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11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

13 MAJID FAIZYAN,

14 Petitioner-Plaintiff,

15 v.

16 JEREMY CASEY, Warden at Imperial
17 Regional Detention Center, Imperial,
18 California;
19 JOSEPH FREDEN, Field Office Director of
20 San Diego Office of Detention and
21 Removal, U.S. Immigrations and Customs
22 Enforcement; U.S. Department of
23 Homeland Security;
24 TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
KRISTI NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security;
PAM BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents-Defendants.

Case No.: **'25CV2884 RBM JLB**

Agency File No.: 

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

1 Petitioner MAJID FAIZYAN petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states
3 as follows:
4

5 **INTRODUCTION**

6 1. Petitioner, MAJID FAIZYAN ("Mr. Hernandez Colis" or "Petitioner"), by and
7 through his undersigned counsel, hereby files this petition for writ of habeas corpus
8 and complaint for declaratory and injunctive relief to compel his immediate release
9 from immigration detention where he has been held by the U.S. Department of
10 Homeland Security (DHS) since being unlawfully re-detained on October 15, 2025,
11 without first being provided a due process hearing to determine whether his
12 incarceration is justified.
13

14 2. Petitioner must be released from custody unless and until DHS proves to a
15 neutral adjudicator, by clear and convincing evidence, material changed
16 circumstances (including that he is a flight risk and/or a danger to the community)
17 that would justify cancelling Petitioner's order of supervision issued by ICE on
18 December 2, 2023.

19 3. The Due Process clause of the Fifth Amendment, as well as statutory and
20 regulatory authorities, require the government to provide noncitizens with notice
21 and a hearing prior to re-detention. Here Petitioner's rights were violated and
22 continue to be each day he is detained.
23
24

STATEMENT OF FACTS

4. Mr. Majid Faizyan (Petitioner) is an Afghan citizen of the Tajek minority ethnic groups and of the Shia (Shi-ite) sect of the Moslem religion, which is a minority group in Afghanistan. Petitioner was born on ~~XXXXXX~~ 1975 in the city and province of Herat, Afghanistan. Petitioner is married and has two children, 18 and 11 years old. During the family's recent ICE check-in, the entire family was detained and separated. Petitioner was transferred to Imperial, his wife and 11-year-old son were transferred to a facility in Texas and the 18-year-old daughter is being detained at the Adelanto Detention Facility.

5. Petitioner entered the United States on November 30, 2023 when he came to seek protection. He intended to apply for asylum, withholding of removal and protection under the Convention Against Torture because his and his family's lives were in danger in Afghanistan due to Petitioner's imputed political opinion, his Tajek ethnicity and his religion. The Taliban targeted, harmed and threatened Petitioner for having helped the Americans through the sale of goods in his mechanical tools shop as well as his ethnicity and religion. Even after Petitioner fled Afghanistan, the Taliban has continued to pursue him with threats of violence communicated through his former employees.

6. Petitioner has a history of coronary artery disease and has undergone surgical procedure for valvopathy and suffers from chest pains due to coronary artery disease and has been advised by his doctors here in the United States that he

1 requires a Coronary CT angiogram, and the test had not been completed at the time
2 of his October 15 incarceration as it was pending insurance authorization. In
3 addition, Petitioner is suffering from symptoms related to anxiety, tension, and
4 depressed mood for which he was being treated and taking prescription medication.
5 Petitioner has been under the care of Robert Douglas Collins, M.D. .
6

7 7. Additionally, during his recent incarceration, Petitioner has been experiencing
8 increasing chest pain and his anxiety, tension and depression have escalated
9 exponentially. To date, Petitioner has been refused medication and treatment for
10 these symptoms.
11

12 8. Petitioner has now lived for almost two years in the United States and he and
13 his family were adjusting very well in the United States, with the help of his
14 community support. He has had no encounters with the immigration system nor the
15 criminal justice system.
16

17 9. On October 14, 2025, following Petitioner and his family's individual merits
18 hearing, the Immigration Judge denied all relief and ordered removal. Respondent,
19 through his counsel, reserved appeal, and on October 16, 2025, they filed their
20 appeal with the Board of Immigration Appeals. That appeal is presently pending
21 before the Board.
22

23 10. On October 15, 2025, at the ICE check-in pursuant to the conditions of
24 their conditional release on their own recognizance, the entire family was detained

1 and separated. Respondent is being detained at the Imperial Regional Detention
2 Center, his wife and 11-year-old child are in a facility in Texas, while their 18-year-
3 old daughter is in Adelanto detention facility.

4 11. Petitioner and his family has since complied with the release
5 requirements. For almost two years, he has diligently continued to document his
6 case in court through his immigration attorney and has been reporting to all his ICE
7 check-ins and appointment religiously.

8 12. On October 15, 2025, ICE rearrested. Petitioner was re-detained without
9 any notice, a hearing, or an on-the-record determination.
10

11 13. Ever since his re-detention, Petitioner has not been provided any
12 custody review or any custody redetermination review by an immigration judge as
13 Petitioner is purportedly being detained under the mandatory detention provision
14 of 8 U.S.C § 1225(b)(2)(A).
15

16 **CUSTODY**

17 14. Petitioner is currently in Respondents' legal and physical custody. They
18 are detaining him at the Imperial Regional Detention Facility, where he was
19 ultimately transferred after being arrested by ICE officers at the ICE office in
20 Camarillo, California. He is under Respondents' and their agents' direct control.
21 Prior to his arrest and re-detention Petitioner was not provided with a
22 constitutionally and statutorily compliant bond hearing.
23
24

JURISDICTION

15. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 28 U.S.C. § 1346, original jurisdiction; 5 U.S.C. § 701 *et seq.*, Administrative Procedure Act; 28 U.S.C. § 1651, All Writs Act; 28 U.S.C. § 2201, the Declaratory Judgment Act; 28 U.S.C. § 2241 *et seq.*, habeas corpus; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court 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).

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

18. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential

1 consideration to insure expeditious hearing and determination.” *Yong v. INS*, 208
2 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit
3 warned against any action creating the perception “that courts are more concerned
4 with efficient trial management than with the vindication of constitutional rights.”
5

6 *Id.*

7 VENUE

8 19. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e)
9 because the Respondents are employees or officers of the United States, acting in
10 their official capacity; because a substantial part of the events or omissions giving
11 rise to the claim occur in Imperial County in the Central District of California where
12 Petitioner is currently detained, and because there is no real property involved in
13 this action.
14

15 INTRADISTRICT ASSIGNMENT

16 20. The decision to re-arrest and re-detain Petitioner was made by the
17 Camarillo office of ICE, and until he was unlawfully re-detained by ICE, his case was
18 pending before the Van Nuys Immigration Court, in Van Nuys, California. He was
19 then transferred to the Imperial Regional Detention Center in Calexico, California
20 and after he filed his appeal, the Board of Immigration Appeals assumed jurisdiction
21 over his case.
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EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

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

23. Exhausting administrative remedies here is futile because Respondents contend Petitioner is subject to mandatory detention. As such, no request to release Petitioner from custody would be considered by ICE. Moreover, Immigration Judges

1 in this district claim to have no jurisdiction to conduct a custody redetermination
2 hearing as to individuals procedurally situated like Petitioner. Indeed, in
3 contravention to the INA and long-standing precedent and practice, the Board of
4 Immigration Appeals and Attorney General have deemed no noncitizen eligible for
5 bond before an immigration judge (with the exception of noncitizens who entered
6 the U.S. on a visa). As such, any attempts to exhaust administrative remedies would
7 be entirely futile.

9 24. More importantly, every day that Petitioner remains detained causes
10 him harm that cannot be repaired. His continued detention puts his physical and
11 mental health at greater risk, further warranting a finding of irreparable harm and
12 the waiver of the prudential exhaustion requirement. The Court must consider this
13 in its irreparable harm analysis of the effects on Petitioner as her detention
14 continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4
15 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to suffer significant
16 psychological effects from his detention, including anxiety caused by the threats of
17 other inmates and two suicide attempts,” in finding that petitioner would suffer
18 irreparable harm warranting waiver of exhaustion requirement).

21 25. Health concerns are one factor the Court should consider in its
22 irreparable harm analysis of the effects on Petitioner as his detention continues. *See*
23 *De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan.
24

1 21, 2020) (noting that the petitioner “continues to suffer significant psychological
2 effects from his detention, including anxiety caused by the threats of other inmates
3 and two suicide attempts,” in finding that petitioner would suffer irreparable harm
4 warranting waiver of exhaustion requirement).

6 **PARTIES**

7 26. Petitioner is a 50-year-old married Afghan father of two children
8 seeking asylum protection in the United States. Petitioner is of the Tajek minority
9 ethnic groups and of the Shia (Shi-ite) sect of the Moslem religion, which is a
10 minority group in Afghanistan. During the family’s recent ICE check-in, the entire
11 family was detained and separated. Petitioner was transferred to Imperial, his wife
12 and 11-year-old son were transferred to a facility in Texas and the 18-year-old
13 daughter is being detained at the Adelanto Detention Facility.

14 27. Petitioner is currently in Respondents’ legal and physical custody at the
15 Imperial Regional Detention Facility in Imperial, California. Management and
16 Training Corporation (MTC), a Utah corporation, operates that facility.

17 28. Respondent JOSEPH FREDEN is the Acting Field Office Director of ICE in
18 San Diego, California and is named in his official capacity. ICE is the component of
19 DHS that is responsible for detaining and removing noncitizens according to
20 immigration law and oversees custody determinations. In his official capacity, he is
21 the legal custodian of Petitioner.
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1 29. Respondent TODD M. LYONS is the Acting Director of ICE and is named
2 in his official capacity. Among other things, ICE is responsible for the administration
3 and enforcement of the immigration laws, including the removal of noncitizens. In
4 his official capacity as head of ICE, he is the legal custodian of Petitioner.

5 30. Respondent KRISTI NOEM is the Secretary of the DHS and is named in
6 her official capacity. DHS is the federal agency encompassing ICE, which is
7 responsible for the administration and enforcement of the INA and all other laws
8 relating to the immigration of noncitizens. In her capacity as Secretary, Respondent
9 Noem has responsibility for the administration and enforcement of the immigration
10 and naturalization laws pursuant to section 402 of the Homeland Security Act of
11 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
12 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

13
14 31. Respondent PAM BONDI is the Attorney General of the United States
15 and the most senior official in the U.S. Department of Justice (DOJ) and is named in
16 her official capacity. She has the authority to interpret the immigration laws and
17 adjudicate removal cases. The Attorney General delegates this responsibility to the
18 Executive Office for Immigration Review (EOIR), which administers the immigration
19 courts and the BIA.

20
21 32. Respondent JEREMY CASEY is the Warden of the Imperial Regional
22 Detention Facility where Petitioner is being held. Respondent Jeremy Casey
23 oversees the day-to-day operations of the Imperial Regional Detention Facility and
24

1 acts at the Direction of Respondents Freden, Lyons and Noem. Respondent Jeremy
2 Casey is a custodian of Petitioner and is named in their official capacity.

3 **LEGAL FRAMEWORK AND ANALYSIS**

4 33. The Due Process clause of the Constitution, Congress's statutes and
5 implementing regulations as well as precedential decisions narrow DHS's authority
6 to unilaterally revoke any noncitizen's immigration bond or conditional parole and
7 re-arrest the noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

9 34. ICE can release a noncitizen from custody after the noncitizen
10 "demonstrate[s] to the satisfaction of the officer that such release would not pose a
11 danger to property or persons" and that the noncitizen is "likely to appear for any
12 future proceeding." § 1236.1(c)(8).3 "Release [therefore] reflects a determination
13 by the government that the noncitizen is not a danger to the community or a flight
14 risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom.*
15 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

17 35. Petitioner was released from ICE custody with an order of supervision
18 on December 2, 2023 after considering his lack of criminal and immigration history
19 and determining he was neither a flight risk nor a danger to the community.

21 **Right to a Hearing Prior to Re-incarceration**

22 36. The Board of Immigration Appeals has clearly identified limits to DHS's
23 authority to re-detain noncitizens: "where a previous bond determination has been
24 made by an immigration judge, no change should be made by [the DHS] absent a

1 change of circumstance," a position adopted by the Ninth Circuit. *Matter of Sugay*, 17
2 I. & N. Dec. 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App'x 787,
3 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot re-detain
4 Panosyan.").

5
6 37. The government has further clarified in litigation that the showing of
7 changed circumstances applies "both where the prior bond determination was made
8 by an immigration judge *and* where the previous release decision was made by a
9 DHS officer." *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).

10
11 38. Further, DHS has in practice limited its authority and "generally only re-
12 arrests [noncitizens] pursuant to § 1226(b) after a *material* change in
13 circumstances," not just any changed circumstances. *Id.* (quoting Defs.' Second Supp.
14 Br. at 1, Dkt. No. 90) (emphasis added).

15 39. Guidance from *Matter of Sugay* and DHS practice alone—that ICE
16 should not re-arrest a noncitizen absent changed circumstances—are insufficient to
17 protect Petitioner's weighty interest in his freedom from detention. Federal district
18 courts in California have repeatedly recognized that the demands of due process and
19 the limitations on DHS's authority to revoke a noncitizen's bond or parole require a
20 pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-
21 detains him, to comport with the Due Process clause of the Constitution. *See, e.g.,*
22 *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F.
23
24

1 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
2 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-
3 JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021)

4 40. Just in the last few months, several federal courts in California have
5 agreed that immigration re-detention after being released in the community
6 warrants a hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.
7 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.
8 Cal. July 11, 2025); *Pinchi v. Noem*, --- F. Supp. 3d ----, ----, No. 5:25-cv-05632-
9 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Rodriguez-Flores v. Semaia*, No.
10 2:25-CV-06900 (C.D. Cal. Aug. 14, 2025).

11 41. It follows that prior to re-detaining Petitioner who had previously been
12 released pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-
13 detention hearing and notice of such hearing at which DHS had the burden of
14 proving that Petitioner's conditional parole should be canceled.

15 42. Instead, Respondents unlawfully re-arrested and re-detained Petitioner
16 without having an immigration judge or a neutral adjudicator assess whether
17 circumstances have materially changed since his release on own recognizance on
18 December 2, 2023, such that detention would now be warranted.

19 **Petitioner's due process rights**

1 43. The government cannot deprive any person of “life, liberty, or property,
2 without due process of law[.]” U.S. Const. Amend. V. Due process extends to “all
3 ‘persons’ within the United States, including [non-citizens], whether their presence
4 here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678,
5 693 (2001).
6

7 **A. Petitioner’s Liberty Interest is protected**

8 44. “Freedom from imprisonment—from government custody, detention,
9 or other forms of physical restraint—lies at the heart of the liberty that [the Due
10 Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.
11

12 45. A continued liberty interest also exists where an individual was
13 detained and is subsequently released, even if conditionally released and even when
14 an initial decision to detain or release the individual is discretionary. *Morrissey v.*
15 *Brewer*, 408 U.S. 471, 481-82 (1972). “[S]ubject to the conditions of his parole, [a
16 parolee] can be gainfully employed and is free to be with family and friends and to
17 form the other enduring attachments of normal life.” *Id.* at 482. The parolee relies
18 “on at least an implicit promise that parole will be revoked only if he fails to live up
19 to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee,
20 although indeterminate, includes many of the core values of unqualified liberty and
21 its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
22 “[b]y whatever name, the liberty is valuable and must be seen within the protection
23
24

1 of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482; *see also Young v. Harper*, 520
2 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program
3 created to reduce prison overcrowding have a protected liberty interest requiring
4 pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding
5 that individuals released on felony probation have a protected liberty interest
6 requiring pre-deprivation process).

8 46. As the First Circuit has explained, when analyzing the issue of whether a
9 specific conditional release rises to the level of a protected liberty interest, "[c]ourts
10 have resolved the issue by comparing the specific conditional release in the case
11 before them with the liberty interest in parole as characterized by *Morrissey*."
12 *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
13 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d
14 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—
15 even if that freedom is lawfully revocable—has a liberty interest that entitles him to
16 constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at
17 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

20 47. The protectable liberty interest created by conditional release also
21 applies to immigration detention. "[T]he government's discretion to incarcerate
22 non-citizens is always constrained by the requirements of due process." *Hernandez*
23 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). "Just as people on preparole, parole,
24

1 and probation status have a liberty interest, so too does [a noncitizen released from
2 immigration detention] have a liberty interest in remaining out of custody on
3 bond.”). *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019). Even where “a
4 decision-making process involves discretion does not prevent an individual from
5 having a protectable liberty interest.” *Id.* at 970 (N.D. Cal. 2019); *Romero v. Kaiser*,
6 No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

8 48. The protected liberty interest is even more substantial when balancing
9 the nonpunitive purpose of immigration detention against the “irreparable harms
10 imposed on anyone subject to immigration detention,” including “subpar medical
11 and psychiatric care in ICE detention facilities, the economic burdens imposed on
12 detainees and their families as a result of detention, and the collateral harms to
13 children of detainees whose parents are detained.” *Hernandez v. Sessions*, 872 F.3d
14 976, 995 (9th Cir. 2017).

16 49. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the
17 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the
18 conditions of her release.’ The regulatory framework makes clear that those
19 conditions [a]re that [the noncitizen] remain[s] neither a danger to the community
20 nor a flight risk. *Pinchi v. Noem*, --- F. Supp. 3d ----, ----, No. 5:25-cv-05632-PCP,
21 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).
22
23
24

1 50. A noncitizen released from custody pending removal proceedings
2 therefore has a protected liberty interest in remaining out of custody. *See Diaz v.*
3 *Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v.*
4 *Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *see also*
5 *Ramirez Clavijo v. Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025) (gathering
6 cases).

7
8 51. Petitioner has a substantial liberty interest in not being detained. He
9 suffers from heart conditions as well as psychological distress symptoms and needs
10 daily medications. He has family in the United States and has worked to support
11 them throughout the years. Most importantly, he has not engaged in any criminal
12 activity and has not violated the terms of his conditional parole since his release in
13 2023.
14

15 **B. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and**
16 **Revocation of Parole**

17 52. "Adequate, or due, process depends upon the nature of the interest
18 affected. The more important the interest and the greater the effect of its
19 impairment, the greater the procedural safeguards the [government] must provide
20 to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985)
21 (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance
22 [Petitioner's] liberty interest against the [government's] interest in the efficient
23 administration of" its immigration laws in order to determine what process he is
24

owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357.

53. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps the Court assess adequate safeguards: “[F]irst, 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 probative 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 requirements would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

54. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due process always requires, at a minimum, notice and an opportunity to respond.”). Post-deprivation remedies may satisfy the requirements of due process only in a “special case” where they are “the only remedies the State could be expected to provide” and where “one of the variables in the *Mathews* equation—the value of post deprivation safeguards—is negligible in preventing the kind of

1 deprivation at issue” such that “the State cannot be required constitutionally to do
2 the impossible by providing post deprivation process.” *Zinerman*, 494 U.S. at 985.

3
4 **1. Petitioner has a substantial liberty interest in staying out of detention**

5 55. An individual's interest in not being detained is “the most elemental of
6 liberty interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159
7 L.Ed.2d 578 (2004). “Freedom from bodily restraint has always been at the core of
8 the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71,
9 80 (1992). This liberty interest also exists where ICE decides to unilaterally nullify
10 its own prior parole decision and take away his physical freedom, *i.e.*, his
11 “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*,
12 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). Courts have
13 routinely agreed that “a petitioner’s interest in remaining out of custody as
14 ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-06900, at *5 (C.D. Cal. Aug.
15 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal.
16 June 14, 2025)). The longer the individual has been released, the more important
17 his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
18

19
20 **2. There is a risk of erroneous deprivation that the additional procedural
safeguard of a pre-detention hearing would help protect against.**

21 56. Even if the Government believes “it has a valid reason” to re-detain
22 noncitizens, it “does not eliminate its obligation to effectuate the detention in a
23 manner that comports with due process.” *Guillermo M.R. v. Kaiser*, --- F. Supp. 3d –
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1 ---, ---, No. 25-cv-05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025)
2 (finding “undeniably stark” risk of erroneous deprivation where the Government
3 contends that “notwithstanding a neutral arbiter's determination that Petitioner
4 should be released, ICE is entitled to unilaterally terminate the IJ's order by re-
5 detaining Petitioner without a hearing for at least six months, based on ICE's own
6 determination in its sole discretion that additional conditions of release unilaterally
7 set by ICE had been violated”); *see also Singh v. Andrews*, No. 1:25-CV-00801, 2025
8 WL 1918679 (E.D. Cal. July 11, 2025).

10 57. Where the petitioner “has not received any bond or custody ... hearing,
11 the risk of an erroneous deprivation [of liberty] is high because neither the
12 government nor [Petitioner] has had an opportunity to determine whether there is
13 any valid basis for her detention.” *Pinchi v. Noem*, --- F. Supp. 3d ---, ---, No.
14 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation
15 omitted). A pre-detention hearing significantly decreases that risk because the
16 government has to prove to a neutral adjudicator by clear and convincing evidence
17 that circumstances have materially changed to justify re-detention, and a hearing is
18 likelier to produce accurate determinations regarding factual disputes, such as
19 whether a certain occurrence constitutes a “changed circumstance.” *See*
20 *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate
21 judgments depending on credibility of witnesses and assessment of conditions not
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1 subject to measurement” are at issue, the “risk of error is considerable when just
2 determinations are made after hearing only one side”).

3 58. Further, the risk of an erroneous deprivation of liberty under *Mathews*
4 can be decreased where a neutral decisionmaker, rather than ICE alone, makes
5 custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92
6 (9th Cir. 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
7 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30
8 (2006) (“A neutral judge is one of the most basic due process protections.”)
9

10 59. Any argument that noncitizens can request a custody determination
11 hearing once re-detained goes against the due process safeguards envisioned in the
12 Constitution, because such hearing happens after the fact and cannot prevent an
13 erroneous deprivation of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025
14 WL 1940179, at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a
15 prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at
16 that point, he will have already suffered the harm that is the subject of his motion:
17 that is, his potentially erroneous detention.”). Further, custody determination
18 hearings are routinely conducted in immigration court and this is not a “special
19 case” that warrants post-deprivation remedies because other remedies are
20 impractical the way it was in *Zinerman*.
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1 60. Consequently ICE was required to provide Petitioner with notice and a
2 hearing *prior* to any re-incarceration and revocation of his conditional parole. *See*
3 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at
4 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24
5 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
6 awaiting involuntary civil commitment proceedings may not constitutionally be
7 held in jail pending the determination as to whether they can ultimately be
8 recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Petitioner’s]
9 liberty” and required a pre-deprivation hearing before a neutral adjudicator, which
10 ICE failed to provide.

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13 61. Further, immigration detention is civil (as opposed to criminal), and its
14 primary purpose is to ensure a noncitizen’s appearance during removal proceedings
15 and protect against danger to the community; it cannot be punitive. *Zadvydas v.*
16 *Davis*, 533 U.S. 678, 690, 697 (2001). Due process thus also requires consideration
17 of alternatives to detention at any custody redetermination hearing that may occur,
18 and where alternatives to detention that could mitigate risk of flight exist, detention
19 is not warranted. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). In fact here
20 Petitioner was released with an order of supervision and has since then complied
21 with the conditions of his release.
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3. The government's interest in detaining Petitioner is minimal, and in fact the procedural requirements of a hearing would promote judicial and administrative efficiency given the government's limited resources

62. The efficient allocation of the government's limited fiscal resources further supports holding a hearing prior to re-detaining noncitizens. The "fiscal and administrative burdens" as a result of the due process safeguard are nonexistent. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long recognized that "[t]he costs to the public of immigration detention are 'staggering,'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz*, 2025 WL 1676854, at *3. In 2017 – with inflation numbers are likely higher today – immigration detention cost "\$158 each day per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996. On the other hand, "[i]n immigration court, custody hearings are routine and impose a minimal cost." *Pinchi v. Noem*, --- F. Supp. 3d ----, ----, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)). The cost of re-detaining an immigrant who was previously released "pending any bond hearing would significantly exceed the cost of providing [the immigrant] with a pre-detention hearing." *Pinchi*, 2025 WL 2084921, at *10.

63. ICE's new policy to make a minimum number of arrests each day under the new administration¹ does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Even if the government "ultimately demonstrates to a neutral decisionmaker by clear and convincing evidence that her detention is necessary to prevent danger to the community or flight," then the only potential injury the government faces is a short delay in detaining" Petitioner. *Pinchi*, 2025 WL 2084921, at *12. "Faced with ... a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff[s] favor." (internal citations omitted). *Id.*

64. Consequently the government's interest in keeping Petitioner in detention without a due process hearing is outweighed by Petitioner's significant private interest in his liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers

¹ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 that the process Petitioner seeks—release from custody pending notice and a
2 hearing regarding whether his bond should be revoked and, if so, whether a new
3 bond amount should be set—is a standard course of action for the government. In
4 the alternative, providing Petitioner with a hearing before this Court (or a neutral
5 decisionmaker) to determine whether there is clear and convincing evidence that
6 Petitioner is a flight risk or danger to the community would impose only a *de*
7 *minimis* burden on the government, because the government routinely provides this
8 sort of hearing to detained individuals like Petitioner.
9

10
11 **FIRST CLAIM FOR RELIEF**

12 **Due Process**
13 **U.S. Const. amend. V**

14 65. Petitioner incorporates by reference the allegations of fact set forth in
15 the preceding paragraphs.

16 66. The Government may not deprive a person of life, liberty, or property
17 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—
18 from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
20 690 (2001).
21

22 67. Petitioner has a vested liberty interest in his conditional release. Due
23 Process does not permit the government to strip him of that liberty without a
24 hearing before this Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

1 68. Petitioner's re-arrest without a hearing violated the Constitution both
2 substantively, because Respondents have no valid interest in detaining him since
3 circumstances have not changed, and procedurally, because he was not provided
4 with a pre-detention hearing.
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6 **SECOND CLAIM FOR RELIEF**

7 **Petitioners' Detention is in Violation of 8 U.S.C. § 1226(a)-(b)**

8 69. Petitioners incorporate by reference the allegations of fact set forth in
9 the preceding paragraphs.

10 70. Once ICE has determined a noncitizen is not a flight risk and is not a
11 danger to the community and it decides to release him on conditional parole
12 pursuant to § 1226(a), the agency can only re-detain him if circumstances have
13 materially changed. The agency has to show such changes at a hearing.
14

15 71. Respondents violated Petitioner's statutory and regulatory rights by
16 detaining him when circumstances have not changed since his release, and without
17 providing him with a hearing.
18

19 **THIRD CLAIM FOR RELIEF**

20 **Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2) 97**

21 72. Petitioners incorporate by reference the allegations of fact set forth in
22 the preceding paragraphs.
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73. Under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

74. A court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

75. Respondents' re-detention of Petitioner pursuant to ICE's new policy and quotas is in direct contradiction with Congress's intent when enacting regulations and the INA, and long-established case law. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California pending the resolution of this case;

(3) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner on the conditions of his prior bond;

(4) Alternatively conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

(5) Alternatively, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and where alternatives to detention and Petitioner's ability to pay a bond are considered;

(6) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

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

Dated: October 26, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this October 26, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner