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9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 Eladio CORTEZ MORALES,

14 *Petitioner,*

15 v.

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

25 *Respondents.*

Case No. 3:25-cv-9241

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

**IMMIGRATION HABEAS
CASE**

INTRODUCTION

1
2 1. Petitioner Eladio Cortez Morales (“Mr. Cortez Morales” or “Petitioner”), by and through
3 his undersigned counsel (“Counsel”), hereby files this petition for writ of habeas corpus and
4 complaint for declaratory and injunctive relief, and accompanying ex parte motion for a
5 temporary restraining order, to prevent Respondents, the Department of Homeland Security
6 (“DHS” or “the Department”) and Immigration and Customs Enforcement (“ICE”), from
7 unlawfully re-detaining him at a scheduled check-in with immigration authorities on October 28,
8 2025 at 3PM, in violation of the Fifth Amendment to the U.S. Constitution.

9 2. The DHS previously incarcerated Mr. Cortez Morales for over six months—between
10 October 2022 and April 2023—pending resolution of his immigration case. At a bond hearing
11 held pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff’d*, 955 F.3d
12 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022), an Immigration Judge (“IJ”) determined that Mr.
13 Cortez Morales was neither a flight risk nor a danger and ordered his release from custody on a
14 \$5,000 bond and participation in ICE’s alternatives to detention program. Upon Mr. Cortez
15 Morales’s release, ICE installed an electronic ankle monitor and enrolled him in the Intensive
16 Supervision Appearance Program (“ISAP”). Since his release on April 6, 2023, Petitioner has
17 remained out of custody and complied with ISAP requirements. Because of his compliance, ICE
18 removed his ankle monitor in 2024.

19 3. During the more than two and a half years in which he has lived at liberty, Mr. Cortez
20 Morales has become a powerful community organizer and advocate for justice in the Bay Area
21 and statewide. He works at a nonprofit organization in Gilroy, California, serving immigrant
22 families. Outside of work, he speaks at events across California to draw attention to the poor
23 conditions of confinement for immigrants in ICE detention. Mr. Cortez Morales is a source of
24 support for his mother, who suffers from depression. He is also a survivor of sexual assault in
25 prison, and he has a pending application for a U Visa based on his reporting and cooperation with
26 the investigation into this crime.

27 4. Mr. Cortez Morales is scheduled for an in-person check at the ISAP office in San Jose,
28 California on Tuesday, October 28 at 3pm. ICE is currently detaining large numbers of

1 immigrants at their ICE or ISAP check-ins without providing notice or process. In the past two
2 weeks alone, undersigned Counsel has had two clients detained at in-person check ins with ICE
3 or ISAP. Despite undersigned Counsel's efforts, as of the time of filing the instant petition,
4 Respondents have not provided undersigned Counsel with any assurance that Mr. Cortez Morales
5 will not be detained tomorrow.

6 5. Mr. Cortez Morales faces the prospect of ICE unilaterally stripping him of his liberty,
7 tearing him away from his family and community, and keeping him detained under mandatory
8 detention without a bond hearing for the foreseeable future. He faces the very real possibility of
9 being transferred outside of Northern California with little or no notice, far away from his family
10 and community. Finally, Mr. Cortez Morales suffers from PTSD, and being re-detained by ICE
11 without notice and placed in a carceral setting akin to the one where he was raped and tortured is
12 likely to cause him psychological harm.

13 6. It is well established that Mr. Cortez Morales has a vested liberty interest in his freedom,
14 and the Fifth Amendment's Due Process Clause requires certain procedural protections be
15 afforded to him prior to any re-detention. At a minimum, due process requires that he receive
16 notice and a hearing before a neutral adjudicator *prior* to the deprivation of his liberty.

17 CUSTODY

18 7. Mr. Cortez Morales was released from immigration custody on a \$5,000 bond set by an
19 IJ, with the condition of participation in ICE's alternatives to detention program. This program is
20 run by a private contractor and is called the Intensive Supervision Appearance Program ("ISAP").
21 Pursuant to the ISAP contract, among other restrictions, Mr. Cortez Morales is subject to
22 mandatory in-person check ins about every six months; mandatory monthly video calls with his
23 ISAP case officer; and mandatory weekly virtual check ins in which he must share his location
24 and photo within a short time of receiving a notification. Such stringent requirements "impose[]
25 conditions which significantly confine and restrain his freedom; this is enough to keep him in the
26 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*,
27 371 U.S. 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir. 2010)

(holding that comparable supervision requirements constitute “custody” sufficient to support habeas jurisdiction).

JURISDICTION

8. This action arises under the Constitution of the United States, the INA, 8 USC Section 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 USC Section 500 *et seq.*

9. Jurisdiction is proper under 28 U.S.C. Section 1331 (federal question), 28 U.S.C. Section 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C. Sections 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 U.S.C. Section 702.

10. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. Sections 2241, 1651, 2201-02, and 5 U.S.C. Section 702. 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).

REQUIREMENTS OF 28 U.S.C. § 2243

11. 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).

12. 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).

13. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception “that courts are

1 more concerned with efficient trial management than with the vindication of constitutional
2 rights.” *Id.*

3 VENUE

4 14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
5 Respondents are employees or officers of the United States, acting in their official capacity;
6 because a substantial part of the events or omissions giving rise to the claim occurred in the
7 Northern District of California; because Mr. Cortez Morales is under the jurisdiction of the San
8 Jose Sub-Office of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern
9 District of California; and because there is no real property involved in this action.

10 INTRADISTRICT ASSIGNMENT

11 15. The decision to re-arrest and re-incarcerate Mr. Cortez Morales is being made by the San
12 Jose Sub-Office of the San Francisco Field Office of ICE. Moreover, he is subject to an ISAP
13 program operated out of San Jose, California, which is under the jurisdiction of the San Francisco
14 Field Office. Therefore, the assignment to the San Jose Division of this Court is proper under
15 N.D. Local Rule 3-2(d).

16 EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

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

1099 (C.D. Cal. 2000) (same).

PARTIES

18. Petitioner Eladio Cortez Morales was born in Mexico and has lived in the United States since about 1989, when he was less than one year old.

19. Respondent Polly KAISER is the Acting Field Office Director of ICE, in San Francisco, California and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration laws and oversees custody determinations. In her official capacity, she is the legal custodian of Mr. Cortez Morales.

20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. Cortez Morales.

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

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

STATEMENT OF FACTS

23. Mr. Cortez Morales is 37 years old and lives in Gilroy, California. Declaration of Peter Weiss (“Weiss Decl.”), ¶ 6. He was born in Mexico and brought to the U.S. as an infant, in about 1989. *Id.* He was raised in the U.S. and has no memory of Mexico whatsoever. *Id.*

1 24. Mr. Cortez Morales' father was killed when he was five years old. *Id.*, ¶ 7. His mother
2 struggled to support the family, and he grew up very poor. *Id.* As a teenager, Mr. Cortez Morales
3 was recruited into a gang, and at age 17, he was arrested for the shooting of a rival gang member.
4 *Id.* He was charged as an adult, convicted of assault with a deadly weapon, and sentenced to 22
5 years in prison. *Id.*

6 25. In prison, Mr. Cortez Morales was beaten, raped and tortured by an older gang member.
7 *Id.*, ¶ 8. He reported this abuse and cooperated with an investigation. *Id.* Mr. Cortez Morales
8 suffered severe psychological harm from this abuse and was eventually diagnosed with Post-
9 Traumatic Stress Disorder ("PTSD"), anxiety and depression. *Id.* Today, Mr. Cortez Morales has
10 a pending application with U.S. Citizenship & Immigration Services ("USCIS") for a U Visa
11 based on these events. *Id.*

12 26. While in prison, Mr. Cortez Morales made the decision to disassociate from the gang.
13 Weiss Decl., ¶ 9. He used his time to participate in rehabilitative programming. *Id.* He completed
14 his GED, several college courses, and numerous vocational programs. *Id.* He took courses on
15 anger management, personal insight and self-improvement, and participated in support groups.
16 *Id.* He worked numerous jobs. He also served as a mentor to others in the Youth Offender
17 Program. *Id.*

18 27. In October 2022, Mr. Cortez Morales was granted parole and released after serving 17
19 years in prison, half his life. *Id.*, ¶ 10. Upon release, he was immediately arrested by ICE and
20 transferred to immigration detention. *Id.*

21 28. On September 25, 2025, Mr. Cortez Morales' sole criminal conviction was vacated for
22 legal invalidity. *Id.*, ¶ 11; *see also* Weiss Decl. at Exh. E (Vacatur order). A state court found that
23 his plea had not been entered knowingly, voluntarily and intelligently, in violation of the 5th and
24 14th Amendments to the U.S. Constitution. Exh. E (Vacatur order). Mr. Cortez Morales was re-
25 charged in juvenile court, on the grounds that he was under 18 when the alleged offense took
26 place. *Id.* He admitted the charges and his sentence was deemed served. *Id.* Mr. Cortez Morales
27 has no other convictions. Weiss Decl., ¶ 11.

Mr. Cortez Morales's Detention, Bond Hearing, and Release

29. As stated above, Mr. Cortez Morales was transferred to ICE upon release from prison. Prior to this, while in state custody, ICE had issued him a Final Administrative Removal Order pursuant to 8 U.S.C. § 1231(a)(6), finding that he was deportable due to an aggravated felony conviction. Weiss Decl., ¶ 12.

30. On January 18, 2023 an asylum officer found that Mr. Cortez Morales had a reasonable fear of persecution in Mexico, and referred his case to Immigration Court for withholding-only proceedings. *Id.*, ¶ 13; Weiss Decl. at Exh. A (Notice of Referral to Immigration Judge).

31. Due to his final administrative removal order, Mr. Cortez Morales was subject to mandatory detention and was not entitled to a custody redetermination hearing before an IJ. *See* 8 U.S.C. § 1231(a)(6). However, in April 2023, the immigration court scheduled Mr. Cortez Morales for a custody redetermination hearing pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022) (holding that all individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are entitled to a bond hearing after six months of detention.) Weiss Decl., ¶ 14.

32. On April 4, 2023, an IJ granted Mr. Cortez Morales's release from custody after determining that he was neither a flight risk nor a danger to the community. Weiss Decl. at Exh. B (IJ Bond Order). Mr. Cortez was ordered to pay a \$5000 bond and participate in ICE's alternatives to detention program as a condition of release. *Id.*

33. On April 6, 2023, ICE released Mr. Cortez Morales and placed him on a monitoring program through the Intensive Supervision Appearance Program ("ISAP"). Weiss Decl. at Exh. C (ICE Order of Supervision). At first, Mr. Cortez Morales was outfitted with a mandatory ankle monitor with a GPS tracking device. Weiss Decl., ¶ 17. However, after about one year, in recognition of Mr. Cortez Morales's compliance with his order of supervision, ISAP de-escalated Mr. Cortez Morales's case and removed the GPS ankle monitor. *Id.* Mr. Cortez Morales continued to communicate with ISAP, appear at in-person and virtual check-ins, and comply with all required conditions through the BI SmartLINK application on his phone. *Id.*

1 34. In the over two and a half years since his release from ICE detention, Mr. Cortez Morales
2 has complied with ICE's order of supervision and ISAP requirements. *Id.*, ¶ 18. He has attended
3 his in-person check-ins, and complied with his virtual check-ins through the BI SmartLINK
4 application. He has stayed at home on designated days for home visits or calls by ISAP agents.
5 *Id.* He has not been arrested for or convicted of any crime during that time. *Id.*

6 35. On several occasions, Mr. Cortez Morales was scheduled for a virtual check over the BI
7 SmartLINK App, and the app did not work properly. *Id.*, ¶ 19. Each time this happened, Mr.
8 Cortez Morales called his ISAP agent, and the agent agreed to complete the virtual check in over
9 the phone. *Id.* The ISAP agent told Mr. Cortez Morales that the BI SmartLINK app was "glitchy."
10 *Id.*

11 36. Due to his strong record of compliance, ISAP reduced Mr. Cortez Morales' reporting
12 requirements to the following: uploading a photograph of himself to the BI SmartLINK app
13 whenever he receives a notification to do so, about once a week; participating in a video call with
14 his ISAP officer about once a month; and attending in-person check ins at the ISAP San Jose
15 office about once every six months. *Id.*, ¶ 20.

16 37. In about 2023, U.S. Citizenship and Immigration Services ("USCIS") issued Mr. Cortez
17 Morales an employment authorization document ("EAD"). *Id.*, ¶ 21.

18 38. On August 22, 2024, an IJ administratively closed Mr. Cortez Morales' removal case
19 pending the outcome of his U Visa application. *Id.*, ¶ 22; see also Weiss Decl. at Exh. D (IJ Order
20 granting administrative closure).

21 **Mr. Cortez Morales's Life After Release from Custody**

22 39. Since his release from ICE detention in 2023, Mr. Cortez Morales has focused on his
23 rehabilitation and serving his community. Weiss Decl., ¶ 23. He was discharged from state parole
24 in October 2024 without any violations. *Id.*; see also Weiss Decl. at Exh. F (Parole discharge
25 document). Mr. Cortez Morales attended classes at De Anza College and received a Certificate
26 of Achievement in Leadership and Social Change in June 2024. Weiss Decl., ¶ 24; Exh. G
27 (Equities, including De Anza College certificate). After receiving his work permit, he secured
28 full-time employment at the nonprofit organization Community Agency for Resources, Advocacy

1 and Services (CARAS) in Gilroy, California. Weiss Decl., ¶ 25. He started there as a peer support
2 specialist, helping unhoused residents access social services. *Id.* Today, he is a Program
3 Coordinator in CARAS' immigration program, connecting residents with immigration legal
4 services and conducting know-your-rights presentations. *Id.* Mr. Cortez Morales also volunteers
5 with CARAS' Youth Center, conducting programs for teens on topics such as positive
6 masculinity. *Id.*

7 40. Furthermore, Mr. Cortez Morales has become a recognized leader in the immigrants'
8 rights movement in California. *Id.*, ¶ 26. He has delivered speeches at the California state capitol
9 and participated in statewide events to draw attention to the poor conditions of confinement for
10 immigrants in ICE detention. *Id.*; *see also* Weiss Decl. at Exh. G (Equities, including photographs
11 of Mr. Cortez Morales' advocacy work). He is a volunteer organizer with several nonprofit
12 organizations, including Silicon Valley De-Bug, SIREN, Dignity Not Detention, and Interfaith
13 Movement for Human Integrity, whose members have written letters of support on his behalf.
14 Weiss Decl., ¶ 27; Exh. G (Equities, including letters of support.)

15 41. Mr. Cortez Morales also provides support to his family members. Weiss Decl. at Exh. G
16 (Equities, including letters of support). His mother, Cecilia, suffers from depression, and he
17 spends time with her and provides her with emotional support. *Id.* He also assists his disabled
18 uncle with manual labor, and accompanies his grandmother to medical appointments when
19 needed. *Id.*

20 **Mr. Cortez Morales Faces Re-Detention Without Notice or Process**

21 42. ICE is currently detaining large numbers of immigrants at their ICE or ISAP check-ins
22 and immigration court appointments, without providing notice or process.¹ In the past two weeks
23 alone, undersigned counsel has had two clients detained at in-person check ins with ICE or ISAP.
24 Weiss Decl., ¶ 5.

25 43. On October 27, 2025 at 7:04AM, undersigned Counsel contacted Pamela Johann, Chief
26

27 ¹ *See e.g.*, Weiss Decl. at Exh. H, St. John Barned-Smith and Brooke Park, "About 25 Northern California
28 immigrants detained after being summoned by ICE," *San Francisco Chronicle* (October 26, 2025); Exh. I, Hilda
Gutierrez, Michael Bott and Alex Bozovic, "ICE ordered to release dozens of Bay Area immigrants over due
process concerns," *NBC Bay Area* (Oct 10, 2025).

1 of the Civil Division of the U.S. Attorney's Office for the Northern District of California, via
2 email to ask if ICE intended to detain Mr. Cortez Morales at his check in on October 28, 2025.
3 Weiss Decl., ¶ 28. At 9:52AM, Ms. Johann responded that she had forwarded my inquiry to ICE
4 and would let me know if she received any information. *Id.*, ¶ 29.

5 44. At 2:29PM, Ms. Johann called undersigned Counsel and asked if Mr. Cortes Morales
6 would wait until COB to file the instant petition and TRO, to see if she could obtain an assurance
7 from ICE that he would not be detained tomorrow. *Id.*, ¶ 30. As of the time of filing the instant
8 petition,, undersigned Counsel has not heard back from Ms. Johann. *Id.*

9 45. Despite the fact that Mr. Cortez Morales was ordered released by an IJ, he faces the
10 prospect of ICE unilaterally stripping him of his liberty, tearing him away from his family and
11 community, and keeping him detained under mandatory detention with no opportunity for a
12 neutral adjudicator to review his case. *Id.*, ¶ 31. He also faces the very real possibility of being
13 transferred outside of Northern California with little or no notice, far away from his family and
14 community, or even being unlawfully deported to Mexico, a country where he fears persecution.
15 *Id.*

16 46. Following his experience of rape and torture while incarcerated, Mr. Cortez Morales was
17 diagnosed with PTSD, anxiety and depression. *Id.*, ¶8. Since his release in 2023, Mr. Cortez
18 Morales has finally accessed therapy. *Id.*, ¶ 32. Being re-detained without notice and placed back
19 in a carceral setting akin to the one where he raped and tortured is likely to have a destabilizing
20 effect on Mr. Cortez Morales's mental health, and cause him additional psychological harm. *Id.*

21 47. Intervention from this Court is therefore required to ensure that Mr. Cortez Morales is not
22 unlawfully re-arrested and re-incarcerated and subjected to irreparable harm without the process
23 due to him.

24 **LEGAL BACKGROUND**

25 **Mr. Cortez Morales Has a Constitutional Right to a Pre-Deprivation Hearing**

26 48. In Mr. Cortez Morales's particular circumstances, the Due Process Clause of the
27 Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-
28 deprivation hearing before a neutral decisionmaker to determine, first, whether there has been a

1 material change in circumstances since his release on bond in April 2023, and second, assuming
2 there is a material change, whether the government can show by clear and convincing evidence
3 that detention would now be warranted on the basis that he is a danger or a flight risk.

4 49. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
5 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
6 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
7 revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.
8 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest
9 noncitizens. There, the BIA held that "where a previous bond determination has been made by an
10 immigration judge, no change should be made by [the DHS] absent a change of circumstance."
11 *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-
12 detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787,
13 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

14 50. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests
15 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F.
16 Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp.
17 Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may
18 re-arrest a noncitizen who had been previously released on bond only after a material change in
19 circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

20 51. There has been no material change in circumstances in Mr. Cortez Morales' case. He has
21 not committed any crime or been arrested, and ICE has alleged no violations of the terms of his
22 release.

23 52. In fact, the most significant change in Mr. Cortez Morales' circumstances is the vacatur
24 of the conviction that formed the basis of his Administrative Removal Order. *See Weiss Decl.*
25 *Exh. E* (Vacatur order). Following the vacatur of the conviction for legal invalidity, Mr. Cortez
26 Morales was re-charged in juvenile court, on the grounds that he was under 18 when the alleged
27 offense took place. *Id.* He admitted the charges and his sentence was deemed served. *Id.* Mr.
28 Cortez Morales has no other criminal convictions.

1 53. Furthermore, ICE’s power to re-arrest a noncitizen who is at liberty following a
2 release on bond is also constrained by the demands of due process. *See Hernandez v. Sessions*,
3 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is
4 always constrained by the requirements of due process”). In this case, the guidance provided by
5 *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent materially changed
6 circumstances—is insufficient to protect Mr. Cortez Morales’s weighty interest in his freedom
7 from detention.

8 54. Federal district courts in California have repeatedly recognized that the demands of due
9 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
10 DHS’s stated practice and *Matter of Sugay* require a pre-deprivation hearing for a noncitizen on
11 bond, like Mr. Cortez Morales, *before* ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL
12 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
13 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020)
14 (granting a preliminary injunction for Petitioner to be provided with a pre-deprivation hearing
15 prior to re-arrest by Respondents, even though he was facing a new criminal charge after
16 release); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
17 Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal.
18 May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a
19 hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL
20 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at
21 plaintiff’s ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*,
22 No. 3:25-cv-05070-JSC, 2025 U.S. Dist. LEXIS 113570, at *6 (N.D. Cal. Jun. 14, 2025)
23 (granting temporary restraining order enjoining Respondents from re-detaining Petitioner
24 without notice and a hearing); *Diaz v. Kaiser*, 3:25-cv-05071, 2025 U.S. Dist. LEXIS 113566, at
25 *10 (N.D. Cal. Jun. 14, 2025) (granting temporary restraining order and finding that a pre-
26 detention hearing would prevent against the risk of erroneous deprivation). *See also Doe v.*
27 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding
28 the Constitution requires a hearing before any re-arrest).

Mr. Cortez Morales's Protected Liberty Interest in His Conditional Release

53. “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 v. Davis*, 533 U.S. 678, 690 (2001). Since April 2023, Mr. Cortez Morales has exercised that freedom under the IJ’s order granting him release on a \$5,000 bond. Weiss Decl. at Exh. B (IJ Bond Order). Although he was released on bond (and thus under government custody, as further demonstrated by his enrollment in ISAP), he 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. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s bond determination).

54. 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 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court explained 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 the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

55. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 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 v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, 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

1 specific conditional release in the case before them with the liberty interest in parole as
2 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
3 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864
4 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
5 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
6 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
7 and *Morrissey*, 408 U.S. at 482).

8 56. In fact, it is well-established that an individual maintains a protectable liberty interest even
9 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
10 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
11 considerations support the notion that an inmate released on parole by mistake, because he was
12 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
13 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
14 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
15 (internal quotation marks and citation omitted).

16 57. Here, when this Court ““compar[es] the specific conditional release in [Mr. Cortez
17 Morales’s case], with the liberty interest in parole as characterized by *Morrissey*,”” it is clear that
18 they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr.
19 Cortez Morales’s release “enables him to do a wide range of things open to persons” who have
20 never been in custody or convicted of any crime, including to live at home, work, volunteer,
21 engage in political activism, and “be with family and friends and to form the other enduring
22 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

23 58. Furthermore, in this case, a return to detention would have a profoundly destabilizing
24 effect on the Petitioner’s mental health. Mr. Cortez Morales suffers from PTSD, anxiety and
25 depression related to the physical and sexual abuse that he survived in prison. Weiss Decl., ¶ 8.
26 Since his release, he has finally accessed therapy. *Id.*, ¶ 32. Being re-detained without notice and
27 placed in a setting akin to the one where he was raped and tortured is very likely to cause him
28 psychological harm. *Id.*

Mr. Cortez Morales's Liberty Interest Mandates a Hearing *Before* any Re-Arrest and Revocation of Bond

59. Mr. Cortez Morales asserts that due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of a bond. Numerous district courts have found the threat of future re-arrest and re-detention is sufficient to order a remedy tailored to prevent a constitutional violation from occurring. See, e.g., *Ortega I*, 415 F. Supp. 3d 963; *Ortega v. Kaiser*, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (“*Ortega IP*”); *Ortega III*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Garcia v. Bondi*, 2025 WL 1676855 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (“*Diaz P*”); Order Granting Motion for Preliminary Injunction, *Diaz v. Kaiser*, No. 25-cv-05071-TLT, Dkt. 35 (N.D. Cal. Sept. 16, 2025) (“*Diaz IP*”); *Zakzouk v. Becerra*, 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025); *Qian Sun v. Ernesto Santacruz Jr. et al.*, 2025 WL 2730235 (C.D. Cal. Aug. 26, 2025); *Asif M Qazi v. Albarran, et al.*, No. 2:25-cv-02791-TLN-SCR, Dkt. 7 (E.D. Cal. Sept. 29, 2025).

60. In Mr. Cortez Morales' case, as in the above cases, Respondents have given no assurances that they do not intend to re-detain him, or that if they do, that notice and a hearing would be provided to comport with due process and avoid the risk of erroneous deprivation of his liberty. See Weiss Decl., ¶¶ 28-30. Under such circumstances, courts have recognized that when Respondents refuse or fail to give such assurances, the lack of assurance carries weight and factors into the assessment of the risk of injury. See, e.g., *Sun*, at *7 (“Sun’s imminent check-in appointment, and ICE’s failure to provide any assurance that it will not re-detain her at that appointment, clearly establish a risk of irreparable harm entitling *Sun* to injunctive relief.”); *Pinchi v. Noem*, 2025 WL 2084921, at *6 (N.D. Cal. July 24, 2025) (“[Petitioner] is out of ICE custody only because of a court order, and the government has given no assurance that she will not face immediate re-detention in the absence of an injunction.”); *Hai Chieu Dam v. Robbins et al.*, No. 2:25-cv-08133-JWH-MAA, Dkt. 7 (C.D. Cal. Sept. 16, 2025) (distinguishing *Ortega I* from the facts in *Dam*, where the government in *Ortega I* “refused to provide any assurance that [the petitioner would] not be re-arrested,” versus in *Dam*, the

1 government gave the assurance, “ICE does not intend to detain the Petitioner.”) (emphasis in
2 original) (quoting *Ortega I*, 415 F. Supp. 3d at 969). In Mr. Cortez Morales’ case, we have no
3 such assurance from ICE.

4 61. “Adequate, or due, process depends upon the nature of the interest affected. The more
5 important the interest and the greater the effect of its impairment, the greater the procedural
6 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
7 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
8 “balance [Mr. Cortez Morales’s] liberty interest against the [government’s] interest in the efficient
9 administration of” its immigration laws in order to determine what process he is owed to ensure
10 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
11 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
12 “first, the private interest that will be affected by the official action; second, the risk of an
13 erroneous deprivation of such interest through the procedures used, and the probative value, if
14 any, of additional or substitute procedural safeguards; and finally the government’s interest,
15 including the function involved and the fiscal and administrative burdens that the additional or
16 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
17 *Eldridge*, 424 U.S. 319, 335 (1976)).

18 62. The Supreme Court “usually has held that the Constitution requires some kind of a hearing
19 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
20 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
21 only remedies the State could be expected to provide” can post-deprivation process satisfy the
22 requirements of due process. *Zinerman*, 494 U.S. at 985.

23 63. Because, in this case, the provision of a pre-deprivation hearing is both possible and
24 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Cortez
25 Morales with notice and a hearing prior to any re-incarceration and revocation of his bond. See
26 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
27 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
28 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment

proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Mr. Cortez Morales’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

Mr. Cortez Morales’s Private Interest in His Liberty is Profound

64. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that 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—apply with even greater force to individuals like Mr. Cortez Morales, who have been released pending civil removal proceedings, because “his liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” See *Ortega v. Bonnar*, 415 F.Supp.3d at 970. Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. See *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Cortez Morales retains a truly weighty liberty interest even though he is under conditional release.

65. What is at stake in this case for Mr. Cortez Morales is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also *Zadvydas*, 533 U.S. at 690 (“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.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. See *Mathews*, 424 U.S. at 334-35.

The Government's Interest in Re-Incarcerating Mr. Cortez Morales Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

66. The government's interest in detaining Mr. Cortez Morales without a due process hearing is low, and when weighed against Mr. Cortez Morales's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Cortez Morales 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 Mr. Cortez Morales when the Court considers that the process he seeks—notice and a hearing regarding whether his bond should be revoked—is a standard course of action for the government. Providing Mr. Cortez Morales with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Cortez Morales is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Mr. Cortez Morales.

67. In April 2023, an IJ found that Mr. Cortez Morales was not a danger to the community nor a flight risk. Weiss Decl. at Exh. B (IJ Bond Order). That determination still stands. In fact, ICE subsequently decided to remove his ankle monitor given his full compliance with the terms and conditions of his release. *Id.*, ¶ 17.

68. As to flight risk, an IJ determined that a bond of \$5,000 was sufficient to guard against any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. Furthermore, Mr. Cortez Morales has cases for immigration relief pending before both USCIS (a U Visa application) and the IJ (withholding of removal, albeit administratively closed pending USCIS' decision on his U Visa). *See* Weiss Decl. at Exh. D. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in April 2023, as he has appeared at all scheduled court dates and check-ins. Weiss Decl., ¶ 18. The government's interest in detaining Mr. Cortez Morales at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the

1 government's interest in detaining him.²

2 69. Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing
3 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Cortez Morales
4 does not seek a unique or expensive form of process, but rather a routine hearing regarding
5 whether his bond should be revoked and whether he should be re-incarcerated.

6 70. In the alternative, providing Mr. Cortez Morales with a hearing before this Court (or a
7 neutral decisionmaker) regarding bond is a routine procedure that the government provides to
8 those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity
9 to determine whether circumstances have materially changed to require a different amount of
10 bond—or if bond should be revoked. But there is no justifiable reason to re-incarcerate Mr. Cortez
11 Morales prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even
12 where the State has an “overwhelming interest in being able to return [a parolee] to imprisonment
13 without the burden of a new adversary criminal trial if in fact he has failed to abide by the
14 conditions of his parole . . . the State has no interest in revoking parole without some informal
15 procedural guarantees.” 408 U.S. at 483.

16 71. Enjoining Mr. Cortez Morales's re-arrest until ICE (1) moves for a bond re-determination
17 before an IJ and (2) demonstrates by clear and convincing evidence a material change in
18 circumstances such that Mr. Cortez Morales is a flight risk or danger to the community is far *less*
19 costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted
20 in 2017, which remains true today, “[t]he costs to the public of immigration detention are
21 ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”
22 *Hernandez*, 872 F.3d at 996.

23
24
25 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
28 <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

72. Providing Mr. Cortez Morales a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Cortez Morales can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been materially changed circumstances such that the IJ's April 2023 bond determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Cortez Morales is a danger to the community or a flight risk.

73. Under ICE's process for custody determination—which affords Mr. Cortez Morales no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Cortez Morales will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 236.1(c)(9), an arrest of Mr. Cortez Morales automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond order without oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination. 8 C.F.R. § 236.1(c)(9).

74. Mr. Cortez Morales's detention will be governed by 8 U.S.C. § 1231(a)(6) because he has a final administrative order of removal pursuant to 8 U.S.C. § 1228(b). Noncitizens detained under 8 U.S.C. § 1231(a)(6) are subject to mandatory detention and are not be eligible for an individualized bond hearing before an IJ.³ Therefore, revocation of Mr. Cortez Morales's bond would evade *any* review by an IJ or any other neutral arbiter.

75. The procedure Mr. Cortez Morales seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989)

³ Noncitizens detained in the Ninth Circuit under 8 U.S.C. § 1231(a)(6) are currently eligible for prolonged detention bond hearings after six months of detention *See Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)³, *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022). However, the preliminary injunction was reversed and remanded by the U.S. Supreme Court, and then remanded by the Ninth Circuit to the District Court. *Tejada v. Godfrey*, No. 18-35460, 2023 U.S. App. LEXIS 10790 (9th Cir. Apr. 25, 2023). This injunction is currently still in place but is expected to be lifted in the near future.

(when “delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”). “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

76. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this 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 re-incarceration is warranted.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

77. Mr. Cortez Morales re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

78. 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.

79. Mr. Cortez Morales has a vested liberty interest in his current conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

80. The Court must therefore order that, prior to any re-arrest, the government must provide Mr. Cortez Morales with a hearing before a neutral adjudicator, who will decide first whether the government has shown by clear and convincing evidence that there has been a material change in circumstances since Mr. Cortez Morales release, and second, assuming there is a material change,

1 whether the government can show by clear and convincing evidence that Mr. Medina is a danger
2 or a flight risk to warrant an alteration of his current custody status. *See Sugay*, 17 I&N Dec. at
3 640; *Ortega*, 415 F.Supp.3d at 969-70. During any custody redetermination hearing that occurs,
4 this Court or, in the alternative, a neutral adjudicator, must consider alternatives to detention when
5 determining whether Mr. Cortez Morales's re-incarceration is warranted.

6 **SECOND CAUSE OF ACTION**

7 **Substantive Due Process**

8 **U.S. Const. amend. V**

9 81. Mr. Cortez Morales re-alleges and incorporates herein by reference, as is set forth fully
10 herein, the allegations in all the preceding paragraphs.

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

14 83. Mr. Cortez Morales has a vested liberty interest in his conditional release. Due Process
15 does not permit the government to strip him of that liberty without it being tethered to one of the
16 two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
17 community from danger.

18 84. Since April 2023, Mr. Cortez Morales has fully complied with his release conditions
19 ordered by the IJ and the additional conditions of release imposed on him by ICE, thus
20 demonstrating that he is neither a flight risk nor a danger. Re-arresting him now—while he is
21 working a full-time job for the betterment of himself and his community, caring for his mother,
22 and organizing and advocating for the rights of detained immigrants—would be punitive and
23 violate his constitutional right to be free from the unjustified deprivation of his liberty.

24 85. For these reasons, Mr. Cortez Morales's re-arrest without first being provided a hearing
25 would violate the Constitution.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Mr. Cortez Morales prays that this Court grant the following relief:

28 (1) Exercise jurisdiction over this matter;

- 1 (2) Enjoin Respondents from re-arresting Mr. Cortez Morales, unless and until a hearing can
2 be held before a neutral adjudicator to determine whether his re- detention would be lawful
3 because the government has shown, by clear and convincing evidence, that there has been
4 a material change in circumstances and that he is a danger or a flight risk;
- 5 (3) Declare that Mr. Cortez Morales cannot be re-arrested unless and until he is afforded a
6 hearing before a neutral adjudicator on the question of whether his re-detention would be
7 lawful—i.e., whether the government has shown, by clear and convincing evidence, that
8 there has been a material change in circumstances and that he is a danger or a flight risk;
- 9 (4) Enjoin Respondents from re-detaining Mr. Cortez Morales because any re-detention
10 would violate his substantive due process rights under the Fifth Amendment;
- 11 (5) Declare that Respondents may not re-detain Mr. Cortez Morales because any re-detention
12 would violate his substantive due process rights under the Fifth Amendment;
- 13 (6) Award reasonable costs and attorney fees; and
- 14 (7) Grant such further relief as the Court deems just and proper.
- 15

16 Dated: October 27, 2025

Respectfully submitted,

17 /s/ Peter Weiss

18 Peter Weiss

19 PANGAEA LEGAL SERVICES

Pro Bono Attorney for Mr. Cortez Morales

20 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

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

25 Executed on this October 27, 2025, in San Francisco, California.

26
27 /s/ Peter Weiss

28 Peter Weiss

Pro Bono Attorney for Petitioner