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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

J.E.H.G.,

Petitioner,

v.

Christopher CHESTNUT, Facility Administrator of California City Correctional Facility;

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

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

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

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

Respondents.

No.

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

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

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INTRODUCTION

1. Petitioner, J.E.H.G., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at the California City Correctional Facility since October 25, 2025, after having complied with the conditions of her release from the custody of the Department of Homeland Security (DHS) since she was granted parole on December 14, 2022. J.E.H.G. has appeared at appointments, taken photographs, and answered supervision calls from the Intensive Supervision Appearance Program (ISAP), while diligently pursuing asylum before the Executive Office of Immigration Review (EOIR). J.E.H.G. has a valid DHS authorization, and California's driver's license.

2. J.E.H.G.'s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that she is a flight risk or danger to the community, or if her removal is imminent. As a hardworking and loving daughter with no criminal history, J.E.H.G. is not a flight risk or danger. Her asylum case remains pending before EOIR, and thus, removal is not imminent. Her parents have also filed a derivative asylum petition for her with the United States Citizenship and Immigration Services (USCIS), which is currently pending. Thus, J.E.H.G.'s continued detention without a bond hearing before a neutral decision-maker violates her rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

3. This Court should issue a writ of habeas corpus and determine that J.E.H.G. is entitled to immediate release under reasonable conditions and pending further order of the Court.

4. Alternatively, this Court should order J.E.H.G.'s release unless she receives a bond hearing before a neutral arbiter where: (1) to justify her continued detention, the government bears the burden to establish by clear and convincing evidence that J.E.H.G. is a danger or flight risk; and (2) if the government cannot meet its burden, J.E.H.G. must be ordered released on reasonable conditions, taking into account her ability to pay bond.

CUSTODY

5. J.E.H.G. is currently in custody of ICE at California City Correctional Facility in California City, California. J.E.H.G. is therefore in "'custody' of [the DHS] within the meaning

of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

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

VENUE

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

REQUIREMENTS OF 28 USC § 2243

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

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

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

EXHAUSTION

11. For habeas claims, exhaustion of administrative remedies is prudential, not

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

12. It would be futile for J.E.H.G. to seek a bond hearing from an Immigration Judge. His request would be summarily denied based on the current interpretation of the BIA's recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

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

PARTIES

14. J.E.H.G. is a 21-year-old female citizen of Peru who entered the U.S. in November of 2022 and has remained in the country since. *See* Affidavit of J.E.H.G. ("J.E.H.G. Aff."). DHS detained J.E.H.G. upon entry and shortly released her on parole pursuant to 8 C.F.R. § 212.5. *Id; see also* Notice of Parole, *attached as* Exh. 2. J.E.H.G. established a life in Turlock, California. J.E.H.G. Aff. ¶ 6. She is gainfully employed and lives with her asylum-holding parents and brother. ¶ 6. *Id.*

15. Respondent Christopher CHESTNUT is the Facility Administrator of California City Correctional Facility. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of J.E.H.G.

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

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

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

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

FACTUAL ALLEGATIONS

20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse or at the ICE office and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*

Arrests at Courthouses Signal New Tactic in Trump's Deportation Push, Wash. Post, May 23, 2025, 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 Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html. The Trump administration implemented a policy to drastically increase immigration arrests to a target of at least 3,000 per day. According to White House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct mass round-ups in public spaces rather than targeted investigations.

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

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

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

24. J.E.H.G. fled Peru in 2022 because of persecution she suffered on account of her gender and family relationships. *See* J.E.H.G. Aff. On or around November 10, 2022, J.E.H.G. presented herself at the Texas/Mexico border with the intention of seeking asylum. J.E.H.G. Aff. DHS admitted J.E.H.G. into their custody for a few weeks before determining that she had a credible fear of returning to Peru, and that she was not a danger to the community nor a flight risk

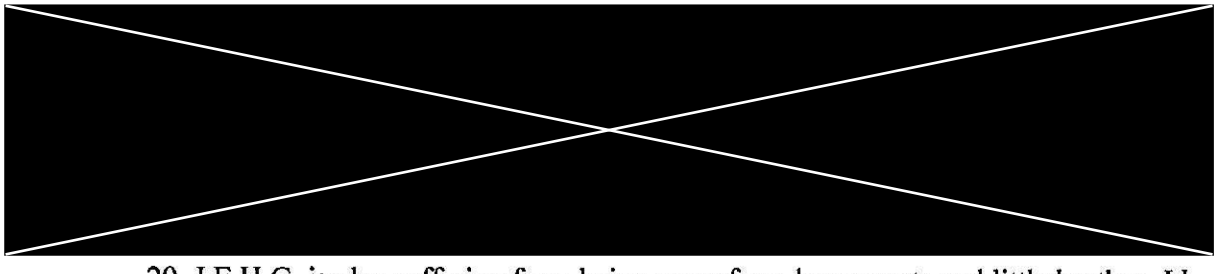
and releasing her pursuant to 8 C.F.R. § 212.5. Exh. 2; *see also* J.E.H.G. Aff.

25. Upon her release, J.E.H.G. established a life in Turlock, California. *Id.* DHS granted her employment authorization, enabling her to obtain gainful employment and support herself. *Id*; Exh 3. J.E.H.G. has never committed any crimes, nor been arrested for any reason. *Id*

26. J.E.H.G. diligently complied with all requirements imposed by DHS through the Intensive Supervision Appearance Program (ISAP). *Id.* She consistently reported to the ICE office in Stockton and her assigned officers through the mobile reporting app. *See* J.E.H.G. Aff. She followed the instructions diligently, taking and sending photos from her home whenever requested, usually once a month. *Id.* Her officers never told her precisely when to take the picture; she believed it had to be that day the request was made. *Id.* She would receive the notification in the morning and send the photo in the afternoon due to work. *Id.* Her officer never notified her that she was out of compliance. *Id.*

27. On October 25, 2025, J.E.H.G. appeared for a supervision check-in with ICE. *Id.* At this appointment, DHS accused J.E.H.G. of not complying with the conditions of her release and detained her without giving her any opportunity for an explanation. *Id.*

28. Allegedly, this detention was due to J.E.H.G. having missed several supervision photo check-ins, which she was unaware she had missed. *Id.* ICE arrested and re-detained J.E.H.G. at this October appointment and promptly transferred her to California City. *Id.* While detained at California City, J.E.H.G. suffered from food, hygiene, and sleep deprivation. *Id.* She developed hives and pimples on her body. *Id.* She is also dealing with the emotional aftermath of



29. J.E.H.G. is also suffering from being away from her parents and little brother. *Id.*

30. J.E.H.G.'s asylum case remains pending with the EOIR. *Id.* In addition, J.E.H.G.'s parents have obtained asylum in this country and have filed a petition for her to get asylum as a derivative. Such a petition is currently pending with USCIS. *Id.*

LEGAL ARGUMENT

31. J.E.H.G.'s removal proceedings before the San Francisco Immigration Judge are governed by INA § 240 ("section 240 proceedings"). Section 240 proceedings provide important statutory protections, including hearings before an Immigration Judge. *See* 8 U.S.C. § 1229a(a)(1), (a)(4).

32. In J.E.H.G.'s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since her release from custody in December 2022, such that detention would now be warranted on the basis that she is a danger or a flight risk by clear and convincing evidence.

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

34. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197, aff'd sub nom. Saravia for A.H., 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE

may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

35. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez,* 872 F.3d at 981 ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release from custody in December of 2022 and ties to her family and community provide her with a protected liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

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

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I. Petitioner Has a Protected Liberty Interest in Her Conditional Release

37. The Due Process Clause protects J.E.H.G.'s liberty from immigration custody: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Since December 2022, J.E.H.G. has exercised that freedom under ICE's order releasing her from custody. As she was released from custody, she retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S at 781-82; *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that J.E.H.G. would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

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

40. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its

termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Id* at 482.

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

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

43. Here, when this Court compares the specific release in J.E.H.G.'s case "with the liberty interest in parole as characterized by *Morrissey*," they are strikingly similar. *See Gonzalez-*

Fuentes, 607 F.3d at 887. Just as in *Morrissey*, J.E.H.G.'s release "enables her to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, practice his faith, care for his grandmother, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

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

44. J.E.H.G. asserts that, here, (1) where her detention would be civil; (2) where she has been at liberty for over three years; (3) where no change in circumstances exist that would justify her lawful detention; and (4) where the only circumstance was ICE's move to arrest as many people as possible because of the new administration, due process mandates that she be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of his custody release.

45. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [J.E.H.G.'s] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id at* 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the *Mathews* factors in similar cases, and found that those in Petitioner's position, noncitizens granted the liberty of release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No.

25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

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

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

III. Petitioner's Private Interest in Her Liberty is Profound

48. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to

individuals like J.E.H.G., who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, J.E.H.G. retains a truly weighty liberty interest even though he is under conditional release.

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

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

IV. The Government's Interest in Re-Incarcerating Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Her Unless and Until She is Provided a Hearing That Comports with Due Process is Minimal

51. The government's interest in detaining J.E.H.G. without a due process hearing is low, and when weighed against J.E.H.G.'s significant private interest in her liberty, the scale tips sharply in favor of enjoining Respondents to release J.E.H.G. from her unlawful custody and refrain from re-arresting J.E.H.G. unless and until the government demonstrates by clear and convincing evidence that she is a flight risk or danger to the community. It becomes abundantly

clear that the *Mathews* test favors J.E.H.G. when the Court considers that the process she seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing J.E.H.G. with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that J.E.H.G. is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like J.E.H.G.

52. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis for detaining J.E.H.G. has lived at liberty complying with the conditions of her release since December 2022.

53. ICE determined J.E.H.G. not to be a danger to the community or a flight risk in December of 2022 and she has done nothing to undermine that determination. To the contrary, she complied with the terms of her release. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

54. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in December 2022, when she has appeared at every ISAP and ICE appointment. The government's interest in detaining J.E.H.G. at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.

55. Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. J.E.H.G. does not seek a unique or expensive form of process, but rather a routine

hearing regarding whether her order of release should be revoked and whether she should be re-incarcerated.

56. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. ICE's unlawful action of placing him in custody is more of a financial burden than releasing him and providing a pre-custody hearing before any future re-arrest occurs.

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

58. Releasing J.E.H.G. from unlawful custody and enjoining her re-arrest until ICE (1) moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by clear and convincing evidence that J.E.H.G. is a flight risk or danger to the community. *Hernandez*, 872 F.3d at 996.

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

59. Releasing J.E.H.G. from unlawful custody and providing J.E.H.G. a pre-deprivation hearing would decrease the risk of J.E.H.G. being erroneously deprived of her liberty. Before J.E.H.G. can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE's June 2021 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that J.E.H.G. is a danger to the

community or a flight risk.

60. On October 25, 2025, J.E.H.G. did not receive this protection. Instead, she was detained by ICE, without notice, as she attended his appointment with ICE, demonstrating compliance, and there have been no material changes in her circumstances.

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

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

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

63. J.E.H.G. re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

64. 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.

65. J.E.H.G. has a vested liberty interest in her lawful conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

66. The Court must therefore order that ICE release J.E.H.G. from her current unlawful custody.

67. Prior to any re-arrest, the government must provide her with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that J.E.H.G. is a danger to the community or a flight risk, such that her reincarceration is warranted. During any custody determination hearing that occurs, this Court or, alternatively, a neutral adjudicator must consider alternatives to detention when determining whether J.E.H.G.'s re-incarceration is warranted.

SECOND CLAIM FOR RELIEF

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

68. J.E.H.G. re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

70. J.E.H.G. has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger. Since June 2021, J.E.H.G. has attended all her appointments, thus demonstrating that she is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate her constitutional right to be free from the unjustified deprivation of her liberty.

71. For these reasons, J.E.H.G.'s continued unlawful custody and any subsequent re-arrest without first being provided a pre-deprivation hearing would violate the Constitution.

72. The Court must therefore order that she be released from custody.

73. The Court must order the government to not re-arrest her in any subsequent action without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that J.E.H.G. is a danger to the community or a flight risk, such that her reincarceration is warranted. During any custody determination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether J.E.H.G.'s reincarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, J.E.H.G. prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's October 25, 2025, apprehension and detention of J.E.H.G. was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Order ICE to immediately release J.E.H.G. from his unlawful detention;

(4) Enjoin re-arresting J.E.H.G. unless and until a hearing can be held before a neutral adjudicator to determine whether her re-incarceration would be lawful because the government has shown that she is a danger or a flight risk by clear and convincing evidence;

(5) Declare that J.E.H.G. cannot be re-arrested unless and until she is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that she is a danger or a flight risk by clear and convincing evidence;

(6) Award reasonable costs and attorney fees; and

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

Respectfully submitted this 30th day of November, 2025.

By counsel,

/s/ Natalia Vieira Santanna

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

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

Executed on November 30, 2025, in Oakland, CA.

/s/ Natalia Vieira Santanna
Natalia Vieira Santanna, Esq.
Attorney for Petitioner