

1 PETER WEISS, ESQ. (CA SBN 324117)
2 PANGEA LEGAL SERVICES
3 391 SUTTER ST., SUITE 500
4 SAN FRANCISCO, CA 94108
5 TEL. (415) 547-9382
6 FAX. (415) 593-5335
7 pete@pangealegal.org

8 *Pro Bono Attorney for Petitioner*

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 MYKE JONATHAN CUX JOCOP,
14 a.k.a. Mike Cux Jocop

15 *Petitioner,*

16 v.

17 SERGIO ALBARRAN, Field Office Director
18 of the San Francisco Field Office of
19 U.S. Immigration and Customs Enforcement;
20 TODD M. LYONS, Acting Director of
21 U.S. Immigration and Customs Enforcement;
22 KRISTI NOEM, Secretary of the U.S.
23 Department of Homeland Security; and
24 PAMELA BONDI, Attorney General of the
25 United States,

26 *Respondents.*

Case No.: 3:25-cv-9059

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

IMMIGRATION HABEAS CASE

INTRODUCTION

1
2 1. Petitioner Myke Jonathan Cux Jocop (“Petitioner” or “Mr. Cux Jocop”) brings
3 this petition for writ of habeas corpus to remedy Respondents’ (“Respondents”) arbitrary and
4 unlawful re-detention of Mr. Cux Jocop without any process in violation of the Immigration and
5 Nationality Act (“INA”) and the Fifth Amendment to the U.S. Constitution.

6 2. Mr. Cux Jocop [REDACTED] was released from ICE
7 custody pursuant to a bail order from District Judge Vince Chhabria more than five years ago in
8 June 2020. While at liberty for more than five years since then, he has complied with the bail
9 order and ICE supervision conditions, including participation in ICE’s Intensive Supervision
10 Appearance Program (“ISAP”). Mr. Cux Jocop has lived in the United States for over 10 years.
11 His sole criminal conviction has been vacated for legal invalidity, and he has no arrests since his
12 release from ICE custody in June 2020. His removal proceedings remain pending at San
13 Francisco Immigration Court.

14 3. Nevertheless, on October 21, 2025, ICE detained Mr. Cux Jocop when he
15 appeared at a regularly-scheduled check-in at the ICE office in San Francisco, California.

16 4. Mr. Cux Jocop supports his long-term partner, Nancy, their two U.S. citizen
17 children, ages 2 and 5, and his two U.S. citizen stepchildren, ages 9 and 14. In addition to
18 working full time, Mr. Cux Jocop takes care of the children while his partner is at work, only
19 beginning his full-time job as a delivery driver when his partner returns home. His partner Nancy
20 cannot provide and care for their U.S. children if Mr. Cux Jocop remains detained.

21 5. It is well-established that Mr. Cux Jocop has a liberty interest in his years-long
22 freedom, and the Fifth Amendment’s Due Process Clause mandates that detention serve a
23 legitimate purpose—to mitigate flight risk and/or prevent danger to the community—neither of
24 which is served by Mr. Cux Jocop’s detention. The fact that Mr. Cux Jocop has been out of
25 detention for more than *five years* without incident entitled him to procedural protections before
26 he was redetained, which Respondents failed to provide.

27 6. Mr. Cux Jocop seeks immediate relief to remedy his unlawful detention.
28

JURISDICTION

7. Mr. Cux Jocop is currently detained in the custody of Respondents at 630 Sansome Street, San Francisco, California (“630 Sansome Street”).

8. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution and the Immigration & Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

9. The Court may grant declaratory and injunctive 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).

10. The federal habeas statute establishes the Court’s power to decide the legality of Mr. Cux Jocop’s 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. Moreover, the Supreme Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *INS 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.”). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) (“[T]he Queen’s Bench had, ‘independently of statute, by the common law, jurisdiction to admit to bail[.]’”) (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

VENUE

11. Venue is proper in this District because it is the district in which Mr. Cux Jocop is confined at the time of this petition’s filing. *See Doe v. Garland*, 109 F.4th 1188, 1197-98 (9th Cir. 2024); *see also Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025); *Khalil v. Joyce*, No. 25-cv-01963 (MEF) (MAH), 2025 U.S. Dist. LEXIS 63573, at *31 (D.N.J. Apr. 1, 2025), *aff’d*,

1 *Khalil v. President of the United States*, No. 25-08019 (3d Cir., May 6, 2025). This District also
2 has territorial jurisdiction over Respondent Sergio Albarran, the ICE San Francisco Field Office
3 Director who has taken Mr. Cux Jocop into custody in San Francisco and is currently Mr. Cux
4 Jocop's custodian.

5 12. Additionally, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)
6 because Respondents are employees or officers of the United States, acting in their official
7 capacity; a substantial part of the events or omissions giving rise to the claim occurred or will
8 occur in the Northern District of California; Petitioner resides in this District; and there is no real
9 property involved in this action. *See* 28 U.S.C. § 1391(e)(1)(A).

10 **INTRADISTRICT ASSIGNMENT**

11 13. Mr. Cux Jocop was re-detained by the San Francisco Field Office of ICE in San
12 Francisco, California. Assignment to the San Francisco Division of this Court is therefore proper
13 under N.D. Local Rule 3-2(d).

14 **PARTIES**

15 14. Petitioner Myke Jonathan Cux Jocop is a 40-year-old man from Guatemala who
16 came to the United States fleeing persecution over ten years ago. He resides with his wife and
17 their young children in San Mateo, California. Mr. Cux Jocop was taken into custody by ICE on
18 October 21, 2025 at approximately 4:00 PM at ICE's Office at 630 Sansome Street, San
19 Francisco, California.

20 15. Respondent Sergio Albarran is the Field Office Director for the San Francisco
21 Field Office of ICE Enforcement and Removal Operations ("ERO"). Respondent Albarran
22 maintains an office in San Francisco, California, within this judicial district. The San Francisco
23 Field Office oversees custody determinations of noncitizens at the ISAP Office in San Jose,
24 California. Respondent Albarran is the federal official most directly responsible for Mr. Cux
25 Jocop's custody and is his legal custodian. He is named in his official capacity.

26 16. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and
27 Customs Enforcement. Respondent Lyons is responsible for ICE's policies, practices, and
28 procedures, including those relating to the detention of noncitizens. Respondent Lyons is a legal

1 custodian of Mr. Cux Jocop. He is named in his official capacity.

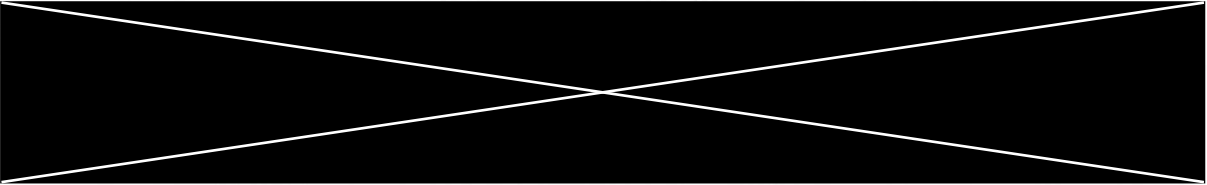
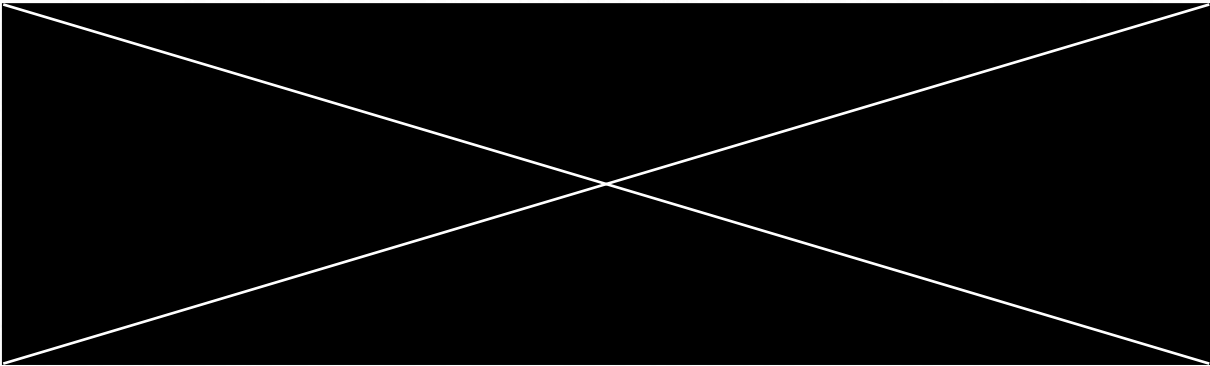
2 17. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
3 Security ("DHS"), an agency of the United States. She is responsible for overseeing DHS and its
4 sub-agencies, ICE and USCIS, and has ultimate responsibility over the detention of noncitizens
5 in civil immigration custody. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal custodian of
6 Mr. Cux Jocop. She is named in her official capacity.

7 18. Respondent Pamela Bondi is the Attorney General of the United States and the
8 head of the Department of Justice ("DOJ"), which encompasses the Board of Immigration
9 Appeals ("BIA") and Immigration Judges ("IJs") as part of its sub-agency, the Executive Office
10 for Immigration Review ("EOIR"). As Attorney General, Respondent Bondi is responsible for
11 overseeing the implementation and enforcement of the federal immigration laws. *See* 8 U.S.C.
12 § 1103(g). The Attorney General delegates this responsibility to the EOIR, which administers the
13 immigration courts and the BIA. Respondent Bondi is a legal custodian of Mr. Cux Jocop. She is
14 sued in her official capacity.

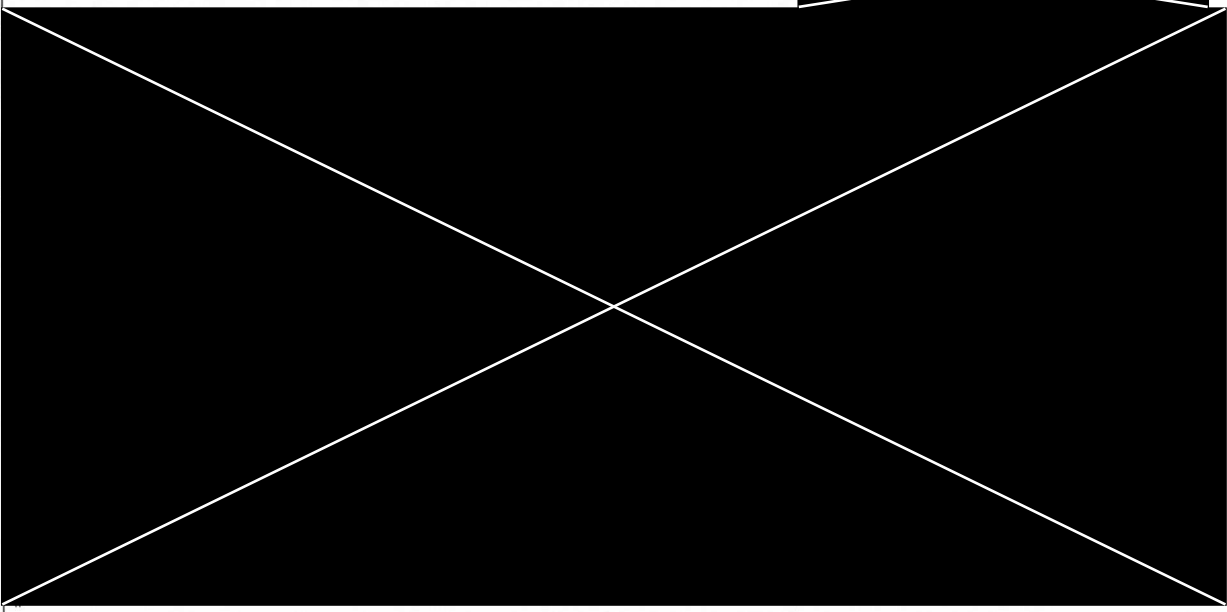
15 STATEMENT OF FACTS

16 A. Immigration Proceedings

17 19. Petitioner Myke Jonathan Cux Jocop is a 40-year-old man from Guatemala. *See*
18 Declaration of Peter Weiss ("Weiss Decl."), ¶ 3. 

19 
20
21
22 20. 
23
24
25
26
27
28 

1 21. Mr. Cux Jocop lived in the United States until about March 2020, when he was
2 detained by ICE and his removal order was reinstated. *Id.*, ¶ 10.



3
4
5
6
7
8
9
10
11
12
13 23. As of today, October 21, 2025, Mr. Cux Jocop's case remains pending before the
14 San Francisco Immigration Court, with an individual hearing scheduled for August 25, 2026. *Id.*,
15 ¶ 15.

16 **C. Detention, Release, and Participation in the Community Over the Past 5 Years**

17 24. As stated above, Mr. Cux Jocop was detained by ICE in March 2020. On June 15,
18 2020, U.S. District Judge Vince Chhabria granted his individualized bail application submitted
19 as part of a class action challenging conditions of immigration detention during the COVID-19
20 pandemic. *See* Exh. A, Bail Application Approval Order; *see Zepeda Rivas v. Jennings*, 445 F.
21 Supp. 3d 36 (N.D. Cal. 2020), *aff'd in part and ref'd to mediation*, 845 Fed. Appx. 530 (9th Cir.
22 2021) (granting TRO and providing district court bail application process for individuals
23 detained in certain ICE facilities). Judge Chhabria ordered Mr. Cux Jocop released on bail. *See*
24 Exh. A; Weiss Decl., ¶ 17.

25 25. The next day, June 16, 2020, ICE released Mr. Cux Jocop on an order of
26 supervision. Weiss Decl., ¶ 18. ICE placed Mr. Cux Jocop on a monitoring program through the
27 Intensive Supervision Appearance Program ("ISAP"). *Id.* At first, Mr. Cux Jocop was outfitted
28 with a mandatory ankle monitor with a GPS tracking device. *Id.*, ¶ 19. However, around July

1 2023, in recognition of Mr. Cux Jocop's compliance with his order of supervision, ISAP de-
2 escalated Mr. Cux Jocop's case and removed the GPS ankle monitor. *Id.* Mr. Cux Jocop
3 continued to communicate with ISAP, appear at in-person and virtual check-ins, and comply
4 with all required conditions through the BI SmartLINK application on his phone. *Id.*, ¶ 19.

5 26. In the more than 5 years since his release from ICE detention, Mr. Cux Jocop has
6 complied with the bail order and ICE's order of supervision. *Id.*, ¶ 20. He has repeatedly attended
7 his in-person check-ins with ICE and ISAP and his virtual check-ins through the BI SmartLINK
8 application. *Id.* He has not been arrested for or convicted of any crime during that time. *Id.* In
9 fact, his sole conviction, dating from 2013, was vacated for legal invalidity in 2021. *Id.*, ¶ 21.

10 27. In 2021, U.S. Citizenship and Immigration Services ("USCIS") issued Mr. Cux
11 Jocop an employment authorization document ("EAD"). *Id.*, ¶ 11. Since that time, Mr. Cux
12 Jocop has worked lawfully to support his family. *Id.*

13 28. Since his release, Mr. Cux Jocop has lived with his partner, Nancy, and their
14 children in San Mateo, California. *Id.*, ¶ 5. The couple have two U.S. citizen children together,
15 ages 2 and 5, and Mr. Cux Jocop is a stepfather to Nancy's two U.S. citizen children, ages 9 and
16 14. *Id.* In addition to working full-time as a delivery driver, Mr. Cux Jocop is a primary caretaker
17 for his young children. *Id.*, ¶¶ 5-6. He takes care of them while Nancy is at work, and only
18 leaves for his job when Nancy returns home in the evening. *Id.* Mr. Cux Jocop's 2-year-old son
19 is currently recovering from surgery and requires extra care. *Id.*, ¶ 6. Nancy cannot take care of
20 their children on her own, and does not know how she will provide and care for them if Mr. Cux
21 Jocop remains detained. *Id.*

22 **D. Re-Detention Without Process or a Hearing**

23 29. Despite Mr. Cux Jocop's compliance with ICE directives, on October 14, 2025
24 ICE officers detained him at his yearly in-person check in at the San Francisco ICE Office at 630
25 Sansome Street, San Francisco, CA ("630 Sansome Street"). *Id.*, ¶ 22. ICE did not provide Mr.
26 Cux Jocop any notice, hearing, or process prior to his arrest.

27 30. When undersigned Counsel asked why Mr. Cux Jocop was being detained, an ICE
28 officer said that Mr. Cux Jocop had four ISAP violations where he failed to upload a photo of

1 himself to the BI Application within the short period permitted. *Id.*, ¶ 23. The ICE officer did not
 2 provide Mr. Cux Jocop with any evidence of his noncompliance, nor give Mr. Cux Jocop an
 3 opportunity to provide contrary evidence of compliance before taking him into custody. *Id.*, ¶ 24.

4 31. The ICE officer said that Mr. Cux Jocop would be detained overnight at 630
 5 Sansome Street. *Id.*, ¶ 25. Upon information and belief, at the time of filing Mr. Cux Jocop
 6 remains detained at the San Francisco ICE office at 630 Sansome St., in San Francisco,
 7 California. *Id.*

8 LEGAL FRAMEWORK

9 **I. RIGHT TO A HEARING PRIOR TO RE-INCARCERATION**

10 32. The Due Process Clause of the Fifth Amendment makes it unlawful for
 11 Respondents to re-detain Mr. Cux Jocop without first providing a pre-deprivation hearing before
 12 a neutral decision maker to determine whether re-detention is justified by a risk of flight or
 13 danger to the community.

14 33. Civil immigration detention must be justified by a permissible purpose, and must
 15 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
 16 permissible regulatory goals are “ensuring the appearance of [noncitizens] at future immigration
 17 proceedings” and “preventing danger to the community.” *Id.*; *see also Matter of Patel*, 17 I&N
 18 Dec. 597, 666 (BIA 1976) (“[A noncitizen] generally is not and should not be detained or
 19 required to post bond except on a finding that he is a threat to the national security, or that he is a
 20 poor bail risk.”) (internal citations omitted).

21 34. In *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA recognized an
 22 implicit limitation on ICE’s authority to re-arrest noncitizens who had previously been found
 23 proper for release. There, the BIA held that “where a previous bond determination has been
 24 made by an immigration judge, no change should be made by [the DHS] absent a change of
 25 circumstance.” *Id.*

26 35. In practice, DHS “requires a showing of changed circumstances both where the
 27 prior bond determination was made by an immigration judge *and* where the previous release
 28

1 decision was made by a DHS officer.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
 2 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
 3 added). The Ninth Circuit has assumed that, under *Matter of Sugay*, ICE has no authority to re-
 4 detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787,
 5 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

6 36. ICE has further limited its authority as described in *Sugay*, and “generally only re-
 7 arrests [noncitizens]...after a *material* change in circumstances.” *Saravia*, 280 F. Supp. 3d at
 8 1197 (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA
 9 case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on
 10 bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter*
 11 *of Sugay*, 17 I&N Dec. at 640.

12 37. ICE’s power to re-arrest a noncitizen who is at liberty is also constrained by the
 13 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the
 14 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
 15 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due
 16 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
 17 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
 18 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
 19 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
 20 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
 21 unlawful or arbitrary personal restraint or detention.”).

22 38. Courts in this district have repeatedly recognized that due process requires that a
 23 noncitizen like Mr. Cux Jocop who was previously found by an adjudicator to be appropriate for
 24 release from immigration detention be given a pre-deprivation hearing *before* ICE re-detains
 25 him. *See, e.g., Serrano v. Albarran*, No. 25-cv-08408-EKL, 2025 U.S. Dist. LEXIS 195917, at
 26 *5 (N.D. Cal. Oct. 2, 2025) (ordering release and a pre-deprivation hearing before re-detention);
 27 *Pinchi v. Noem*, No. 25-cv-06632-PCP, 2025 U.S. Dist. LEXIS 142213, at *8 (N.D. Cal. July 24,
 28 2025) (same); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D.

Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

39. Indeed, in similar circumstances to this case, where noncitizens released on a *Zepeda-Rivas* bail order was re-arrested prior to being provided a pre-deprivation hearing, at least two judges in this District have recently issued TROs and/or preliminary injunctions requiring ICE to immediately release the petitioner and enjoined the government "from arresting, detaining, or removing the petitioner without notice and a hearing to determine whether a material change of circumstances justifies his re-detention." *Duong v. Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024 (N.D. Cal., Sept. 19, 2025); *Alas v. Albarran*, No. 25-cv-08774-VC, 2025 U.S. Dist. LEXIS 207060 (N.D. Cal., Oct. 15, 2025) (granting TRO requiring release for individual re-detained five years after *Zepeda-Rivas* release); *see also Doe*, 2025 WL 691664, at *4 (granting TRO as to an individual who had already been re-arrested).

A. Mr. Cux Jocop's Protected Liberty Interest in His Conditional Release

40. Mr. Cux Jocop's liberty from immigration custody and his weighty interest in avoiding re-incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment...lies at the heart of the liberty" that the Due Process Clause protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

41. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and

1 friends and to form the other enduring attachments of normal life.” *Id.* at 482. “[T]he liberty of a
2 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
3 termination inflicts a grievous loss on the parolee and often others.” *Id.* Therefore, “[b]y
4 whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
5 Amendment.” *Id.*

6 42. This basic principle—that individuals have a liberty interest in their conditional
7 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
8 occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a
9 pre-parole program created to reduce prison overcrowding have a protected liberty interest
10 requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals
11 released on felony probation have a protected liberty interest requiring pre-deprivation process).
12 As the First Circuit has explained, when analyzing the issue of whether a specific conditional
13 release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by
14 comparing the specific conditional release in the case before them with the liberty interest in
15 parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir.
16 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v. District of*
17 *Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical
18 confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him
19 to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
20 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482)

21 43. In fact, an individual maintains a protected liberty interest in his freedom even
22 where he obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-*
23 *Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that
24 due process considerations support the notion that an inmate released on parole by mistake,
25 because he was serving a sentence that did not carry a possibility of parole, could not be re-
26 incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to
27 society, so it “would be inconsistent with fundamental principles of liberty and justice” to return
28 him to prison) (internal quotation marks and citation omitted).

44. Here, Mr. Cux Jocop's conditional release is in relevant ways similar to the liberty interest in parole protected in *Morrissey*. Just as in *Morrissey*, Mr. Cux Jocop's release "enables him to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, care for his children, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Indeed, Mr. Cux Jocop is a breadwinner and primary caretaker for his U.S. citizen children. Weiss Decl., ¶¶ 5-6. He picks up his five-year-old daughter from school every day, and cares for his 2-year-old son who is currently recovering from surgery. *Id.*, ¶ 6. He takes care of his children, including his two stepchildren, until his wife returns from work, at which time he begins his own work day as a delivery driver. *Id.* He has complied with all conditions of release for over five years as he continues to pursue relief from removal. *Id.*, ¶ 20.

45. Even if "lawfully revocable," Mr. Cux Jocop's 5 years at liberty provides him a "a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd*, 864 F.3d at 683; *see also Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring program had liberty interest protected by the Due Process Clause because the program "allowed the appellees to live with their loved ones, form relationships with neighbors, lay down roots in their community, and reside in a dwelling of their own choosing (albeit subject to certain limitations) rather than in a cell designated by the government."); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen made a substantial showing that he had liberty interest requiring pre-deprivation hearing before re-arrest, even after original bond order was reversed on appeal); *Duong*, 2025 U.S. Dist. LEXIS 185024, at *13-14 (noncitizen released on *Zepeda-Rivas* bail order had strong liberty interest even after expiration of settlement agreement); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist. LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025) (same).

B. Mr. Cux Jocop's Strong Interest in His Liberty Required a Hearing Before He Was Re-Incarcerated By ICE

46. If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "Adequate, or due, process depends upon the nature of the interest affected.

1 The more important the interest and the greater the effect of its impairment, the greater the
 2 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
 3 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-
 4 82). To determine the process due in this context, courts use the flexible balancing test set forth
 5 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970;
 6 *Jorge M. F.*, 534 F. Supp. 3d at 1055.

7 47. Under the *Mathews* test, the Court balances three factors: “first, the private
 8 interest that will be affected by the official action; second, the risk of an erroneous deprivation of
 9 such interest through the procedures used, and the probative value, if any, of additional or
 10 substitute procedural safeguards; and finally the government’s interest, including the function
 11 involved and the fiscal and administrative burdens that the additional or substitute procedural
 12 requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S.
 13 319, 335 (1976)).

14 48. Importantly, the Supreme Court “usually has held that the Constitution requires
 15 some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v.*
 16 *Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports
 17 with due process in a “special case” where post-deprivation remedies are “the only remedies the
 18 State could be expected to provide”. *Zinerman*, 494 U.S. at 128. Further, only where “one of the
 19 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
 20 preventing the kind of deprivation at issue” can the government avoid providing pre-deprivation
 21 process. *Id.*; *see also Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
 22 awaiting involuntary civil commitment proceedings may not constitutionally be held in jail
 23 pending the determination as to whether they can ultimately be recommitted).

24 49. Here, the *Mathews* factors all favor Mr. Cux Jocop and establish that the
 25 government was required to provide Mr. Cux Jocop notice and a hearing *prior* to any re-
 26 incarceration and revocation of his bond. *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*,
 27 534 F. Supp. 3d at 1055; *Duong*, 2025 U.S. Dist. LEXIS 185024, at *16.

1 50. First, Mr. Cux Jocop's private interest in his liberty is substantial. *See Foucha v.*
2 *Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core
3 of the liberty protected by the Due Process Clause."). The Supreme Court has recognized that
4 individuals released from serving a *criminal* sentence have a "valuable" liberty interest—even if
5 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. Thus,
6 released individuals who have not violated the conditions of their release must be provided
7 notice and a hearing *before* they are reincarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-*
8 *Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. If that is true for parolees or probationers—
9 who have a diminished liberty interest given their convictions, *see, e.g., U.S. v. Knights*, 534 U.S.
10 112, 119 (2001)—the interest for an individual awaiting civil immigration proceedings is even
11 weightier. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 ("[G]iven the civil context" of immigration
12 detention, a noncitizen's interest in release on bond is "arguably greater than the interest of
13 parolees in *Morrissey*"). Here, Mr. Cux Jocop's interest is even more pronounced than the
14 average noncitizen previously released from custody, given that the government has provided
15 him employment authorization, allowing him to work lawfully. *See Weiss Decl.*, ¶ 11.

16 51. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally
17 re-detain Mr. Cux Jocop without a hearing before a neutral adjudicator that would determine
18 whether detention serves a permissible purpose, ie. preventing danger or flight risk. *See*
19 *Zadvydas*, 533 U.S. at 690. A federal judge in this district has already reviewed Mr. Cux Jocop's
20 case and found that he should be admitted to bail. *See Exh. A (Bail Order)*. In the five years
21 since, Judge Chhabria's judgment was proven correct: Mr. Cux Jocop complied with the bail
22 conditions, reported as required to ICE, and remained law-abiding. Moreover, ICE itself de-
23 escalated Mr. Cux Jocop's case, taking him off an ankle monitor. *Weiss Decl.*, ¶ 19. These
24 developments show that detention is likely *not* warranted.

25 52. To the extent ICE is alleging that Mr. Cux Jocop violated the terms of his release
26 by uploading photos of himself to the BI Application on the same date he was supposed to but
27 slightly after the brief 2-hour window required, that would not show he is a flight risk. On the
28 contrary, even if true it shows he is endeavoring to comply with the ISAP requirements. To the

1 extent there is a dispute regarding Mr. Cux Jocop's compliance with ISAP, a hearing is
2 particularly important in ensuring Mr. Cux Jocop is not unnecessarily detained. Yet DHS's
3 choice to re-detain Mr. Cux Jocop without a hearing has deprived him of his liberty and
4 separated him from his family and community without any opportunity for Mr. Cux Jocop to
5 contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-
6 SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his
7 scheduled check-in without notice or hearing, and where compliance with release terms is in
8 dispute, and ordering immediate release and enjoining Respondents from re-detention without a
9 pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show
10 by clear and convincing evidence that petitioner is a flight risk or danger to the community);
11 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23,
12 2025) (same).

13 53. By contrast, the value of a pre-deprivation hearing before a neutral decision-
14 maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez*
15 *v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas*
16 *v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous
17 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
18 than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081,
19 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than
20 ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to
21 determine whether Mr. Cux Jocop actually currently poses a flight risk or danger such that
22 detention is justified. *See, e.g., Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 ("At a hearing, a
23 neutral decisionmaker can consider all of the facts and evidence before him to determine whether
24 Petitioner in fact presents a risk of flight or dangerousness."). Requiring such a hearing be held
25 *before* Mr. Cux Jocop is re-detained serves to protect his liberty interest, facilitate his right to
26 counsel and to gather evidence, and ensure that ICE's decision to revoke Mr. Cux Jocop's
27 release does not evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

1 54. Third, the government’s interest in detaining Mr. Cux Jocop *without* a hearing is
2 low. The government cannot plausibly assert it has any basis for detaining Mr. Cux Jocop now,
3 when he has lived in the community caring for his family without incident for more than five
4 years. In any event, providing Mr. Cux Jocop with a hearing before this Court (or another neutral
5 decisionmaker) to determine whether there is evidence that Mr. Cux Jocop *currently* poses any
6 risk of flight or danger to the community imposes a *de minimis*, if any, burden on the
7 government. Such a hearing is far *less* costly and burdensome for the government than keeping
8 Mr. Cux Jocop detained at what the Ninth Circuit described as a “staggering” cost to the public
9 of \$158 each day per detainee in 2017, “amounting to a total daily cost of \$6.5 million” (the
10 current cost now is likely significantly higher). *Hernandez*, 872 F.3d at 996.

11 55. Because the government failed to give Mr. Cux Jocop the notice and hearing he
12 was due under the *Mathews* factors prior to re-incarcerating him, the Court should order him
13 released until the government provides him with a constitutionally-compliant hearing.

14 56. At a pre-deprivation hearing, due process requires that the government justify re-
15 detention of Mr. Cux Jocop by clear and convincing evidence that he poses a flight risk or
16 danger. *See Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the
17 State in civil proceedings in which the individual interests at stake . . . are both particularly
18 important and more substantial than mere loss of money.”) (internal quotation marks omitted);
19 *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus
20 view” among District Courts concluding that, “where . . . the government seeks to detain [a
21 noncitizen] pending removal proceedings, it bears the burden of proving that such detention is
22 justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation
23 hearing before being returned to custody, ordering that the government bear the burden at the
24 hearing by clear and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

25 57. The hearing must also consider whether alternatives to detention—such as the
26 ISAP program that has successfully managed Mr. Cux Jocop’s release for more than five years—
27 would adequately ensure Mr. Cux Jocop’s appearance. Detention is not reasonably related to this
28 purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*,

441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Cux Jocop's re-incarceration is warranted. *Cf. G.C. v. Wofford*, No. 1:24-cv-01032-EPG-HC, 2025 U.S. Dist. LEXIS 39773, at *26 (E.D. Cal. Mar. 4, 2025) (ordering bond hearing at which IJ considers alternative conditions of release); *M.R. v. Warden, Mesa Verde Det. Ctr.*, No. 1:24-cv-00988-EPG-HC, 2025 U.S. Dist. LEXIS 75622, at *34 (E.D. Cal. Apr. 21, 2025) (same).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process Re-Arrest Without Pre-Deprivation Hearing

58. Mr. Cux Jocop re-alleges and incorporates by reference the paragraphs above.

59. 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.

60. Mr. Cux Jocop has a vested liberty interest in his release from immigration custody. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator. *See Morrissey*, 408 U.S. at 487-488.

61. The government's rearrest of Mr. Cux Jocop five years after he was released without any hearing violated his right to procedural due process. At the very least, he must be released until he has a constitutionally-compliant pre-deprivation hearing before a neutral adjudicator.

SECOND CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process

62. Mr. Cux Jocop re-alleges and incorporates by reference the paragraphs above.

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

64. Due Process does not permit the government to strip Mr. Cux Jocop of liberty without it being tethered to one of the two constitutional bases for civil immigration detention: to

1 mitigate against the risk of flight or to protect the community from danger.

2 65. Civil detention that is unrelated to a valid regulatory purpose or excessive in
3 relation to that purpose is punitive, in violation of substantive due process. *See Jones*, 393 F.3d at
4 934.

5 66. Since Mr. Cux Jocop was released in June 2020, he has complied with the bail
6 order and the additional conditions of release imposed on him by ICE, has appeared for ICE
7 appointments, and poses no risk of flight. Additionally, during those five years at liberty, Mr.
8 Cux Jocop has not been arrested or convicted of any crime. Instead, he has been working and
9 taking care of his wife and minor U.S. citizen children. He poses no danger.

10 67. The government's re-arrest of Mr. Cux Jocop is untethered from any valid basis
11 for civil immigration detention, is excessive in relation to any risk that does exist, and is
12 therefore punitive in violation of substantive due process. Mr. Cux Jocop's continued detention
13 is unlawful and violates due process.

14 **THIRD CLAIM FOR RELIEF**
15 **Violation of the Immigration and Nationality Act**
16 **and Implementing Regulations**

17 68. Mr. Cux Jocop re-alleges and incorporates by reference the paragraphs above.

18 69. Pursuant to BIA case law, and ICE practice, ICE may re-arrest a noncitizen who
19 has been released on bond only after a material change in circumstances. *See*
20 *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640. Here, no
21 such material change in circumstances exists. Mr. Cux Jocop was granted bail by a
22 U.S. Federal District Judge in May 2020. Mr. Cux Jocop has no criminal
23 convictions in the United States, and no other circumstances exist to warrant his
24 re-detention by Respondents.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Mr. Cux Jocop requests that the Court:

- 27 1) Assume jurisdiction over this matter;
28 2) Declare Respondents' actions in re-arresting Mr. Cux Jocop on October 21, 2025 and
continuing to detain him contrary to law;

- 1 3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Mr. Cux
- 2 Jocop from their custody;
- 3 4) Enjoin Respondents, and anyone acting in concert with them, from re-detaining Mr. Cux
- 4 Jocop until a hearing is held before a neutral adjudicator, at which the government must
- 5 establish by clear and convincing evidence that Petitioner presents a risk of flight or
- 6 danger, and that no alternatives to detention can sufficiently protect its interests, before
- 7 the Respondents can re-detain Mr. Cux Jocop;
- 8 5) Enjoin Respondents from causing Mr. Cux Jocop any additional harm during the
- 9 pendency of this litigation, such as by transferring him farther away from his legal
- 10 Counsel or placing him into solitary confinement;
- 11 6) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act, as
- 12 amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under
- 13 law; and
- 14 7) Grant such further relief as the Court deems just and proper.

15
16 Respectfully submitted,

17 Date: October 21, 2025

18 /s/ Peter Weiss
19 Peter Weiss
PANGAEA LEGAL SERVICES

20 *Pro Bono Attorney for Petitioner*
21
22
23
24
25
26
27
28

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Mr. Cux Jocop because I am his attorney.

As Mr. Cux Jocop's attorney, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: October 21, 2025

/s/ Peter Weiss
Peter Weiss

Pro Bono Attorney for Petitioner