detain an individual who has been released under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the individual has violated the conditions of their release.

119. Mr. Rivera Larios's final order of removal was entered over 90 days ago. Thus, Mr. Rivera Larios is outside the 90-day removal period and cannot be detained for that reason alone.

120. Mr. Rivera Larios was released by ICE under § 1231(a)(3), pursuant to an Order of Supervision. He was never detained under § 1231(a)(6).

121. Mr. Rivera Larios has never violated any terms of his supervised release. There are no changed circumstances that alter his flight risk or danger. There is no reasonable likelihood that Mr. Rivera Larios will be removed in the foreseeable future. Thus, Mr. Rivera Larios cannot be detained pursuant to *Zadvydas* and § 1231(a)(3).

122. For these reasons, the Court should order that Respondents release Mr. Rivera Larios.

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SECOND CAUSE OF ACTION
Violation of Fifth Amendment Due Process Clause:
Substantive Due Process

123. The allegations in the above paragraphs are realleged and incorporated herein.

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

125. The government's interest in civil immigration detention is to effectuate removal and safeguard the community.

126. Due process prohibits the government from punishing people through civil detention. Civil detention becomes punitive when its nature or duration is unreasonable relative to the purpose for which the individual is detained-- effectuating removal and safeguarding the community.

127. Here, the evidence does not support a finding that Mr. Rivera Larios is a danger to the community or flight risk, as such his detention is unjustified. Respondents' attempts to create conditions to warrant his detention render the detention punitive.

128. When a civil restriction is excessive in relation to a governmental interest, or the government could accomplish its interests through less restrictive means, the punitive detention violates the person's right to substantive due process.

129. Because Mr. Rivera Larios's detention is unjustified, such detention is punitive. The Court should order that Respondents do not presently have a justification to require Mr. Rivera Larios's detention.

THIRD CAUSE OF ACTION
Violation of Fifth Amendment Due Process Clause:
Procedural Due Process

130. The allegations in the above paragraphs are realleged and incorporated herein.

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

132. ICE previously detained Mr. Rivera Larios and released him after an individualized custody determination that considered any danger or unmitigable flight risk. He has a liberty interest in

remaining free from physical confinement on conditional release under the Due Process Clause. *See Morrissey*, 408 U.S. at 482–83. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See id.* at 487–88.

133. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127).

134. In the immigration context, for such hearings to comply with due process, the government must bear the burden, before a neutral arbiter to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

135. Mr. Rivera Larios's re-detention without a pre-deprivation hearing before a neutral arbiter violated due process. The IJ's finding that Mr. Rivera Larios is a danger to the community and flight risk is not supported by the record, and the IJ's deference to DHS reflects a lack of neutrality by the immigration court.

136. Mr. Rivera Larios has a profound personal interest in his liberty. Because he did not receive procedural protections that comported with due process, the risk of erroneous deprivation is high, and the government has no legitimate interest in detaining him.

137. For these reasons, Respondents have violated the Due Process Clause of the Fifth Amendment. The Court should order Mr. Rivera Larios's release or should conduct a hearing at which the government bears the burden of justifying Mr. Rivera Larios's re-detention by clear and convincing evidence.

RELIEF REQUESTED

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

(1) Assume jurisdiction over this action;

(2) Declare that Mr. Rivera Larios's detention violates 8 U.S.C. § 1231(a) and the Due Process Clause of the Fifth Amendment;

(3) Issue a writ of habeas corpus and order Respondents to immediately release Mr. Rivera Larios from DHS's physical custody and reinstate his Order of Supervision with the same conditions in place at the time of his unlawful arrest;

(4) Enjoin Respondents from re-detaining Mr. Rivera Larios unless his re-detention is ordered at a custody hearing before this Court, in which the government bears the burden of proving, by clear and convincing evidence, that there has been a material change in circumstances warranting his re-detention;

(5) This Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless Mr. Rivera Larios is not entitled to relief. 28 U.S.C. § 2243. If this Court issues an order to show cause, it must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added);

(6) Award costs and reasonable attorney fees under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412(b), and any other applicable law; and

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

Dated: December 5, 2025

IMMIGRANT LEGAL DEFENSE

By: */s/ Ilyce Shugall*

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

I am submitting this verification on behalf of Petitioner because I am his attorney in the instant habeas petition. As his 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.

Date: December 5, 2025

/s/ Ilyce Shugall

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