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9

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

13 ENIL JABIB CLAROS,

14 *Petitioner,*

15 v.

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

25 *Respondents.*

26 Case No.: _____

27 **VERIFIED PETITION FOR**
28 **WRIT OF HABEAS CORPUS**

29 **IMMIGRATION HABEAS CASE**

INTRODUCTION

1. Petitioner Enil Jabib Claros (“Petitioner” or “Mr. Claros”) brings this petition for writ of habeas corpus to remedy Respondents’ arbitrary and unlawful re-detention of Mr. Claros without any process, in violation of the Immigration and Nationality Act (“INA”), the Administrative Procedures Act (“APA”), and the Fifth Amendment to the U.S. Constitution.

2. Mr. Claros was released on his own recognizance by the Department of Homeland Security (“DHS”) on July 7, 2019, after being detained overnight following his apprehension by Customs and Border Patrol (“CBP”). He has been living at liberty in the community for the past six-plus years. During the time since his release, Mr. Claros has had no arrests, has a pending petition for U Nonimmigrant Status based on having been the victim of a qualifying crime—severe domestic violence and felonious assault by his parents when he was a child—and dutifully appeared at his immigration appointment in San Francisco, California on November 3, 2025, as directed.

3. Nevertheless, on November 3, 2025, ICE detained Mr. Claros after he appeared as requested for his Reasonable Fear Interview in San Francisco, California. No reason was given for Mr. Claros's sudden detention apart from the fact that he "has a deportation order."

4. It is well-established that Mr. Claros has a liberty interest in his years-long freedom, and the Fifth Amendment’s Due Process Clause mandates that detention serve a legitimate purpose: to mitigate flight risk and/or prevent danger to the community. Neither is served by Mr. Claros’s detention. The fact that Mr. Claros has been out of detention for more than *six years* without incident entitled him to procedural protections before he was re-detained, which Respondents failed to provide.

5. Additionally, Respondents' unexplained detention of violates the Immigration and Nationality Act and implementing regulations, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine. Mr. Claros seeks immediate relief to remedy his unlawful detention.

JURISDICTION

6. Mr. Claros is currently detained in the custody of Respondents at 630 Sansome St., San Francisco, California.

7. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the Immigration & Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq.*

8. The Court may grant declaratory and injunctive relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the Administrative Procedures Act, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

9. The federal habeas statute establishes the Court’s power to decide the legality of Mr. Claros’s detention and directs courts to “hear and determine the facts” of a habeas petition and to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Moreover, the Supreme Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) (“[T]he Queen’s Bench had, ‘independently of statute, by the common law, jurisdiction to admit to bail[.]’”)) (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

VENUE

10. Venue is proper in this District because it is the district in which Mr. Claros is confined at the time of this petition's filing. *See Doe v. Garland*, 109 F.4th 1188, 1197-98 (9th Cir. 2024); *see also Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025); *Khalil v. Joyce*, No. 25-cv-01963 (MEF) (MAH), 2025 U.S. Dist. LEXIS 63573, at *31 (D.N.J. Apr. 1, 2025), *aff'd*, *Khalil v. President of the United States*, No. 25-08019 (3d Cir., May 6, 2025). This District also has territorial jurisdiction over Respondent Sergio Albarran, the ICE San Francisco Field Office

1 Director who has taken Mr. Claros into custody in San Francisco and is currently Mr. Claros's
2 custodian.

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

INTRADISTRICT ASSIGNMENT

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

PARTIES

13 13. Petitioner Enil Jabib Claros is a 34-year-old husband and father from Honduras.
14 He requested a RFI from the USCIS Asylum Office and attended his scheduled RFI to pursue his
15 claim for protection from removal. He has had no arrests since being released by DHS following
16 his apprehension at the southern border in 2019. Mr. Claros was taken into custody by ICE on
17 November 3, 2025, following his Reasonable Fear Interview at the Asylum Office at 75
18 Hawthorne St., San Francisco, California, 94105 (“Asylum Office”). He is currently in civil
19 immigration detention, in a temporary holding facility on the sixth floor of ICE offices at 630
20 Sansome St., San Francisco, California 94111 (“630 Sansome”).

21 14. Respondent Sergio Albarran is the Field Office Director for the San Francisco
22 Field Office of ICE Enforcement and Removal Operations (“ERO”). Respondent Albarran
23 maintains an office in San Francisco, California, within this judicial district. The San Francisco
24 Field Office oversees custody determinations of noncitizens at its office at 630 Sansome, and
25 holds some noncitizens in custody there temporarily before their transfer to other facilities.
26 Respondent Albarran is the federal official most directly responsible for Mr. Claros’s custody
27 and is his legal custodian. He is named in his official capacity.

28 15. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and

1 Customs Enforcement. Respondent Lyons is responsible for ICE's policies, practices, and
2 procedures, including those relating to the detention of noncitizens. Respondent Lyons is a legal
3 custodian of Mr. Claros. He is named in his official capacity.

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

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

STATEMENT OF FACTS

A. Lengthy U.S. Residence, Persecution in Honduras, and Flight Back to U.S.

18. Mr. Claros is a 34-year-old husband and father from Honduras. Exh. A (Hodges
Decl.), ¶ 4. Mr. Claros was brought to the United States as a young child and has lived in this
country for most of his life. *Id.* Mr. Claros received a deportation order in 2011 and was removed
to Honduras, where he lived until forced to flee back to the United States with his family 2019 to
escape persecution by state actors on the basis of his political activity and beliefs. *Id.*, ¶ 5.

B. Initial Detention and Release

25 19. Mr. Claros crossed the United States border with his wife and three minor
26 children on or about July 7, 2019. *Id.*, ¶ 6. He was briefly detained by Customs and Border
27 Patrol. *Id.* The next day, on July 8, 2019, ICE released Mr. Claros on his own recognizance
28 awaiting a Reasonable Fear Interview (“RFI”). *Id.* He has lived in the United States ever since.

1 *Id.* Mr. Claros and his family live in San Francisco, California. *Id.* In the more than six years
 2 since his release from ICE detention, Mr. Claros has had no arrests. *Id.*

3 **C. Pending U Visa Petition**

4 20. As a child, Mr. Claros was the victim of pervasive physical and emotional abuse
 5 by his parents. *See id.*, ¶ 7. In one particularly severe incident, Mr. Claros's parents burned his
 6 hand with a hot iron and then beat him. *Id.* A Child and Family Services petition charged Mr.
 7 Claros's parents with Welfare & Institutions Code violations, a court sustained these petitions,
 8 and Mr. Claros was removed from his parents' custody for years. *Id.* The abuse Mr. Claros
 9 suffered caused lasting emotional harm from which he is still in the process of healing. *Id.*

10 21. On February 13, 2025, Mr. Claros filed a Form I-918, Petition for U
 11 Nonimmigrant Status on the basis of this harm with USCIS, a component agency of DHS. *See*
 12 *id.*, ¶ 8. U Nonimmigrant Status, also called a "U visa," is available to victims of certain criminal
 13 activity who are helpful to law enforcement in investigating or prosecuting the criminal activity.
 14 *See* 8 U.S.C. § 1101(a)(15)(U). If USCIS grants a petitioner's U visa, any prior removal order is
 15 subject to being reopened and/or cancelled. *See* 8 C.F.R. § 214.14(c)(5)(i).

16 22. Along with his U visa petition, Mr. Claros filed a Form I-192, Petition for
 17 Advance Permission to Enter as Nonimmigrant, and supporting documentation. Exh. A (Hodges
 18 Decl.), ¶ 9. Mr. Claros disclosed his single conviction and provided evidence of his
 19 rehabilitation. *Id.* He also provided evidence of other positive equities. *Id.* Mr. Claros also filed I-
 20 918 Supplement A forms on behalf of his wife and three minor children to include them in his U
 21 via petition as derivative beneficiaries. *Id.* The petition remains pending. *See id.*

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

23 23. On October 20, 2025, Mr. Claros received a notice that he had been scheduled for
 24 a Reasonable Fear Interview ("RFI") at the ICE office at 630 Sansome in two days, on October
 25 22, 2025, at 8:00 A.M. *See id.*, ¶ 10. Counsel for Mr. Claros requested and received a brief
 26 continuance due to an attorney scheduling conflict, and the interview was rescheduled for
 27 November 3, 2025, at 7:45 A.M. at the Asylum Office.

28 24. On November 3, 2025, Mr. Claros and his counsel attended his scheduled RFI

1 together. *Id.*, ¶ 11. They appeared, as directed, at the Asylum Office, where Mr. Claros testified
2 to an asylum officer about his fear of returning to Honduras. *Id.*, ¶¶ 11-13.

3 25. Mr. Claros was informed by a different asylum officer that he had been found not
4 to have a reasonable fear of returning to Honduras and that he could seek IJ review from ICE
5 detention. *Id.*, ¶ 15. Thereafter, ICE officers entered the room and detained Mr. Claros. *Id.*, ¶ 16.

6 26. Upon information and belief, the official responsible for revoking Mr. Claros's
7 release did not first refer the case to the ICE Executive Associate Director, did not make findings
8 that revocation was in the public interest and that circumstances did not reasonably permit
9 referral to the Executive Associate Director, and had not been delegated authority to revoke an
10 order of supervision. *Id.*, ¶ 17.

11 27. ICE did not provide Mr. Claros any hearing or process prior to his arrest. *Id.*, ¶ 18.
12 ICE did not explain to Mr. Claros why they were arresting him beyond a cursory statement that
13 Mr. Claros "has a deportation order." *Id.*, ¶ 16. ICE similarly did not provide any reason that ICE
14 considers him a current flight risk or danger to the community. *Id.*, ¶ 18. ICE gave no indication
15 that DHS had revoked Mr. Claros's release on recognizance and did not give Mr. Claros an
16 opportunity to contest any such revocation. *Id.*

17 28. Upon information and belief, at the time of filing Mr. Claros remains detained at
18 the ICE office at 630 Sansome Street in San Francisco, California. *Id.*, ¶ 19.

19 **LEGAL FRAMEWORK**

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

21 29. The Due Process Clause of the Fifth Amendment makes it unlawful for
22 Respondents to re-detain Mr. Claros without first providing a pre-deprivation hearing before a
23 neutral decision maker to determine whether re-detention is justified by a risk of flight or danger
24 to the community.

25 30. Civil immigration detention must be justified by a permissible purpose, and must
26 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
27 permissible regulatory goals are "ensuring the appearance of [noncitizens] at future immigration
28 proceedings" and "preventing danger to the community." *Id.*; *see also Matter of Patel*, 17 I&N

1 Dec. 597, 666 (BIA 1976) (“[A noncitizen] generally is not and should not be detained or
 2 required to post bond except on a finding that he is a threat to the national security, or that he is a
 3 poor bail risk.”) (internal citations omitted).

4 31. The statute and regulations grant ICE discretion to detain or release certain
 5 noncitizens subject to orders of removal. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 236.1(a)(6).
 6 However, notwithstanding the breadth of the statutory language in § 1231(a)(6), in practice, DHS
 7 “requires a showing of changed circumstances both where the prior bond determination was
 8 made by an immigration judge *and* where the previous release decision was made by a DHS
 9 officer.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia*
 10 *for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has
 11 assumed that, under *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), ICE has no authority to
 12 re-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 32. ICE’s power to re-arrest a noncitizen who is at liberty is also constrained by the
 15 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the
 16 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
 17 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due
 18 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
 19 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
 20 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
 21 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
 22 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
 23 unlawful or arbitrary personal restraint or detention.”).

24 33. Courts in this district have repeatedly recognized that due process requires that a
 25 noncitizen like Mr. Claros who was previously found by an adjudicator to be appropriate for
 26 release from immigration detention be given a pre-deprivation hearing *before* ICE re-detains
 27 him. *See, e.g., Serrano v. Albarran*, No. 25-cv-08408-EKL, 2025 U.S. Dist. LEXIS 195917, at
 28 *5 (N.D. Cal. Oct. 2, 2025) (ordering release and a pre-deprivation hearing before re-detention);

1 *Pinchi v. Noem*, No. 25-cv-06632-PCP, 2025 U.S. Dist. LEXIS 142213, at *8 (N.D. Cal. July 24,
 2 2025) (same); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D.
 3 Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE
 4 interview when he had been on bond for more than five years); *Romero v. Kaiser*, No. 22-cv-
 5 02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, 534
 6 F. Supp. 3d 1050 (N.D. Cal. 2021); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
 7 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal.
 8 2019); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *see also Doe v. Becerra*,
 9 No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the
 10 Constitution requires a hearing before any re-arrest).

11 34. Indeed, in a recent case, where a noncitizen released on a bail order was re-
 12 arrested prior to being provided a pre-deprivation hearing, a judge in this District issued a TRO
 13 and preliminary injunction requiring ICE to immediately release the petitioner and enjoined the
 14 government “from arresting, detaining, or removing the petitioner without notice and a hearing
 15 to determine whether a material change of circumstances justifies his re-detention.” *Duong v.*
 16 *Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024 (N.D. Cal., Sept. 19, 2025); *see*
 17 *also Doe*, 2025 WL 691664, at *4 (granting TRO as to an individual who had already been re-
 18 arrested).

19 **A. Mr. Claros Has a Protected Liberty Interest in His Conditional Release.**

20 35. Mr. Claros's liberty from immigration custody and his weighty interest in
 21 avoiding re-incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690
 22 (“Freedom from imprisonment . . . lies at the heart of the liberty” that the Due Process Clause
 23 protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a
 24 protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
 25 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

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

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

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

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

1 39. Here, Mr. Claros's conditional release is in relevant ways similar to the liberty
 2 interest in parole protected in *Morrissey*. As in *Morrissey*, Mr. Claros's release "enables him to
 3 do a wide range of things open to persons" who have never been in custody or convicted of any
 4 crime, including to live at home, work, care for his children, and "be with family and friends and
 5 to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Mr. Claros
 6 has lived in the community since his release in 2019 and is a loving father to his three young
 7 children. Exh. A (Hodges Decl.), ¶¶ 4, 6.

8 40. Even if "lawfully revocable," Mr. Claros's over six years at liberty provide him a
 9 "a liberty interest that entitles him to constitutional due process before he is re-incarcerated."
 10 *Hurd*, 864 F.3d at 683; *see also* *Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates
 11 released to electronic monitoring program had liberty interest protected by the Due Process
 12 Clause because the program "allowed the appellees to live with their loved ones, form
 13 relationships with neighbors, lay down roots in their community, and reside in a dwelling of their
 14 own choosing (albeit subject to certain limitations) rather than in a cell designated by the
 15 government"); *see also* *Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen
 16 made a substantial showing that he had liberty interest requiring pre-deprivation hearing before
 17 re-arrest, even after original bond order was reversed on appeal); *Duong*, 2025 U.S. Dist. LEXIS
 18 185024, at *13-14 (noncitizen released on *Zepeda-Rivas* bail order had strong liberty interest
 19 even after expiration of settlement agreement); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-
 20 EPG (HC), 2025 U.S. Dist. LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025) (same).

21 **B. Mr. Claros's Strong Interest in His Liberty Required a Hearing Before He Was
 22 Re-Incarcerated By ICE.**

23 41. If a petitioner identifies a protected liberty interest, the Court must then determine
 24 what process is due. "Adequate, or due, process depends upon the nature of the interest affected.
 25 The more important the interest and the greater the effect of its impairment, the greater the
 26 procedural safeguards the [government] must provide to satisfy due process." *Haygood v.*
 27 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-
 28 82). To determine the process due in this context, courts use the flexible balancing test set forth

1 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970;
2 *Jorge M. F.*, 534 F. Supp. 3d at 1055.

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

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

20 44. Here, the *Mathews* factors all favor Mr. Claros and establish that the government
21 was required to provide Mr. Claros notice and a hearing *prior* to any re-incarceration and
22 revocation of his bond. *See, e.g., Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at
23 1055; *Duong*, 2025 U.S. Dist. LEXIS 185024, at *16.

24 45. First, Mr. Claros’s private interest in his liberty is substantial. *See Foucha v.*
25 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core
26 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that
27 individuals released from serving a *criminal* sentence have a “valuable” liberty interest—even if
28 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. Thus,

1 released individuals who have not violated the conditions of their release must be provided
 2 notice and a hearing *before* they are reincarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-*
 3 *Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. If that is true for parolees or probationers—
 4 who have a diminished liberty interest given their convictions, *see, e.g.* *U.S. v. Knights*, 534 U.S.
 5 112, 119 (2001)—the interest for an individual awaiting civil immigration proceedings is even
 6 weightier. *See, e.g.*, *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration
 7 detention, a noncitizen’s interest in release on bond is “arguably greater than the interest of
 8 parolees in *Morrissey*.”).

9 46. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally
 10 re-detain Mr. Claros without a hearing before a neutral adjudicator that would determine whether
 11 detention serves a permissible purpose, ie. preventing danger or flight risk. *See Zadvydas*, 533
 12 U.S. at 690. DHS already determined that Mr. Claros does not pose a flight risk or danger to the
 13 community when it released him on recognizance in July 2019. Exh. A (Hodges Decl.) ¶ 6. In
 14 the more than six years since, this judgment was proven correct: Mr. Claros has lived in the
 15 community, has had no arrests, has filed a currently-pending U visa petition on the basis of
 16 severe harm he suffered as a child in the United States, and attended his recent in-person
 17 immigration appointment. *Id.* ¶¶ 6-8, 11. These developments show that detention is likely *not*
 18 warranted. DHS’s choice to re-detain Mr. Claros without a hearing has deprived him of his
 19 liberty and separated him from his family and community without any opportunity for Mr.
 20 Claros to contest this unilateral action.

21 47. By contrast, the value of a pre-deprivation hearing before a neutral decision-
 22 maker is high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez*
 23 *v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas*
 24 *v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous
 25 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
 26 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf IP*”), 634 F.3d 1081,
 27 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than
 28 ICE’s unilateral decision to produce accurate determinations regarding factual disputes, and to

1 determine whether Mr. Claros actually currently poses a flight risk or danger such that detention
2 is justified. *See, e.g. Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 (“At a hearing, a neutral
3 decisionmaker can consider all of the facts and evidence before him to determine whether
4 Petitioner in fact presents a risk of flight or dangerousness.”). Requiring such a hearing be held
5 *before* Mr. Claros is re-detained serves to protect his liberty interest, facilitate his right to counsel
6 and to gather evidence, and ensure that ICE’s decision to revoke Mr. Claros’s release does not
7 evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

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

18 49. Because the government failed to give Mr. Claros the notice and hearing he was
19 due under the *Mathews* factors prior to re-incarcerating him, the Court should order him released
20 until the government provides him with a constitutionally-compliant hearing.

21 50. At a pre-deprivation hearing, due process requires that the government justify re-
22 detention of Mr. Claros by clear and convincing evidence that he poses a flight risk or danger.
23 *See Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State in
24 civil proceedings in which the individual interests at stake . . . are both particularly important and
25 more substantial than mere loss of money.”) (internal quotation marks omitted); *Ixchop Perez v.*
26 *McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among
27 District Courts concluding that, “where . . . the government seeks to detain [a noncitizen]
28 pending removal proceedings, it bears the burden of proving that such detention is justified”);

1 *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before
 2 being returned to custody, ordering that the government bear the burden at the hearing by clear
 3 and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

4 51. The hearing must also consider whether alternatives to detention would
 5 adequately ensure Mr. Claros's appearance. Detention is not reasonably related to this purpose if
 6 there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.
 7 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining
 8 whether Mr. Claros's re-incarceration is warranted. *Cf. G.C. v. Wofford*, No. 1:24-cv-01032-
 9 EPG-HC, 2025 U.S. Dist. LEXIS 39773, at *26 (E.D. Cal. Mar. 4, 2025) (ordering bond hearing
 10 at which IJ considers alternative conditions of release); *M.R. v. Warden, Mesa Verde Det. Ctr.*,
 11 No. 1:24-cv-00988-EPG-HC, 2025 U.S. Dist. LEXIS 75622, at *34 (E.D. Cal. Apr. 21, 2025)
 12 (same).

13 **C. Detention of Mr. Claros Despite DHS's Prior Release Determination, in the
 14 Absence of Materially Changed Circumstances, and Without Required Process, is
 Contrary to Statute and Regulations.**

15 a. Statute and Regulation Govern Procedures for Revoking an Order of Release

16 52. DHS's revocation of Mr. Claros's order of release on recognizance was not in
 17 accordance with the INA and implementing regulations governing who may lawfully revoke an
 18 order of supervision and under what circumstances.

19 53. Immigration regulations permit only certain officials to revoke an order of
 20 supervision: the ICE Executive Associate Director, a field office director, or an official
 21 "delegated the function or authority . . . for a particular geographic district, region, or area."
 22 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,
 23 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles
 24 listed in § 241.4). If the field office director or a delegated official intend to revoke an order of
 25 supervision, they must first make findings that "revocation is in the public interest and
 26 circumstances do not reasonably permit referral of the case to the Executive Associate
 27 [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an
 28 order of supervision, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. 3d

1 137, 161 (finding a delegation order that “refers only to a limited set of powers under part 241
2 that do not include the power to revoke release” insufficient to grant authority to revoke an order
3 of supervision).

4 54. Beyond the question of *who* may lawfully revoke an order of release, the INA and
5 regulations also impose requirements on the procedures to be followed. A non-citizen with a
6 final order of removal “who is not removed within the [90-day] removal period . . . shall be
7 subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8
8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”). A non-citizen may only be
9 detained past the 90-day removal period following a removal order if found to be “a risk to the
10 community or unlikely to comply with the order of removal” or if the order of removal was on
11 specified grounds. *Id.* § 1231(a)(6). But even where initial detention past the 90-day removal
12 period is authorized, if “removal is not reasonably foreseeable, the court should hold continued
13 detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the
14 [noncitizen]’s release may and should be conditioned on any of the various forms of supervised
15 release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699-700.

16 55. The regulations purport to give additional reasons, beyond those listed at §
17 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained
18 past the removal period: “(1) the purposes of release have been served; (2) the [non-citizen]
19 violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the
20 conduct of the [non-citizen], or any other circumstance, indicates that release would no longer be
21 appropriate.” 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of
22 supervision only if a non-citizen “violates any of the conditions of release”). Because
23 “[r]egulations cannot circumvent the plain text of the statute[,]” courts have questioned whether
24 these additional regulatory grounds for revocation of release are *ultra vires* of statutory authority.
25 *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8
26 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk
27 to the community, unlikely to comply with the order of removal, or was ordered removed on
28 specified grounds). Separately, upon revocation of an order of supervision, ICE must also give a

1 non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. §
 2 241.4(l)(1).

3 56. Here, ICE met none of these requirements. Mr. Claros's order of supervision was
 4 not revoked by the ICE Executive Associate Director. Exh. A (Hodges Decl.), ¶ 17. The officer
 5 who revoked the order did not first make findings that revocation was in the public interest and
 6 that circumstances did not reasonably permit referral to the Executive Associate Director. *Id.* Nor
 7 had the officer been delegated authority to revoke an order of supervision. *Id.* Before revoking
 8 the order, DHS did not make findings that Mr. Claros is dangerous or unlikely to comply with a
 9 removal order, as required by statute. *Id.* DHS also made no findings that Mr. Claros's conduct
 10 indicated release would no longer be appropriate, that the purposes of release had been served, or
 11 that it was appropriate to enforce a removal order. *Id.* Nor did DHS give Mr. Claros notice of the
 12 reasons for revocation and opportunity to be heard, as required by the regulations. *Id.*, ¶ 18.

13 b. The APA Sets Minimum Standards for Final Agency Action

14 57. “An agency . . . literally has no power to act—including under its regulations—
 15 unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S. 289, 301
 16 (2022) (internal quotation marks and citation omitted). The APA authorizes judicial review of
 17 final agency action. 5 U.S.C. § 704. Final agency actions are those (1) that “mark the
 18 consummation of the agency’s decision-making process” and (2) “by which rights or obligations
 19 have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S.
 20 154, 178 (1997) (citation modified).

21 58. ICE’s revocation of an order of supervision is a final agency action subject to this
 22 Court’s review. The revocation here marked the consummation of ICE’s decision-making
 23 process regarding Mr. Claros’s custody. The revocation was also an action by which rights or
 24 obligations have been determined or from which legal consequences flowed because it led ICE to
 25 detain Mr. Claros in violation of his rights under the Constitution, statute, and regulations.

26 59. The APA requires courts to set aside agency action that is “arbitrary, capricious,
 27 an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A)–(C).
 28 Agency action that conflicts with its own decisions or directives is arbitrary and capricious in

1 violation of the APA. *See, e.g., Organized Village of Kake v. U.S. Dep’t of Agriculture*, 795 F.3d
 2 956, 966 (9th Cir. 2015) (“Unexplained inconsistency between agency actions is a reason for
 3 holding an [action] to be an arbitrary and capricious change.”) (internal quotation marks
 4 omitted); *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

5 60. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period
 6 for a person who is found to be a danger to the community, unlikely to comply with a removal
 7 order, or whose removal order is on certain grounds specified in the statute. Even then, if
 8 removal “is not reasonably foreseeable, the court should hold continued detention unreasonable
 9 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen]’s release may
 10 and should be conditioned on any of the various forms of supervised release that are appropriate
 11 in the circumstances” *Zadvydas*, 533 U.S. at 699-700. Regulations that purport to give DHS
 12 authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are
 13 *ultra vires* and in excess of statutory authority because “[r]egulations cannot circumvent the
 14 plain text of the statute.” *See You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

15 61. Here, DHS’s unexplained detention of Mr. Claros is entirely arbitrary, and
 16 contrary to its prior determination that he is not a flight risk or danger to the community and
 17 merits release on recognizance. Exh. A (Hodges Decl.) ¶¶ 6, 16.

18 62. Additionally, the INA and due process require that civil immigration detention be
 19 reasonably related to a permissible non-punitive purpose. *See Zadvydas*, 533 U.S. at 690; *Patel*,
 20 17 I&N Dec. at 666; *see also Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (holding that
 21 civil detention is unconstitutionally punitive if it is “excessive in relation to [its non-punitive]
 22 purpose” or is “employed to achieve objectives that could be accomplished in so many
 23 alternative and less harsh methods”). Here, ICE’s decision to re-detain Mr. Claros without
 24 explanation following his RFI, despite his being at liberty for over six years, his lack of any
 25 arrests during that time, pending U-visa petition, and his in-person appearance for his RFI on
 26 October 22, 2025, was both excessive in relation to a non-punitive purpose, and any permissible
 27 purpose could have been accomplished through alternatives to detention. *Zadvydas*, 533 U.S. at
 28 690; *Jones*, 393 F.3d at 934; *see* Exh. A (Hodges Decl.) ¶¶ 6, 8-9, 11, 16.

c. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

63. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

64. *Accardi* is not “limited to rules attaining the status of formal regulations.”

10 *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for
11 violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S.
12 235 (affirming reversal of agency denial of public assistance made in violation of internal agency
13 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to
14 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

15 65. Where a “petitioner can prove the allegation [that an agency failed to follow its
16 rules in a hearing] he should receive a new hearing.” *Accardi*, 347 U.S. at 260. “As a result, this
17 Court cannot conclude that [the revoking officer] had the authority to revoke release” and Mr.
18 Claros “is entitled to release on that basis alone.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137,
19 162 (citing *Rombot v. Souza*, 296 F. Supp. 3d 386, 386-89 ((D. Mass. 2017)); *see also M.S.L. v.*
20 *Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where
21 revocation of an ICE order of supervision was ordered by someone without regulatory authority
22 to do so); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025).

23 66. There is no permissible purpose for Mr. Claros's detention at this time, and ICE's
24 decision to re-detain Mr. Claros without notice and without complying with the agency's
25 statutory and regulatory obligations violates the APA and the *Accardi* doctrine.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

Re-Arrest Without Pre-Deprivation Hearing

67. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

68. 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.

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

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

SECOND CLAIM FOR RELIEF

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

71. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

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

73. Due Process does not permit the government to strip Mr. Claros of liberty without it being tethered to one of the two constitutional bases for civil immigration detention: to mitigate against the risk of flight or to protect the community from danger.

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

75. Since Mr. Claros was released in July 2019, he has awaited his RFI while living at liberty in the community. After receiving the RFI notice, Mr. Claros appeared for his interview appointment. He poses no risk of flight. Additionally, during his six-plus years at liberty, Mr. Claros has not been arrested. He poses no danger.

76. DHS's decision to release Mr. Claros on his own recognizance demonstrates that

1 the government has already determined Mr. Claros is not a flight risk or danger.

2 77. The government's re-arrest of Mr. Claros is untethered from any valid basis for
3 civil immigration detention, is excessive in relation to any risk that does exist, and is therefore
4 punitive in violation of substantive due process. Mr. Claros's continued detention is unlawful
5 and violates due process.

THIRD CLAIM FOR RELIEF

**Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A), (B)
Contrary to Law and Constitutional Right**

78. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

79. Under the APA, a court shall “hold unlawful and set aside agency action . . .

10 found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege,
11 or immunity." 5 U.S.C. § 706(2)(A), (B). The APA's reference to "law" in the phrase "not in
12 accordance with law," "means, of course, *any* law, and not merely those laws that the agency
13 itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300
14 (2003) (emphasis in original)).

15 80. DHS's revocation of Mr. Claros's order of release on recognizance was contrary
16 to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as
17 explained above. The revocation was also not in accordance with the INA and implementing
18 regulations governing who may lawfully revoke an order of supervision and under what
19 circumstances.

20 81. Mr. Claros's order of supervision was not revoked by the ICE Executive
21 Associate Director. The officer who revoked the order did not first make findings that revocation
22 was in the public interest and that circumstances did not reasonably permit referral to the
23 Executive Associate Director. Nor had the officer been delegated authority to revoke an order of
24 supervision. DHS also failed to make findings that Mr. Claros is dangerous or unlikely to comply
25 with a removal order, as required by statute.

26 82. Even assuming that regulations purporting to offer additional justifications for
27 revocation of an order of supervision are not *ultra vires*, DHS did not comply with them. Nor did
28 DHS give Mr. Claros notice of the reasons for revocation and opportunity to be heard.

83. The revocation of Mr. Claros's release should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(A) Arbitrary and Capricious

84. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

85. The APA requires courts to “hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious.” 5 U.S.C. § 706(2)(A).

86. DHS's decision to re-detain Mr. Claros is a final agency action not subject to any further process of internal agency review. DHS's re-detention of Mr. Claros is inconsistent with the agency's grant of release on recognizance in July 2019, and DHS has provided no explanation for its decision to re-detain Mr. Claros.

87. DHS's revocation of Mr. Claros's release on recognizance was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

88. An agency decision that “runs counter to the evidence before the agency” is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). DHS’s decision to revoke Mr. Claros’s order of release on recognizance ran counter to the evidence before the agency that he would comply with a demand to appear without detention.

89. The revocation also “failed to consider important aspects of the problem” before DHS, making it arbitrary and capricious for multiple other reasons. *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020). First, DHS failed to consider the serious constitutional concerns raised by re-detaining Mr. Claros without notice and opportunity to respond. Second, DHS failed to consider the increased administrative burden to the agency caused by revoking the order of release on recognizance for Mr. Claros, who is neither a flight risk nor a danger to the community, including financial and administrative costs incurred by the agency due to unnecessary detention. Third, DHS failed to consider reasonable alternatives to revoking Mr. Claros’s release on recognizance that were before the agency, like

1 simply continuing release under the order of supervision and scheduling a future time and date to
2 appear. This alternative would vindicate the government's interests and save it the expense of
3 detention not needed to guarantee Mr. Claros's appearance.

4 DHS's actions are therefore arbitrary, capricious, and an abuse of discretion, and
5 the revocation of Mr. Claros's release on recognizance should be held unlawful and set aside.

6 **FIFTH CLAIM FOR RELIEF**

7 **Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)(C)**
In Excess of Statutory Authority

8 91. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

9 92. Under the APA, a court shall "hold unlawful and set aside agency action . . .

10 found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory
11 right." 5 U.S.C. § 706(2)(C). Regulations that purport to give DHS authority to revoke an order
12 of supervision on grounds other than those listed § 1231(a)(6) are *ultra vires* and in excess of
13 statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *See*
14 *You*, 321 F. Supp. 3d. at 463.

15 93. DHS's re-detention of Mr. Claros was based on *ultra vires* regulations, and was
16 thus in excess of statutory authority and should be held unlawful and set aside.

17 **SIXTH CLAIM FOR RELIEF**

18 **Ultra Vires Action**

19 94. Mr. Claros re-alleges and incorporates by reference the paragraphs above.

20 95. There is no statute, constitutional provision, or other source of law that authorizes
21 DHS to detain Mr. Claros.

22 96. Mr. Claros has a non-statutory right of action to declare unlawful, set aside, and
23 enjoin DHS's *ultra vires* actions.

24 **SEVENTH CLAIM FOR RELIEF**

25 **Violation of the *Accardi* Doctrine**

26 97. Mr. Claros realleges all paragraphs above as if fully set forth here.

27 98. DHS violated agency regulations governing who and upon what findings it may
28 properly revoke an order of supervision when it revoked Mr. Claros's order of release.

1 99. Under the *Accardi* doctrine, Mr. Claros has a right to set aside agency action that
2 violated agency procedures, rules, or instructions. *Accardi*, 347 U.S. at 260.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Mr. Claros requests that the Court:

- 5 1) Assume jurisdiction over this matter;
- 6 2) Declare Respondents' actions in re-arresting Mr. Claros on November 3, 2025 and
7 continuing to detain him contrary to law, in violation of the Due Process Clause of the
8 Fifth Amendment, the INA and implementing regulations, the APA, and the *Accardi*
9 doctrine;
- 10 3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Mr. Claros
11 from their custody;
- 12 4) Enjoin Respondents, and anyone acting in concert with them, from re-detaining Mr.
13 Claros until a hearing is held before a neutral adjudicator, at which the government must
14 establish by clear and convincing evidence that Petitioner presents a risk of flight or
15 danger, and that no alternatives to detention can sufficiently protect its interests, before
16 the Respondents can re-detain Mr. Claros;
- 17 5) Enjoin Respondents from causing Mr. Claros any additional harm during the pendency of
18 this litigation, such as by transferring him farther away from his legal Counsel or placing
19 him into solitary confinement;
- 20 6) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act, as
21 amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under
22 law; and
- 23 7) Grant such further relief as the Court deems just and proper.

24 Respectfully submitted,

25 Date: November 3, 2025

26 _____
27 /s/ Elena Hodges
28 ELENA HODGES
 PANGEA LEGAL SERVICES

29 *Pro Bono Attorney for Petitioner*

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

I am submitting this verification on behalf of Mr. Claros because I am his attorney. As Mr. Claros's attorney, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: November 3, 2025

/s/ Elena Hodges

Elena Hodges

Pro Bono Attorney for Petitioner