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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 O.A.C.S.,

No.

9 Petitioner,

10 v.

**PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

11
12 Minga WOFFORD, Field Office Director,
Mesa Verde, Office of Detention and
13 Removal, U.S. Immigrations and Customs
Enforcement, U.S. Department of
14 Homeland Security;

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

15 Sergio ALBARRAN, Acting Field Office
Director of the San Francisco Immigration
16 and Customs Enforcement Office, U.S.
Department of Homeland Security;

17 Todd M. LYONS, Acting Director,
18 Immigration and Customs Enforcement,
U.S. Department of Homeland Security;

19 Kristi NOEM, in her Official Capacity,
20 Secretary, U.S. Department of Homeland
Security; and

21 Pam BONDI, in her Official Capacity,
22 Attorney General of the United States.

23 Respondents.
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1 **INTRODUCTION**

2
3 1. Petitioner, O.A.C.S., has been civilly imprisoned by U.S. Immigration and Customs
4 Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since October 17, 2024,
5 after having complied with the conditions of his release from the custody of the Department of
6 Homeland Security (DHS) since he was granted parole on December 01, 2023. O.A.C.S. has
7 experienced several technical and compliance issues related to his weekly check-in-application.
8 One day, he forgot to submit the photo at the scheduled time, prompting an officer to call him that
9 afternoon to request the submission. On another occasion, he missed a scheduled video call with
10 an ISAP officer, leading the officer to call him directly. Crucially, he did not receive any formal
11 warnings, threats of arrest, or formal noncompliance notices from ISAP officials regarding these
12 sporadic incidents.

13 2. O.A.C.S.’s current detention may be permitted under the Constitution and Immigration and
14 Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that
15 he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking
16 individual with no criminal history, O.A.C.S. is not a flight risk or danger. His asylum case remains
17 pending before EOIR, and thus, removal is not imminent. Thus, O.A.C.S.’s continued detention
18 without a bond hearing before a neutral decision-maker violates his rights under the INA and the
19 Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.
20

21 3. This Court should issue a writ of habeas corpus and determine that O.A.C.S. is entitled to
22 immediate release under reasonable conditions and pending further order of the Court.

23 4. Alternatively, this Court should order O.A.C.S.’s release unless he receives a bond hearing
24 before a neutral arbiter where: (1) to justify his continued detention, the government bears the
25 burden to establish by clear and convincing evidence that O.A.C.S. is a danger or flight risk; and
26 (2) if the government cannot meet its burden, O.A.C.S. must be ordered released on reasonable
27 conditions, taking into account his ability to pay bond.
28

1 **CUSTODY**

2 1. O.A.C.S. is currently in the custody of ICE at Mesa Verde in Bakersfield,
3 California. O.A.C.S. is therefore in “‘custody’ of [the DHS] within the meaning of the habeas
4 corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

5 **JURISDICTION**

6 2. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
7 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),
8 28 U.S.C. § 2241 (habeas corpus), U.S. Const. article I, § 9, cl. 2 (the Suspension Clause), U.S.
9 Const., amend IV and V, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

10 **VENUE**

11 3. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
12 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

13 **REQUIREMENTS OF 28 USC § 2243**

14 4. The Court must grant the petition for writ of habeas corpus or issue an order to
15 show cause (OSC) to Respondents “‘forthwith,” unless the petitioner is not entitled to relief. 28
16 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “‘within
17 three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
18 (emphasis added).

19 5. Courts have long recognized the significance of the habeas statute in protecting
20 individuals from unlawful detention. The Great Writ has been referred to as “‘perhaps the most
21 important writ known to the constitutional law of England, affording as it does a swift and
22 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
23 (1963) (emphasis added).

24 6. Habeas corpus must remain a swift remedy. Importantly, “‘the statute itself directs
25 courts to give petitions for habeas corpus ‘special, preferential consideration to ensure expeditious
26 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
27 omitted). The Ninth Circuit warned against any action creating the perception “‘that courts are
28 more concerned with efficient trial management than with the vindication of constitutional

1 rights.” *Id.*

2 EXHAUSTION

3 7. For habeas claims, exhaustion of administrative remedies is prudential, not
4 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the
5 prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious,
6 pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the
7 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
8 (9th Cir. 2004) (citation and quotation marks omitted)). O.A.C.S. asserts that exhaustion should
9 be waived because administrative remedies are (1) futile and (2) his continued detention results in
10 irreparable harm.

11 8. It would be futile for O.A.C.S. to seek a bond hearing from an Immigration Judge.
12 His request would be summarily denied based on the current interpretation of the BIA’s recent
13 decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of Yajure Hurtado*, 29
14 I&N Dec. 216 (BIA 2025).

15 9. Further, no statutory exhaustion requirements apply to O.A.C.S.’s claim of
16 unlawful custody in violation of his due process rights, and there are no administrative remedies
17 that he needs to exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936,
18 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not
19 have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d
20 1098, 1099 (C.D. Cal. 2000) (same).

21 PARTIES

22 10. O.A.C.S. is a male citizen and national of Peru who entered the U.S. on or about
23 November 30, 2023, and has remained in the country since. *See* Affidavit of O.A.C.S. (“O.A.C.S.
24 Aff.”). DHS detained O.A.C.S. upon entry and shortly released him on an order of supervision *Id.*;
25 *see also* Exh 1- Order of Release on Recognizance. O.A.C.S. established a life in Bakersfield,
26 California for almost two years. O.A.C.S. Aff. To help cover basic needs, he worked as a
27 landscaper. He is considered a pillar in his community, which includes his family, sister, and
28 friends. *Id.*

1 11. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
2 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
3 responsible for detaining and removing noncitizens according to immigration law and oversees
4 custody determinations. In her official capacity, she is the legal custodian of O.A.C.S.

5 12. Respondent Sergio ALBARRAN is the Acting Field Office Director of the San
6 Francisco ICE Field Office. In this capacity, he is responsible for the administration of
7 immigration laws and the execution of immigration enforcement and detention policy within
8 ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent
9 Albarran maintains an office and regularly conducts business in this district. Respondent Albarran
10 is sued in his official capacity.

11 13. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
12 official capacity. Among other things, ICE is responsible for the administration and enforcement
13 of the immigration laws, including the removal of noncitizens. In his official capacity as head of
14 ICE, he is the legal custodian of O.A.C.S.

15 14. Respondent Kristi NOEM is the Secretary of DHS and is named in her official
16 capacity. DHS is the federal agency that encompasses ICE, which is responsible for administering
17 and enforcing the INA and all other laws related to the immigration of noncitizens. In her
18 capacity as Secretary, Respondent Noem has responsibility for the administration and
19 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland
20 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
21 1103(a). Respondent Noem is the ultimate legal custodian of O.A.C.S.

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

27 **FACTUAL ALLEGATIONS**

28 16. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign


1 targeting people who are in regular removal proceedings in immigration court, many of whom
2 have pending applications for asylum or other relief. This “coordinated operation” is “aimed at
3 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
4 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
5 *Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23,
6 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
7 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
8 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
9 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
10 administration implemented a policy to drastically increase immigration arrests to a target of at
11 least 3,000 per day. According to White House officials like Stephen Miller, this directive
12 prioritized arrest numbers over the individuals’ criminal history, encouraging agents to conduct
13 mass round-ups in public spaces rather than targeted investigations.

14 17. As a result, arrests of non-citizens with no criminal record surged by over 800%,
15 and two-thirds of those deported had no criminal history. This focus on quantity over public
16 safety led to a new and aggressive tactic: systematically arresting immigrants at courthouses and
17 ICE appointments, regardless of the status of their legal cases. This has created a climate of fear,
18 discouraging people from attending their mandatory hearings or ICE appointments.

19 18. In addition, individuals are now held for extended periods, sometimes days, in
20 temporary holding cells that are not designed for overnight or prolonged detention, often under
21 inhumane conditions. Government officials have justified these harsh conditions not as a matter
22 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
23 detention.

24 19. The government’s new campaign is also a significant shift from the previous DHS
25 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
26 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*
27 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

28 20. O.A.C.S. fled Peru in 2023 because he was a victim of severe physical and

1 psychological abuse perpetrated  O.A.C.S. Aff.. On or around November 30,
2 2023, O.A.C.S. came into immigration custody immediately after crossing the border into the
3 United States. He was detained in a border holding facility for two days in San Diego, California.
4 O.A.C.S. Aff. DHS admitted O.A.C.S. into their custody for two days before determining that he
5 is not a danger to the community nor a flight risk and releasing him pursuant to an order of
6 release on recognizance. Exh. 1; *see also* O.A.C.S. Aff.. DHS released O.A.C.S. on his
7 recognizance and instructions to report to the ICE office in Bakersfield, California. DHS also
8 gave him a Notice to Appear (NTA) for removal proceedings in immigration court pursuant to
9 Section 240 of the Immigration and Nationality Act (INA) (section 240 proceedings). Exh. 2-
10 Notice to Appear. DHS did not require O.A.C.S. to post a bond.

11 21. O.A.C.S. was involved in a car accident approximately two weeks after his release
12 from detention. O.A.C.S. Aff. He was a passenger in the vehicle, which was driven by his sister.
13 *Id.* The accident resulted in a fractured pelvis (waist), requiring the surgical insertion of two
14 screws. *Id.* He was subsequently confined to a wheelchair and utilized a temporary drain for
15 urinary and bowel management. His recovery involved six months of rehabilitation at home. *Id.*

16 22. On May 01, 2024, O.A.C.S. appeared at the San Francisco local ICE office at 800
17 Truxtun Ave., Bakersfield, CA 93301. During his appointment, ICE took his passport and an
18 officer instructed him to go to the Intensive Supervision Appearance Program (ISAP) office at
19 2001 N. Chester Ave., Bakersfield, CA 93308 on September 9, 2024. O.A.C.S. reported at ISAP
20 office and complied with the instructions, which required the installation of a monitoring
21 application on his personal cell phone for weekly reporting. *Id.* The program required O.A.C.S. to
22 take a photo every week, answer phone calls from ISAP officers, and report periodically in-
23 person at ISAP and ICE offices. *Id.* O.A.C.S. complied with the requirements of the ISAP
24 program and his ICE's order of supervision. *Id.*

25 23. O.A.C.S. experienced several technical and compliance issues related to his
26 weekly check-in application. *Id.* On multiple occasions, after submitting his required weekly
27 photo on time, he would receive a notification one to two hours later asking him to resubmit it.
28 One day, he forgot to submit the photo at the scheduled time, prompting an officer to call him that

1 afternoon to request the submission. *Id.* On another occasion, he missed a scheduled video call
2 with an ISAP officer, leading the officer to call him directly. Crucially, he did not receive any
3 formal warnings, threats of arrest, or formal noncompliance notices from ISAP officials regarding
4 these sporadic incidents. *Id.*

5 24. On October 16, 2025, ISAP scheduled an in-person visit to O.A.C.S.'s residence,
6 with an expected arrival time between 9:00 a.m. and 5:00 p.m. After waiting until approximately
7 4:00 p.m., O.A.C.S. briefly left his home to purchase an item at a nearby store. *Id.* Approximately
8 five minutes later, ISAP officials called to notify him of their arrival at his residence. *Id.* He
9 immediately requested that they wait as he was en route, but they informed him they could not
10 delay. *Id.* They subsequently called him again, mandating that he report to the ISAP office the
11 following day at 9:00 a.m. *Id.*

12 25. On October 17, 2024, upon entering the ISAP office, O.A.C.S. was greeted by a
13 young woman who directed him to a room where several officers were waiting. *Id.* The officers
14 informed him that he was being arrested for missing his scheduled home supervision appointment
15 the previous day. *Id.* They proceeded to place shackles on his hands, waist, and feet. This restraint
16 caused him significant pain due to his existing hip fracture. *Id.* O.A.C.S. did not resist arrest. *Id.*
17 The officers then showed him a record of his late photo submissions and the missed home visit.
18 Finally, they confiscated his phone and did not permit him to contact his sister, who was waiting
19 for him outside the office. *Id.* Exh 3, Warrant of Arrest. The warrant for arrest did not mention any
20 ISAP violations. *Id.*

21 26. O.A.C.S. waited in the room for nearly an hour before officers escorted him out
22 and placed him in a transport van with four other detainees, all of whom were similarly restrained
23 with handcuffs and shackles on their hands, waist, and feet. O.A.C.S. Aff. The van was noted to
24 be extremely cold. *Id.* After a drive of approximately 15 minutes, they arrived at the ICE office
25 located at 800 Truxtun Ave, Bakersfield, CA 93301. *Id.* At this location, officers took his
26 fingerprints and had him sign various documents. *Id.* They reiterated the reasons for his detention.
27 He was detained at this office for one to two hours, and he was not given an opportunity to call
28 his sister to inform her of his location. *Id.*

1 27. After waiting in the room, O.A.C.S. was finally transferred to the Mesa Verde
2 Detention Center, arriving around 12:00 p.m. or 1:00 p.m. *Id.* Upon arrival, he underwent a
3 second round of fingerprinting and was examined by a doctor. Following the medical
4 examination, he was left waiting for an additional hour or two. During this extended period, his
5 sister became increasingly worried, as he had not been given any opportunity to inform her of his
6 location. *Id.*

7 28. O.A.C.S. was taken to his cell, which houses approximately 100 individuals and
8 contains 100 bunk beds. *Id.* Privacy is minimal, as the toilets are situated close to the sleeping
9 areas, offering no seclusion for urination or defecation. The shower facilities similarly lack
10 adequate privacy. *Id.* Detainees are responsible for cleaning their own cells daily. Furthermore,
11 the provided food is consistently reported as poor quality, tasteless, and almost always cold. Due
12 to the quality of the meals, O.A.C.S. experienced stomach pains during his initial days of
13 detention. *Id.*

14 29. On November 21st, O.A.C.S. did not receive food due to the officers' lack of an
15 accurate count of detainees. *Id.* O.A.C.S. reports that the cafeteria has been closed, and meals are
16 now delivered to the cells. The nights are also very cold, and he has only a thin blanket. *Id.*

17 30. Prior to his arrest, O.A.C.S. suffered from vitiligo, a condition attributed to the
18 stress and trauma he endured in his home country. *Id.* The current stress of detention is now
19 causing the vitiligo to flare up. *Id.* Additionally, he retains a residual injury from his 2023
20 accident—specifically, an inability to flex the middle finger of his right hand—and suffers from
21 memory loss. *Id.*

22 31. O.A.C.S. timely filed his Form I-589 (Application for Asylum and Withholding of
23 Removal) at the Van Nuys Immigration Court at 6230 Van Nuys Blvd. Suite 300, Van Nuys, CA.
24 O.A.C.S. never missed an immigration court hearing. *Id.* O.A.C.S. maintains a strong interest in
25 pursuing his asylum application due to the fact that he [REDACTED]

26 [REDACTED] His sister enlisted the help of an
27 individual to complete the necessary paperwork; however, this assistance has not yet resulted in
28 O.A.C.S. obtaining his work permit. *Id.* He now plans to secure an immigration lawyer to

1 represent him in the immigration court.*Id.*

2 **LEGAL ARGUMENT**

3 32. O.A.C.S.’s removal proceedings before the San Francisco Immigration Judge are
4 governed by INA § 240 (“section 240 proceedings”). Section 240 proceedings provide important
5 statutory protections, including hearings before an Immigration Judge. *See* 8 U.S.C. §
6 1229a(a)(1), (a)(4).

7 33. In O.A.C.S.’s particular circumstances, the Due Process Clause of the Constitution
8 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation
9 hearing before a neutral decision maker to determine whether circumstances have materially
10 changed since his release from custody in November 30, 2023, such that detention would now be
11 warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

12 34. By statute and regulations, ICE has the ability to unilaterally revoke any
13 noncitizen’s immigration bond determination or parole, and re-arrest the noncitizen at any time. 8
14 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language
15 granting ICE the power to revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter*
16 *of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on
17 ICE’s authority to re-arrest noncitizens. There, the BIA held that “where a previous bond
18 determination has been made by an immigration judge, no change should be made by [the DHS]
19 absent a change of circumstance.” *Id.* In practice, DHS “requires a showing of changed
20 circumstances both where the prior bond determination was made by an immigration judge and
21 where the previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at
22 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has
23 no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854
24 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain
25 Panosyan.”).

26 35. ICE has further limited its authority as described in *Sugay*, and “generally only re-
27 arrests [noncitizens] pursuant to § 1226(b) after a material change in circumstances.” *Saravia*,
28 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second

1 Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE
2 may re-arrest a noncitizen who had been previously released on bond only after a material change
3 in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

4 36. ICE's power to re-arrest a noncitizen who is at liberty following a release from
5 custody is also constrained by the demands of due process. *See Hernandez*, 872 F.3d at 981 ("the
6 government's discretion to incarcerate non-citizens is always constrained by the requirements of
7 due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-
8 deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482
9 (1972) (same, in parole context). Petitioner's release from custody in June of 2021 and ties to his
10 family and community provide him with a protected liberty interest. *See Ortega v. Bonnar*, 415
11 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

12 37. Federal district courts in California have repeatedly recognized that the demands
13 of due process and the limitations on DHS's authority to revoke a noncitizen's release from
14 custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation
15 hearing for a noncitizen on ICE's supervision, like O.A.C.S. before ICE re-detains him. *See, e.g.,*
16 *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d
17 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D.
18 Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2
19 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4
20 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required
21 notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW,
22 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing
23 re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See*
24 *also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3,
25 2025) (holding the Constitution requires a hearing before any re-arrest).

26 **I. Petitioner Has a Protected Liberty Interest in His Conditional Release**

27 38. The Due Process Clause protects O.A.C.S.'s liberty from immigration custody:
28 "Freedom from imprisonment—from government custody, detention, or other forms of physical

1 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
2 *Davis*, 533 U.S. 678, 690 (2001).

3 39. Since December of 2023, O.A.C.S. exercised that freedom under ICE’s order
4 releasing him from custody. As he was released from custody, he retains a weighty liberty
5 interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-
6 incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S. at 781-82;
7 *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that O.A.C.S.
8 would be permitted to live and work in the United States without being subject to arbitrary arrest
9 and removal.

10 40. This reasonable expectation creates constitutionally protected liberty and property
11 interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices
12 may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also*
13 *Texas v. United States*, 136 S. Ct. 2271 (2016) (explaining that “DACA involve[s] issuing
14 benefits” to certain applicants). These benefits are entitled to constitutional protections no matter
15 how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287
16 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property interests under constitutional law
17 turns on the substance of the interest recognized, not the name given that interest by the state or
18 other independent source.”) (internal quotations omitted).

19 41. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
20 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the
21 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and
22 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further
23 noted that “the parolee has relied on at least an implicit promise that parole will be revoked only
24 if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a
25 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
26 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever
27 name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.”
28 *Id.* at 482.

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

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

24 44. Here, when this Court compares the specific release in O.A.C.S.’s case “with the
25 liberty interest in parole as characterized by *Morrissey*,” they are strikingly similar. *See Gonzalez-*
26 *Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, O.A.C.S.’s release “enables him to do a wide
27 range of things open to persons” who have never been in custody or convicted of any crime,
28 including to live at home, practice his faith, care for his grandmother, and “be with family and

1 friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

2 **II. Petitioner’s Liberty Interest Mandates a Hearing Before Any Re-Arrest or**
3 **Revocation of Release from Custody**

4 45. O.A.C.S. asserts that, here, (1) where his detention would be civil; (2) where he
5 has been at liberty for over two years; (3) where no change in circumstances exist that would
6 justify his lawful detention; and (4) where the only circumstance was ICE’s move to arrest as
7 many people as possible because of the new administration, due process mandates that he be
8 released from his unlawful custody and receive notice and a hearing before a neutral adjudicator
9 prior to any re-arrest or revocation of his custody release.

10 46. “Adequate, or due, process depends upon the nature of the interest affected. The
11 more important the interest and the greater the effect of its impairment, the greater the procedural
12 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
13 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
14 “balance [O.A.C.S.’s] liberty interest against the [government’s] interest in the efficient
15 administration of” its immigration laws in order to determine what process he is owed to ensure
16 that ICE does not unconstitutionally deprive him of his liberty. *Id* at 1357. Under the test set forth
17 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
18 “first, the private interest that will be affected by the official action; second, the risk of an
19 erroneous deprivation of such interest through the procedures used, and the probative value, if
20 any, of additional or substitute procedural safeguards; and finally the government’s interest,
21 including the function involved and the fiscal and administrative burdens that the additional or
22 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
23 *Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the *Mathews* factors in
24 similar cases, and found that those in Petitioner’s position, noncitizens granted the liberty of
25 release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No.
26 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v.*
27 *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v.*
28 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez*

1 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

2 47. The Supreme Court “usually has held that the Constitution requires some kind of a
3 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
4 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
5 are “the only remedies the State could be expected to provide” can post-deprivation process
6 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one
7 of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible
8 in preventing the kind of deprivation at issue” such that “the State cannot be required
9 constitutionally to do the impossible by providing predeprivation process,” can the government
10 avoid providing pre-deprivation process. *Id.*

11 48. Because, in this case, ICE is required to release O.A.C.S. from his unlawful
12 custody and provide O.A.C.S. with notice and a hearing prior to any re-incarceration and
13 revocation of his liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56;
14 *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307,
15 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
16 awaiting involuntary civil commitment proceedings may not constitutionally be held in jail
17 pending the determination as to whether they can ultimately be recommitted). Under *Mathews*,
18 the balance weighs heavily in favor of O.A.C.S.’s liberty and requires a pre-deprivation hearing
19 before a neutral adjudicator.

20 **III. Petitioner’s Private Interest in His Liberty is Profound**

21 49. Under *Morrissey* and its progeny, individuals conditionally released from serving a
22 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
23 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
24 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
25 him to constitutional due process before he is re-incarcerated—apply with even greater force to
26 individuals like O.A.C.S., who have been released pending civil removal proceedings, rather than
27 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
28 conviction. Parolees and probationers have a diminished liberty interest given their underlying

1 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
2 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
3 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
4 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
5 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, O.A.C.S. retains a truly weighty liberty interest
6 even though he is under conditional release.

7 50. What is at stake in this case for O.A.C.S. is one of the most profound individual
8 interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision
9 releasing him from custody and to take away—without a lawful basis—his physical freedom, i.e.,
10 his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d
11 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has
12 always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
13 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—
14 from government custody, detention, or other forms of physical restraint—lies at the heart of the
15 liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

16 51. Thus, there is a clear profound private interest at stake in this case, which must be
17 weighed heavily when determining what process he is owed under the Constitution. *See Mathews*,
18 424 U.S. at 334-35.

19 **IV. The Government’s Interest in Re-Incarcerating Petitioner Without a Hearing is**
20 **Low and the Burden on the Government to Refrain from Re-Arresting Him Unless**
21 **and Until He is Provided a Hearing That Comports with Due Process is Minimal**

22 52. The government’s interest in detaining O.A.C.S. without a due process hearing is
23 low, and when weighed against O.A.C.S.’s significant private interest in his liberty, the scale tips
24 sharply in favor of enjoining Respondents to release O.A.C.S. from his unlawful custody and
25 refrain from re-arresting O.A.C.S. unless and until the government demonstrates by clear and
26 convincing evidence that he is a flight risk or danger to the community. It becomes abundantly
27 clear that the *Mathews* test favors O.A.C.S. when the Court considers that the process he seeks—
28 providing O.A.C.S. with a hearing before this Court (or a neutral decisionmaker) to determine

1 whether there is clear and convincing evidence that O.A.C.S. is a flight risk or danger to the
2 community would impose only a *de minimis* burden on the government, because the government
3 routinely provides this sort of hearing to individuals like O.A.C.S.

4 53. As immigration detention is civil, it can have no punitive purpose. The
5 government's only interest in holding an individual in immigration detention can be to prevent
6 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*
7 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
8 lawful basis for detaining O.A.C.S. has lived at liberty complying with the conditions of his
9 release since June 2021.

10 54. ICE determined O.A.C.S. not to be a danger to the community or a flight risk in
11 June 2021 and has done nothing to undermine that determination. To the contrary, he complied
12 with the terms of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater
13 importance to a person's justifiable reliance in maintaining his conditional freedom so long as he
14 abides by the conditions on his release, than to his mere anticipation or hope of freedom”)
15 (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir.
16 1971)).

17 55. It is difficult to see how the government's interest in ensuring his presence at the
18 moment of removal has materially changed since he was released in December of 2023, when he
19 has appeared at ICE appointment and court hearing. The government's interest in detaining
20 O.A.C.S. at this time is therefore low. That ICE has a new policy to make a minimum number of
21 arrests each day under the new administration does not constitute a material change in
22 circumstances or increase the government's interest in detaining him.

23 56. Moreover, the “fiscal and administrative burdens” that his immediate release and a
24 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
25 334-35. O.A.C.S. does not seek a unique or expensive form of process, but rather a routine
26 hearing regarding whether his order of release should be revoked and whether he should be re-
27 incarcerated.

28 57. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the

1 public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total
2 daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. ICE’s unlawful action of placing him in
3 custody is more of a financial burden than releasing him and providing a pre-custody hearing
4 before any future re-arrest occurs.

5 58. In addition, providing O.A.C.S. with a hearing before this Court (or a neutral
6 decisionmaker) regarding release from custody is a routine procedure that the government
7 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
8 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
9 But there is no justifiable reason to re-incarcerate O.A.C.S. prior to such a hearing taking place.
10 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in
11 being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
12 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
13 revoking parole without some informal procedural guarantees.” *Morrissey*, 408 U.S. at 483.

14 59. Releasing O.A.C.S. from unlawful custody and enjoining his re-arrest until ICE (1)
15 moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by
16 clear and convincing evidence that O.A.C.S. is a flight risk or danger to the community.
17 *Hernandez*, 872 F.3d at 996.

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

21 60. Releasing O.A.C.S. from unlawful custody and providing O.A.C.S. a pre-
22 deprivation hearing would decrease the risk of O.A.C.S. being erroneously deprived of his liberty.
23 Before O.A.C.S. can be lawfully detained, he must be provided with a hearing before a neutral
24 adjudicator at which the government is held to show that there has been sufficiently changed
25 circumstances such that ICE’s December 2023 release from custody determination should be
26 altered or revoked because clear and convincing evidence exists to establish that O.A.C.S. is a
27 danger to the community or a flight risk.

28 61. On October 17, 2025, O.A.C.S. did not receive this protection. Instead, he was
detained by ICE, without notice, as he attended his appointment with ICE, demonstrating

1 compliance, and there have been no material changes in his circumstances.

2 62. By contrast, the procedure O.A.C.S. seeks—a hearing in front of a neutral
3 adjudicator at which the government must prove by clear and convincing evidence that
4 circumstances have changed to justify his detention before any re-arrest—is much more likely to
5 produce accurate determinations regarding factual disputes, such as whether a particular
6 occurrence constitutes a “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375,
7 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses and
8 assessment of conditions not subject to measurement” are at issue, the “risk of error is
9 considerable when just determinations are made after hearing only one side”). “A neutral judge is
10 one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th
11 Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).
12 The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews*
13 can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
14 determinations. *Diouf v. Napolitano* (“*Diouf IP*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

15 63. Due process also requires consideration of alternatives to detention at any custody
16 determination hearing that may occur. The primary purpose of immigration detention is to ensure
17 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
18 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
19 of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
20 must be considered in determining whether O.A.C.S.’s reincarceration is warranted.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of Procedural Due Process Under U.S. Const. Amend. V**

24 64. O.A.C.S. re-alleges and incorporates herein by reference, as is set forth fully
25 herein, the allegations in all the preceding paragraphs.

26 65. The Due Process Clause of the Fifth Amendment forbids the government from
27 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

28 66. O.A.C.S. has a vested liberty interest in his lawful conditional release. Due Process

1 does not permit the government to strip him of that liberty without a hearing before this Court.
2 *See Morrissey*, 408 U.S. at 487-488.

3 67. The Court must therefore order that ICE release O.A.C.S. from his current
4 unlawful custody.

5 68. Prior to any re-arrest, the government must provide him with a hearing before a
6 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether
7 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
8 that O.A.C.S. is a danger to the community or a flight risk, such that his reincarceration is
9 warranted. During any custody determination hearing that occurs, this Court or, alternatively, a
10 neutral adjudicator must consider alternatives to detention when determining whether O.A.C.S.'s
11 re-incarceration is warranted.

12 **SECOND CLAIM FOR RELIEF**

13 **Violation of Substantive Due Process Under U.S. Const. Amend. V**

14 69. O.A.C.S. re-alleges and incorporates herein by reference, as is set forth fully
15 herein, the allegations in all the preceding paragraphs.

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

19 71. O.A.C.S. has a vested liberty interest in his conditional release. Due Process does
20 not permit the government to strip him of that liberty without it being tethered to one of the two
21 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
22 community from danger. Since December 2023, O.A.C.S. has attended all his appointments, thus
23 demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be
24 punitive and violate his constitutional right to be free from the unjustified deprivation of his
25 liberty.

26 72. For these reasons, O.A.C.S.'s continued unlawful custody and any subsequent re-
27 arrest without first being provided a pre-deprivation hearing would violate the Constitution.

28 73. The Court must therefore order that he be released from custody.

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6 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

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

11 Executed on November 26, 2025, in Oakland, CA.

12 /s/ Natalia Vieira Santanna
13 Natalia Vieira Santanna, Esq.
14 Attorney for Petitioner