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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARLOS ALBERTO DE LA GARZA,

Petitioner-Plaintiff

v.

SERGIO ALBARRAN, in his official capacity, Acting San Francisco Field Office Director, U.S. Immigration and Customs Enforcement;

TODD M. LYONS, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement;

KRISTI NOEM, in her official Capacity, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, in her official capacity, Attorney General of the United States,

Respondent-Defendants

Case No: _____

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

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Petitioner-Plaintiff Carlos De La Garza brings this action to challenge his unconstitutional detention by U.S. Immigration and Customs Enforcement ("ICE"), a division of the Department of Homeland Security ("DHS" or "the Department"). Mr. De La Garza was at a USCIS interview for his adjustment of status—which was approvable and would have provided him with a green card—when he was arrested by ICE agents. When asked by his attorney why they were arresting him, the ICE agents responded, "Because he doesn't have status."

2. Mr. De La Garza is a 55-year-old citizen of Mexico who has lived in the Bay for decades and is beloved by his neighbors and community. He has known profound tragedy and hardship. His only child, his U.S. citizen son, Carlos Jr., was born in 1996 with cerebral palsy, and was never able to speak or walk. He and his U.S. citizen wife devoted their lives to providing loving care for their severely disabled son—making sure he was able to go to school, swim, and go to Disneyland. Tragically, in 2020, Mr. De La Garza's wife, Adriana, died from cancer at the age of 44, leaving Mr. De La Garza as the single parent and provider for their adult son. Mr. De La Garza assumed his role as his son's full-time caretaker with deep love and care. Twenty-four hours a day—day after day after day—Mr. De La Garza helped his son through all of his daily living activities, from showering him, to feeding him through a tube, to changing his diapers. Mr. De La Garza became known in his Berkeley, California neighborhood as a regular presence, pushing his son in his wheelchair around the neighborhood to ensure he experienced fresh air, nature, and the joy and love of his community. Carlos Jr. communicated with his father by making sounds, facial expressions, general body movements, and using his eyes to look at images on a digital communication device.

3. In November 2024, Mr. De La Garza applied for permanent residence through the sponsorship of his U.S. citizen son by filing an application to adjust his status to lawful permanent residence with U.S. Citizenship and Immigration Services ("USCIS"), a division of the Department of Homeland Security. As part of that application, Mr. De La Garza completed application forms, thoroughly documented his history, and paid application fees.

4. In 2025, Carlos Jr. became gravely ill with pneumonia, and was hospitalized. His situation deteriorated rapidly, and he was forcibly intubated, placed in a medically-induced coma, and eventually received a tracheostomy. Heartbreakingly, in August 2025—when his father's immigration application was still pending—Carlos Jr. passed away from complications from his cerebral palsy and numerous medical conditions.

5. Mr. De La Garza was eligible for permanent residence when he submitted his immigration application in November 2024, and he remains eligible today. In 2009, Congress passed legislation to ensure that individuals like Mr. De La Garza, whose sponsoring relatives die during the immigration process, will not be penalized by the tragedy of their relative's passing.

6. This morning, Mr. De La Garza appeared at a pre-scheduled interview at the San Francisco Field Office of U.S. Citizenship and Immigration Services—the final step in the permanent residence process. Mr. De La Garza completed the interview with a USCIS officer, and presented every piece of evidence needed to approve his application for permanent residence.

7. Instead of being granted permanent residence however, he was taken away by ICE agents. At the end of the interview, after signing his application for permanent residency (I-485), the acting Field Office Director entered the interview room with two ICE agents and arrested him in the presence of his attorney (undersigned counsel). After separating Mr. De La Garza from his

attorney, Ms. Amalia Wille, Ms. Wille was later brought back into an office to speak with the ICE agents and Mr. De La Garza. ICE agents informed Ms. Wille that they were likely issuing a Notice to Appear and initiating removal proceedings under INA § 240, 8 U.S.C. § 1229a, but that the Notice to Appear was not prepared yet.

8. ICE is currently holding Mr. De La Garza at 630 Sansome Street, San Francisco, California, pending transfer to another detention facility. Ms. Wille requested that the ICE Agents provide the statutory authority for detention and they declined to do so. They also did not state that they believed Mr. De La Garza to be a flight risk or a danger. On information and belief, ICE is detaining Mr. De La Garza under the Immigration and Nationality Act's "mandatory detention" authority due to a decade-old criminal conviction that ICE has known about for years, and which in no way renders him a danger to the community.

9. Mr. De La Garza's detention occurred in violation of the Constitution. Mr. De La Garza has a liberty interest in his current freedom, and he was denied constitutionally-adequate process before being incarcerated. Moreover, the Fifth Amendment's Due Process Clause mandates that immigration detention serves a legitimate purpose: to mitigate flight risk and/or prevent danger to the community. Given that Mr. De La Garza has lived freely for years with Respondents' both explicit and tacit approval, it is clear that even ICE acknowledges neither of those purposes are served by Mr. De La Garza's detention. Regardless, Mr. De la Garza's conduct for the past 10 years clearly demonstrate that civil detention here, is punitive.

10. The Department has recognized that Mr. De La Garza does not pose a danger. ICE has known about Mr. De La Garza's criminal history for at least 8 years— they had the court records in their possession since at least 2017—and they acquiesced to Mr. De La Garza remaining at liberty in Berkeley, California. Nor can Mr. De La Garza be considered a flight

risk—he *affirmatively applied* for permanent residence, and fully disclosed his history, and ICE arrested him when he appeared at an interview for his application for adjustment of status.

11. Due process requires that Mr. De La Garza be immediately released from custody. If the government wants to argue that he is a danger or flight risk such that he must be held in detention pending further consideration of his application for permanent residence and any removal proceedings, they can present their arguments before this Court while he remains at liberty.

12. Mr. De La Garza brings this petition for writ of habeas corpus to challenge ICE's lawless deprivation of his liberty. Mr. De La Garza respectfully requests that the Court order his immediate release to return him to the status quo ante. In addition, the Court should enter an order preventing Respondents from unlawfully re-detaining him thereafter in violation of the Fifth Amendment to the U.S. Constitution.

JURISDICTION

13. This action arises under the Constitution of the United States, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

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

15. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2241, 1651, 2201-02, and 5 U.S.C. §§ 702, 705-706. This Court also has broad equitable powers to

grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

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

VENUE

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred or will

occur in the Northern District of California; because one of the Respondents resides in this District; and because there is no real property involved in this action.

20. Mr. De La Garza resides in Berkeley, California. He was arrested this morning in San Francisco, California, and he is presently detained by ICE in San Francisco, which is in the Northern District of California.

INTRADISTRICT VENUE

21. Assignment to the San Francisco or Oakland Division of this Court is proper under Local Rule 3-2(d) because this action arises in San Francisco County.

PARTIES

22. Petitioner-Plaintiff Carlos De La Garza is a noncitizen who is currently detained by Respondents-Defendants in San Francisco, California.

23. Respondent-Defendant Sergio Albarran is the Acting Field Office Director of ICE in San Francisco, California, and is named in his official capacity. The San Francisco Field Office is responsible for carrying out ICE's immigration detention operations throughout Northern California. He is a legal custodian of Petitioner-Plaintiff. Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), Mr. Albarran is the proper respondent in habeas because he is the *de facto* warden of the facility at which Mr. De La Garza is being held.

24. Respondent Todd M. Lyons is the Acting Director of ICE and is named in his official capacity. ICE, a component of the DHS, is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. Respondent-Defendant Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the civil detention of immigrants. Respondent Lyons is a legal custodian of Petitioner-Plaintiff.

25. Respondent Kristi Noem is the Secretary of the DHS and is named in her official capacity. She has authority over the detention and departure of noncitizens, because she administers and enforces immigration laws pursuant to Section 402 of the Homeland Security Act of 2002. Given this authority, Respondent Noem is the ultimate legal custodian over Petitioner-Plaintiff and is empowered to carry out any administrative order against him.

26. Respondent Pamela Bondi is the Attorney General of the United States and the most senior official at the Department of Justice and is named in her official capacity. As such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). Respondent Bondi is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR.

STATEMENT OF FACTS

27. Mr. De La Garza is fifty-five years old and was born in Mexico. He is a widower and is still in the early stages of grieving the loss of his only child.

28. He resides in Berkeley, California, where he owns a home. He has an extensive network of extended family, neighbors, and church community in the Bay Area who support him.

29. He is currently detained at the ICE Field Office in San Francisco, California.

30. Mr. De La Garza first came to the United States in the early 1990s. He was deported twice in the 1990s, once in 1994, and once in 1996. Mr. De La Garza has three misdemeanor criminal convictions from the early 1990s—one violation of California Vehicle Code section 23152(a) (driving under the influence), one violation of California Penal Code 484(a) (petty theft), and one violation of California Vehicle Code section 14601.5 (driving on a suspended

license). Some court records for Mr. De La Garza reflect the alias "Juan Ramirez," which Mr. De La Garza understands traces to his 1994 petty theft conviction, and has been repeated by authorities over the years. Mr. De La Garza returned to live in the United States in 1996.

31. In 1996, his only child, Carlos Moreno, was born in Oakland, California. Carlos Jr. was born with cerebral palsy.

32. Carlos Jr.'s parents—Adriana Moreno and Mr. De La Garza—committed themselves to caring for their son at home, and providing him with a loving and stimulating life and home environment.

33. Carlos Jr.'s mother, Adriana Moreno, was Mr. De La Garza's life partner. The pair married in Berkeley, California in 2000. They bought a home together in Berkeley in 2001, where Mr. De La Garza continues to reside today.

34. In 2001, Mr. De La Garza applied to adjust his immigration status to lawful permanent resident in the United States. He was eligible for permanent residence through a visa petition filed by his wife's family. He fully disclosed his criminal and deportation history to immigration authorities in his application, and they did not disqualify him from permanent residence.

35. On November 2, 2004, U.S. immigration authorities approved Mr. De La Garza's application for adjustment of status, and he became a lawful permanent resident of the United States.

36. On May 2, 2007, Mr. De La Garza was arrested, and as a result, on December 17, 2007, he was convicted of a violation of California Health and Safety Code section 11379(a) (transportation of a controlled substance) and a violation of California Peanl Code 182(a)(1) (conspiracy) in Contra Costa County Superior Court. Those convictions were vacated in their

entirety as legally invalid in May 2024 by a Judge of the Superior Court of Contra Costa County, and all charges relating to the incident were dismissed by the district attorney's office.

37. However, in the intervening time, they caused Mr. De La Garza to lose his permanent residence. In 2008, U.S. Immigration and Customs Enforcement initiated removal proceedings against Mr. De La Garza, and charged him as removable as a noncitizen convicted of a controlled substance violation pursuant to INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), based on the 2007 conviction under California Health and Safety Code section 11379(a). Mr. De La Garza was unrepresented in the removal proceedings before the Immigration Judge. On June 24, 2008, an Immigration Judge found Mr. De La Garza removable from the United States, and granted him voluntary departure from the United States in lieu of a removal order.

38. On June 24, 2008, Mr. De La Garza voluntarily departed the United States to Mexico. U.S. government records confirm his compliance with the voluntary departure order.

39. Two days later, Mr. De La Garza returned to the United States through the port of entry in Nogales, Arizona. He presented his then-still facially valid permanent resident card at the port of entry, which he believed at the time permitted his return to the United States. U.S. Customs and Border Protection sent Mr. De La Garza to secondary inspections to review his case, and then admitted him to the United States. Records that Mr. De La Garza obtained from U.S. Customs and Border Protection, via a Freedom of Information Act request, confirm that Mr. De La Garza presented his lawful permanent resident card containing his name and "A number" at the port of entry on June 26, 2008, and that he was inspected and admitted into the United States following a secondary inspection.

40. Mr. De La Garza has not departed the United States since his inspection and admission on June 26, 2008.

41. He resumed his life in Berkeley, California with his wife and son. At this point, Carlos Jr. was eleven years old, and continued to require 24-hour care, 7 days a week, from his parents.

42. Carlos Jr. was dependent in all of his self-care activities, including feeding, dressing, toileting, and bathing. He required total assistance in all the daily transfers necessary in his life, such as transfer from bed to wheelchair, and transfers in and out of the bathtub and cars. He took nutrition and hydration through a gastrointestinal tube.

43. As Carlos Jr. grew into a young adult and grew heavier, these physical tasks grew increasingly taxing, and Adriana could not manage the physical exertion of all of Carlos Jr.'s transfers by herself. Mr. De La Garza was an essential part of his son's care. Carlos Jr.'s longtime occupational therapist wrote in a letter dated 2014 of how devoted Mr. De La Garza and Adriana were to their son, and how they encouraged his participation in all kinds of outings and outdoor activities, such as shopping, vacations, and playing soccer. The therapist described how Mr. De La Garza participated in his son's therapy sessions, ensured he had proper equipment, and for example frequently helped to fix or otherwise modify his son's wheelchair to ensure it was comfortable and functional. Carlos Jr.'s medical doctor at the time wrote that "[c]aring for his son is not an easy job, but Mr. De La Garza is very attentive and accomplished at this. He has been at almost every office [visit] that I have ever had with his son, and he is very involved with his care."

44. Around 2012, Mr. De La Garza suffered an injury that limited his ability to help with his son, and around the house. This caused Mr. De La Garza to feel depressed, helpless, and totally overwhelmed. This culminated in a mental health crisis for Mr. De La Garza. One day in April 2014, someone called the police because Mr. De La Garza was acting erratically in the Berkeley

Aquatic Park, near his home. Mr. De La Garza was arrested for assaulting the police officer who arrived to try to help.

45. Mr. De La Garza describes this April 2014 arrest as a turning point in his life, and as a wake-up call that he needed to find effective and healthy coping mechanisms to address the extreme stress of his life. He completed counseling and therapy, and has found solace and support through his church, and he has had not been arrested since.

46. Mr. De La Garza's neighbors and community gathered in 2014 to explain to the criminal judge that Mr. De La Garza's behavior on that day in April 2014 was totally out of character. For example, several neighbors wrote a letter explaining that Mr. De La Garza "is a loving and caring father to his son with cerebral palsy" and that they were surprised to hear what happened at the Aquatic Park and that they were "sorry for what happened and hope the arresting officer is recovered and doing well." Other care providers and community members attested to how Mr. De La Garza's is "an exemplary father" who shows "extreme dedication and patience to care for a disabled child twenty-four hours a day, seven days per week" who goes "above and beyond trying just to meet the basic needs of his son."

47. In November 2014, Mr. De La Garza pled no contest to a felony violation of Cal. Penal Code § 245(c) (assault on an officer) in Alameda County Superior Court, relating to the April 2014 incident. In January 2015, the judge of the Alameda County Superior Court sentenced Mr. De La Garza to five years of probation.

48. Mr. De La Garza completed outpatient counseling. He completed his probation in January 2020.

49. U.S. Immigration and Customs Enforcement became aware of Mr. De La Garza's April 2014 arrest in Berkeley, California and resulting criminal conviction, and they chose not to take enforcement action against him.

50. Records obtained by Mr. De La Garza through a Freedom of Information Act Request for his "A file" reflect that in June 2017, an ICE Deportation Officer from the San Francisco Field Office requested records relating to the arrest from the Berkeley Police Department. The FOIA response also reflects that Mr. De La Garza's "A file" contains certified court records evidencing the conviction, which were court-certified in June 2017. Mr. De La Garza's "A file" further contains confirmation that Mr. De La Garza successfully completed a counseling program in July 2015.

51. Mr. De La Garza's wife Adriana was diagnosed with cancer when she was in her early 40s. She went through grueling treatment and fought for her life—and to be present for her son—on top of the enormous family responsibilities she already carried. She received radiation, and a liver transplant. Unfortunately, the cancer returned. She passed away in December 2020 at the age of 44. She was a U.S. citizen at the time of her death.

52. This left Mr. De La Garza as the single parent to Carlos, Jr., who was then 24-years old, and still living at home and was totally dependent on his father for all daily needs and his survival.

53. Mr. De La Garza continued to work every day, day and night to meet his son's extraordinary needs in a profoundly loving way. Mr. De La Garza never let his son's disability prevent Carlos Jr. from enjoying life and knowing that he was loved. Mr. De La Garza took his son on trips to the beach in Texas, to the swimming pool, to the rodeo, and out for nature walks. He threw Carlos Jr. birthday parties with mariachi bands. They got dressed up together. He and

his son enjoyed watching sports together, going out to their favorite restaurants, shopping at Carlos Jr.'s favorite stores, exploring the great outdoors, and enjoying their neighborhood in Berkeley, California.

54. Mr. De La Garza continued to be a fixture in his neighborhood in Berkeley, where he is beloved and known by many for his kindness and devotion to his son. As his long-time neighbors explained, Mr. De La Garza would make "extraordinary effort[s]" to push his son in a wheelchair wherever Carlos Jr. wanted to go. Neighbors recall encountering Mr. De La Garza as he was pushing his son over rough terrain, and observing how hard this was. Mr. De La Garza replied, "this is my son and he likes it, so I do it as much as he wants."

55. Another set of neighbors described: "What always stood out to us was the simple yet powerful gesture of Carlos pushing his son in the wheelchair all around the neighborhood, stopping to appreciate the local foliage together and keeping him actively connected to the neighbors. Never in our 23 years of interacting with Carlos did we ever see him treat his son as different or incapable. To the contrary, under challenging circumstances, Carlos spent his days giving his son a loving, stimulating life in which he felt deeply appreciated by friends, family, the community and his church."

56. On November 20, 2024, with the assistance of undersigned counsel's office, Mr. De La Garza applied for permanent residence in the United States with U.S. Citizenship and Immigration Services. His eligibility for adjustment of status was pursuant to the authority of INA § 245(a), 8 U.S.C. § 1255(a), based on a concurrently-filed, immediate relative petition filed by his adult U.S. citizen son, Carlos Jr. He filed an application for a waiver of inadmissibility for his 2014 conviction under California Penal Code § 245(c), pursuant to the

authority of INA § 212(h), 8 U.S.C. § 1182(h), based on the hardship that Carlos Jr. would suffer without his father.

57. Mr. De La Garza and his son paid $3,165 in filing fees to USCIS for the consideration and adjudication of the applications.

58. In the applications to USCIS, Mr. De La Garza fully disclosed his immigration and criminal history, and he submitted extensive documentation establishing his eligibility for adjustment of status. He discussed his remorse and rehabilitation relating to the 2014 arrest. He described his son's medical diagnoses needs, and documented his diagnoses of neuromuscular disease, spastic quadriplegic cerebral palsy, asthma, generalized anxiety disorder, fecal and urinary incontinence, neuromuscular disease, GERD, asthma, chronic bronchitis, and neuromuscular scoliosis, among numerous other medical conditions. He described how his son is wheelchair-bound, non-verbal, and at age 28, requires his father's assistance for all daily living activities including eating through a feeding tube, and having his diapers changed. He submitted letters of support from his extended family, his son's medical provider, his pastor and other community members.

59. On November 30, 2024, USCIS scheduled Mr. De La Garza to appear at a USCIS Application Support Center in Oakland, California on December 16, 2024, to have his fingerprints and photographs taken so USCIS could process his biometrics. Mr. De La Garza appeared on December 16, 2024, and completed the biometrics processing.

60. On January 16, 2025, USCIS issued Mr. De La Garza an employment authorization document, valid through January 2030, based on his pending adjustment of status application.

61. Throughout Carlos Jr.'s life, he was frequently hospitalized, as conditions such as common colds could lead to pneumonia and render him gravely ill. These hospitalizations

increased in 2025, as Carlos Jr. suffered increasing health complications. During his hospitalizations, Mr. De La Garza stayed by his son's side, 24/7.

62. In May 2025, Carlos Jr. became gravely ill with pneumonia, and was hospitalized. His situation deteriorated rapidly, and he was forcibly intubated, and later placed in a medically-induced coma for several weeks. The doctors eventually informed Mr. De La Garza that the only way to save Carlos Jr.'s life was with a tracheostomy, a procedure they completed in late May.

63. During their extensive hospital stays, the hospital staff was not trained in Carlos Jr.'s extraordinarily specific needs, and Mr. De La Garza did not leave his son's side, and provided him with around-the-clock-care. He continued to lift his son in and out of the hospital bed, and change his diaper.

64. Carlos Jr. was discharged from the hospital and then re-hospitalized during the summer of 2025. Mr. De La Garza observed that his son disliked the tracheostomy tube, and Mr. De La Garza would remind his son that it was just temporary, and was to help him breathe better. By the end of July 2025, Carlos Jr. seemed to have more energy, and was able to go outside again.

65. On August 2, 2025, Mr. De La Garza took his son for a walk in their west Berkeley neighborhood, and they picked apples together. That night, at home, Carlos Jr. stopped breathing. Mr. De La Garza called an ambulance. When the paramedics arrived, they informed him that Carlos Jr. had passed away. Mr. De La Garza's describes that his "world crashed in on [him] at that moment."

66. Carlos Jr. is now buried next to his mother at a cemetery in El Cerrito, California. In a letter he later wrote to USCIS, Mr. De La Garza stated that he wants "to be able to visit [his]

late wife and son's place of rest and bring them flowers." Just the thought of being sent to Mexico and never being able to do that again "breaks [his] soul."

67. Mr. De La Garza's immigration applications (Form I-130, I-485, and I-601) were still pending at USCIS at the time of Carlos Jr.'s death. Pursuant to a statute enacted in 2009, because Mr. De La Garza resided in the United States at the time of his son's death, and continues to reside in the United States he "shall have" his I-130 visa petition and "any related applications, adjudicated notwithstanding the death" of his son. INA § 204(l), 8 U.S.C. § 1154(l).

68. On October 8, 2025, Mr. De La Garza sent a letter to USCIS explaining his son's death, and requesting that USCIS approve his applications pursuant to INA § 204(l). He submitted new letters of support from family members and other community members. He explained that his late-wife's family, who are U.S. citizens and lawful permanent residents, live in the San Francisco Bay Area, and they are the only family he has left. His sister-in-law wrote that "Mr. De La Garza has lost his family in the cruelest of ways yet he never gave up." She wrote to USCIS: "I would put my life on the line to prove how much he has evolved and what an asset he is to this country." A family friend wrote that the twin blows of losing his wife and his only child "would break most people, yet [Mr. De La Garza] has remained steadfast, grounded in faith, and deeply connected to his family and community in the United States." His neighbors attested to how Mr. De La Garza remains an important community member who makes contributions to those around him. He is a skilled mechanic and repair person and has helped his neighbors with their car and with home improvement projects. He plants flowers to beautify the neighborhood, of his own accord. His neighbors describe him as "always a smiling, happy presence." He "is a very pleasant, cooperative, and responsible man and has a strong moral

character." Mr. De La Garza suffers from his own chronic health conditions as well now, including chronic back pain and insomnia due to the constant care he was providing for his son. His medical providers here in the United States are trying to help him manage those conditions.

69. Mr. De La Garza wrote to USCIS: "Now that my son is no longer here, given I have a lifetime of experience with such severe disability I would love to work in a field where I can be of service to people like him, those who need so much love and care. So many people like my son are abandoned or surrendered because of their condition. I want to continue helping people like him and I would like to do it in this country. I kindly ask for your understanding and compassion in considering my request to restore my permanent residency."

70. On October 27, 2025, USCIS scheduled Mr. De La Garza to appear for an interview related to his application for adjustment of status on December 1, 2025. An in-person interview is typically the final step in adjudication of an application for adjustment of status.

71. Mr. De La Garza appeared at the USCIS San Francisco Field Office on December 1, 2025 for his interview. He answered all questions from USCIS regarding his application and the interview was completed. The interviewing officer indicated that she had all documents that she needed and asked Mr. De La Garza to sign the application, which she did. Immediately after, the USCIS Acting Field Office Director, Officer Passage, walked in to the interview room with two ICE agents. The ICE agents stated, "Since you're case isn't approved, we are taking you into custody." Ms. Wille, attorney for Mr. De La Garza, asked Officer Passage what documents were allegedly missing such that the case could not be approved and he provided no answer. Ms. Wille provided the ICE agents with a G-28 to demonstrate her representation of Mr. De La Garza before ICE, which at first they refused to accept, but then ultimately did. The ICE agents

indicated they had a warrant and Ms. Wille asked to see it. The ICE agents responded that it was upstairs, and as of the filing of this petition, undersigned counsel has not seen an arrest warrant.

72. The ICE agents handcuffed Mr. De La Garza in the USCIS office and escorted him to the 5th floor without Ms. Wille. After approximately ten minutes, Ms. Wille was brought back into the room and the ICE agents conducted an intake of Mr. De La Garza, asking only about his first entry into the United States in 1991. Ms. Wille informed the officer that Mr. De La Garza was inspected and admitted in 2008, and the officer responded, "This is not my case, I'm just asking what they tell me."

73. He is currently being detained by ICE at 630 Sansome Street, the same building in which his adjustment of status interview occurred.

74. On information and belief, his application for adjustment of status is approvable and remains unadjudicated.

LEGAL FRAMEWORK

Statutory Framework

75. "The statutory scheme governing the detention of [noncitizens] in removal proceedings is not static; rather, the [government's] authority over a [noncitizen's] detention shifts as the [noncitizen] moves through different phases of administrative and judicial review." *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 945 (9th Cir. 2008); *overruled on other grounds by Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023).

76. 8 U.S.C. § 1226 sets out a framework for the detention and release of noncitizens during their administrative removal proceedings.

77. Section 1226(a) "sets out the default rule." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("*Rodriguez IV*"). The government may arrest and detain a noncitizen "pending a decision on whether the [noncitizen] is to be removed from the United States" and, "[e]xcept as provided in subsection (c) [of Section 1226] . . . may continue to detain" or "may release" the noncitizen pending removal proceedings. 8 U.S.C. § 1226(a). Regulations provide that noncitizens detained under Section 1226(a) "receive bond hearings at the outset of detention." *Rodriguez IV*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

78. Although the statute and regulations do not specify the burden or standard of proof to be applied at bond hearings, the Board of Immigration Appeals ("BIA") has held that "[t]he burden is on the [noncitizen] to show to the satisfaction of the [immigration judge] that he or she merits release on bond." *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1116 (BIA 1999) (holding that the noncitizen "must demonstrate that his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings").

79. Section 1226(c) creates a narrow exception to the default rule of bond eligibility. Paragraph (1) of Section 1226(c) provides that the government "shall take into custody any [noncitizen] who" is removable on certain criminal and national security grounds, "when the [noncitizen] is released" from criminal custody. 8 U.S.C. § 1226(c)(1). Section 1226(c) subjects certain noncitizens to mandatory detention without the individualized bond hearing contemplated by Section 1226(a).

80. Whether Section 1226(c) is properly interpreted to include noncitizens who were not detained by immigration authorities immediately upon release from criminal custody was the

subject of over a decade of litigation until the Supreme Court decided *Nielsen v. Preap,* 139 S. Ct. 954 (2019) ("*Preap*").

81. Numerous district courts had held that Section 1226(c) should not be construed to include individuals who were not detained by ICE "when . . . released," *i.e.*, immediately or promptly following release from criminal custody. 8 U.S.C. § 1226(c)(1). Although these cases were generally decided on statutory grounds, many courts observed that imposing mandatory detention on a person who had lived in the community without incident for months or years would pose constitutional concerns. *See, e.g.*, *Figueroa v. Aviles*, No. 14 CIV. 9360 AT HBP, 2015 WL 464168, at *4 (S.D.N.Y. Jan. 29, 2015) (holding that mandatory detention of noncitizen arrested by ICE five years after criminal arrest and four years after guilty plea "raises serious due process concerns"); *Martinez-Done v. McConnell*, 56 F. Supp. 3d 535, 547-48 (S.D.N.Y. 2014) (holding that ICE's practice of "pluck[ing] immigrants from their families and communities with no hope of release pending removal" long after release from criminal custody "threatens immigrants' . . . constitutional rights"); *Espinoza v. Aitken*, No. 5:13-cv-00512 EJD, 2013 WL 1087492, *7 (N.D. Cal. Mar.13, 2013) (interpreting Section 1226(c) not to apply to noncitizen detained by ICE eleven months after criminal arrest and six months after conviction in part due to "the liberty interest implicated by any civil detention statute, especially one which calls for imprisonment without review"); *cf. Saysana v. Gillen*, 590 F.3d 7, 17-18 (1st Cir. 2009) (explaining in related context that "the more remote in time a conviction becomes and the more time after a conviction an individual spends in a community, the lower his bail risk is likely to be").

82. In *Preap v. Johnson*, the Ninth Circuit affirmed a California-wide preliminary injunction requiring, on statutory grounds, bond hearings for noncitizens who were not immediately

detained by ICE after being released from criminal custody. 831 F.3d 1193, 1197 (9th Cir. 2016), *rev'd and remanded sub nom. Nielsen v. Preap*, 139 S. Ct. 954 (2019), and v*acated sub nom. Preap v. McAleenan*, 922 F.3d 1013 (9th Cir. 2019). The Ninth Circuit noted that the purposes of the mandatory detention statute "are ill-served when the critical link between criminal detention and immigration detention is broken," and that "without considering the [noncitizens'] conduct in any intervening period of freedom," it would be "impossible to conclude that the risks that once justified mandatory detention are still present." *Id.* at 1204. It further observed that the government's "robotic detention procedures . . . smack[ed] of injustice" because any presumption of danger or flight risk with respect to "*recently* released" noncitizens "carries considerably less force when these [noncitizens] lead free and productive lives after serving their criminal sentences." *Id.* at 1206 (emphasis in original). The Ninth Circuit's statutory holding was reversed by the Supreme Court in *Nielsen v. Preap*, 139 S. Ct. 954 (2019). Nevertheless, the Ninth Circuit's reasoning regarding the poor fit between mandatory detention and individuals living peaceably in the community is relevant to the constitutionality of Mr. De La Garza's current mandatory detention.

83. In reversing the Ninth Circuit's decision, the Supreme Court in *Preap* held that Section 1226(c) unambiguously applies to noncitizens who were not immediately transferred from criminal to immigration custody. 139 S. Ct. at 959. Notably, the Court declined to address whether application of Section 1226(c) in such cases would raise serious constitutional concerns. *Id.* at 972 (explaining that the canon of constitutional avoidance was "irrelevant" because the statute was unambiguous). The Court then noted that the plaintiffs did not "raise a head-on constitutional challenge" to Section 1226(c), and that its decision "does not foreclose as-applied [constitutional] challenges." *Id.* Justice Breyer, joined by three other justices in

dissent, wrote that the Court's interpretation of the statute "creates serious constitutional problems" by denying a bond hearing to a noncitizen "who committed a crime many years before and has since reformed, living productively in a community," and as a result "will work serious harm to the principles for which American law has long stood." *Id.* at 982, 985 (Breyer, J., dissenting).

84. Courts in this District have addressed the constitutional issue left open by the Supreme Court in *Preap* in at least two cases. *See Perera v. Jennings*, 598 F. Supp. 3d 736 (N.D. Cal. 2022), *appeal dismissed sub nom. Perera v. Kaiser*, No. 22-15898, 2022 WL 17587149 (9th Cir. Sept. 21, 2022); *Pham v. Becerra*, 717 F. Supp. 3d 877 (N.D. Cal. 2024), *appeal pending*, Ninth Circuit Case No. 24-5712.

85. In *Perera*, ICE detained Perera nearly six years after he had been released from federal criminal custody, and held him in mandatory detention under Section 1226(c). Perera brought an as-applied constitutional challenge to his detention without a bond hearing, and the court held that Perera's "detention without a bond hearing pursuant to 8 U.S.C. § 1226(c) . . . violates the Due Process Clause of the Fifth Amendment." *Perera*, 598 F. Supp. 3d at 748.

86. Similarly, in *Pham*, ICE detained Pham seven years after his release from criminal custody, and held him in mandatory detention under Section 1226(c). The Court likewise held that his mandatory detention violated his due process rights. *Pham*, 717 F. Supp. 3d at 887.

Mr. De La Garza's Protected Liberty Interest and Right to a Hearing Prior to Detention

87. In Mr. De La Garza's particular circumstances, the sudden and arbitrary deprivation of his liberty at his adjustment of status interview—where he voluntarily appeared in order to *follow* the immigration laws—violated the Due Process Clause of the Constitution.

88. "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).

89. The Supreme Court has long held that civil detention must not be punitive or arbitrary, and generally must rest on an individualized determination of the necessity for detention accompanied by fair procedural safeguards.

90. For example, in the criminal pretrial setting, the Court has upheld the denial of bail only where Congress provided stringent procedural safeguards, including a requirement that the government demonstrate probable cause to believe the detainee has committed the charged crime and "a full-blown adversary hearing" on dangerousness, at which the government bears the burden of proof by clear and convincing evidence. *United States v. Salerno*, 481 U.S. 739, 750 (1987).

91. The Court has similarly upheld preventive detention pending a juvenile delinquency determination only where the government proves a risk of future dangerousness in a fair adversarial hearing with notice and counsel. *Schall v. Martin*, 467 U.S. 253, 277, 280-81 (1984). Civil commitment is constitutional only when there are "proper procedures and evidentiary standards," including individualized findings of dangerousness. *Kansas v. Hendricks*, 521 U.S. 346, 357-58 (1997); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992) (noting individual's entitlement to "constitutionally adequate procedures to establish the grounds for his confinement").

92. In the immigration setting, civil detention is justified only where it serves its purpose of effectuating removal or protecting against danger during the removal process and is accompanied by adequate procedural safeguards. *Zadvydas*, 533 U.S. at 690-91. In *Zadvydas*, the Court interpreted the statute governing detention after a final order of removal to require the release of a noncitizen whose removal is not "reasonably foreseeable." *Id.* at 699-701. In doing so, the

Court reaffirmed that, as with other types of civil detention, immigration detention can only be imposed with strong procedural safeguards to ensure that it serves a legitimate purpose. *See, e.g., id.* at 691-92 (noting that preventive detention based on dangerousness is permissible "only when limited to specially dangerous individuals and subject to strong procedural protections," and holding that the administrative process available to noncitizens with final orders of removal was inadequate).

93. The Court carved out a narrow exception to the general rule that civil detention must be accompanied by an individualized hearing in *Demore v. Kim*, 538 U.S. 510 (2003) ("*Kim*"). In *Kim*, the Court upheld Section 1226(c) against a facial challenge to the statute, in a case where the noncitizen was detained within a day of his release from criminal incarceration. *Id.* at 513-14; *see also* Brief for Petitioner at 4, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), 2002 WL 31016560.

94. The *Kim* Court pointed to evidence that deportable noncitizens with criminal convictions "often committed more crimes before being removed" and frequently "absconded prior to the completion of [] removal proceedings." *Id.* at 518-20. It held, based on this factual record, that "Congress, justifiably concerned that deportable criminal [noncitizens] who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that [such noncitizens] be detained for the brief period necessary for their removal proceedings." *Id.* at 513; *see also id.* at 526 (noting the "narrow" nature of the mandatory detention statute).

95. Because the noncitizen in *Kim* brought a facial challenge and, in any event, was detained promptly for removal proceedings, the Court had no occasion to address the constitutionality of the statute as applied to a noncitizen detained by ICE years after release from criminal custody, as is the case here. Indeed, the Court in *Preap* made clear that as-applied constitutional challenges remain available to such individuals. 139 S. Ct. at 972. Moreover, while the *Kim* Court assumed that the

duration of mandatory detention would be "brief," Mr. De La Garza faces lengthy detention while he pursues the multi-step process of re-adjusting his immigration status. *Kim*, 538 U.S. at 513 (authorizing mandatory detention for "brief period").

96. For many years preceding today's immigration arrest—including ten years after the conviction that now subjects him to mandatory detention under the Immigration and Nationality Act—Mr. De La Garza has exercised that freedom. ICE has acquiesced to Mr. De La Garza's liberty following his criminal conviction by allowing him to live at his home in Berkeley, California and contribute to his family and community, even after they became aware of his 2014 criminal conviction. An individual like Mr. De La Garza who has lived peaceably and conducted himself responsibly in the community for years following his criminal conviction and release from criminal custody should not be held in immigration custody at all, as neither possible justification for civil confinement is actually present in Mr. De La Garza's case.

97. At least one Court in this District have recognized that the Constitution's Due Process Clause prevents the sudden arrest and detention that occurred in Mr. De La Garza's case. *E.g.*, *Amezquita Diaz v. Albarran*, No. 3:25-CV-09837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025) (ordering a noncitizen's immediate release from DHS custody where he was arrested without process at an adjustment of status interview in San Francisco). There, the Court ordered the petitioner released immediately because it was the last uncontested status preceding the controversy. *Id.* at * 3. In that case, the illegal arrest was pursuant to an erroneous interpretation of the detention statutes under the INA, here the illegal arrest is related to a violation of the Due Process Clause—either way, Mr. De La Garza should be restored to his status prior to his illegal arrest. *See id.*

98. "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 [Mr. De La Garza's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws 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)).

99. 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.*

100. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Mr. De

La Garza with notice and a hearing *prior* to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *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 [Mr. De La Garza's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

101. What is at stake in this case for Mr. De La Garza is his freedom: one of the most profound individual interests recognized by our constitution and, more plainly, by virtue of being human. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Thus, it is clear there is a profound private interest at stake in this case, which must be weighed heavily when determining what process Mr. De La Garza is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35; *see also e.g.*, *Pham v. Becerra*, 717 F.Supp.3d 877, 886 (N.D. Cal. 2024) (stating that a person's "liberty interest persists no matter the length of detention.").

102. Here, without notice, the Government ripped Mr. De La Garza, in the midst of his grief from the loss of his son, from his home, family and community because of a decade-old criminal conviction from which he has totally rehabilitated. ICE's decision to allow Mr. De La Garza to live in the community after his conviction undermines any credible claim that he poses a danger to anyone. Mr. De La Garza affirmatively disclosed his complete criminal and immigration history to USCIS in November 2024 when he applied for permanent residence – and the Department has continued to acquiesce to his life in the community over the past year. And the fact that ICE apprehended him in the midst of Mr. De La Garza's participation in the legal immigration process undermines any credible claim that he poses a flight risk. He was present

today at the government building where he was arrested in order to attempt to comply with the immigration laws. As such the risk of an erroneous deprivation is high. *See e.g., Singh*, 2025 WL 1918679, at *7; *see also Garcia*, 2025 WL 1927596, at * 5 (finding the risk of erroneous deprivation considerable on substantially similar facts).

103. Correspondingly, the process Mr. De La Garza seeks—a hearing before this Court—would add serious value. As described above, Mr. De La Garza is not statutory eligible for a bond hearing under 8 U.S.C. § 1226(c). Absent this Court's intervention, Mr. De La Garza's mandatory detention will not be reviewed by this Court, or any neutral arbiter.

104. The government's interest in detaining Mr. De La Garza without process is low.

105. First, as immigration detention is civil, it can serve 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.[1] In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. De La Garza in December 2025 due to facts that occurred years ago. *See, e.g.*, *Guillermo M.R. v. Kaiser*, 2025 WL 1810076, at *2 (N.D. Cal. June 30, 2025) (noting the government waiting *six weeks* to arrest petitioner "demonstrates their lack of urgency.")

106. Moreover, the "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35; *see e.g.*, *Garcia*, 2025 WL 1927596, at *5. Mr. De La Garza does

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[1] Mr. De La Garza acknowledges that, in some instances, detention *may* be lawful for a brief period to effectuate removal.

not seek a unique or expensive form of process, but rather his release from custody until a hearing can occur before this Court to determine whether he constitutes a danger or flight risk such that his civil detention is constitutional.

107. Release from custody until ICE (1) moves for a bond re-determination before this Court and (2) demonstrates by clear and convincing evidence that warrants his detention is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, "[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.

108. The burden of proof at a future detention hearing regarding Mr. De La Garza should be placed on the government. The government should bear the burden of proving by clear and convincing evidence that Mr. De La Garza poses a danger or flight risk to justify his detention.

109. In *Singh v. Holder*, the Ninth Circuit held that the government must justify detention by clear and convincing evidence at a bond hearing for a noncitizen subject to prolonged detention. 638 F.3d at 1200. As the Ninth Circuit explained, the Supreme Court has "repeatedly reaffirmed" the principle that due process requires a "heightened burden of proof" on the government in civil proceedings that implicate individuals interests that are "particularly important and more substantial than mere loss of money." *Id.* at 1204 (quoting *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996)). Where the "possible injury to the individual" is so significant, the individual should not "share equally with society the risk of error." *Id.* at 1203-04 (*quoting Addington*, 441 U.S. at 427).

110. The "consensus view" among district courts is that the government "bears the burden of proving that [] detention is justified" at bond hearings at the outset of detention. *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (quoting *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018)) (collecting cases). And the "overwhelming majority of district courts"

have held that the government must justify detention by "clear and convincing evidence" at such hearings. *Dubon Miranda v. Barr*, 463 F. Supp. 3d 632, 646 (D. Md. 2020) (citation omitted); *see also Ameen v. Jennings*, No. 22-CV-00140-WHO, 2022 WL 1157900, at *5 (N.D. Cal. Apr. 19, 2022) (same); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1057 (N.D. Cal. Apr. 14, 2021) (same); *Rajnish*, 2020 WL 7626414, at *8 (same); *Vargas v. Wolf*, No. 2:19-CV-02135-KJD-DJA, 2020 WL 1929842, at *8 (D. Nev. Apr. 21, 2020) (same); *Manpreet Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (same). Moreover, the other courts to have addressed a situation analogous to that facing Mr. De La Garza—the *Perera* and *Pham* courts—properly placed the burden on the government to show flight risk or dangerousness by clear and convincing evidence to justify denial of bond. *Perera,* 598 F. Supp. 3d at 746-47; *Pham*, 717 F. Supp. 3d 877.

111. As the Ninth Circuit recently made clear in *Rodriguez Diaz*, under *Mathews*, the question of who should carry the burden at a bond hearing is highly fact specific and informed by the particular context of each case. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1210-11 (9th Cir. 2022); *see also Doe v. Garland*, No. 3:22-CV-03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (placing burden on government at prolonged detention bond hearing for noncitizen detained under Section 1226(c) post-*Rodriguez Diaz*); *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *7 n.5 (S.D. Cal. Jan. 9, 2023) (same, and limiting *Rodriguez Diaz* to the Section 1226(a) context). Here, as articulated above, Mr. De La Garza's interest in liberty is unquestionably profound. *See, e.g.*, *Zadvydas*, 533 U.S. at 690.

112. 94. And, the specific facts and context of Mr. De La Garza's case demonstrate why, to avoid an erroneous deprivation of liberty, the government must bear the burden at a bond hearing. On the facts of his case "it would be improper to ask [Mr. De La Garza] to share equally

with society the risk of error when the possibly injury to [him]—deprivation of liberty—is so significant." *See Perera*, 598 F. Supp. 3d at 747 (cleaned up).

113. Finally, if the government truly believes Mr. De La Garza is a flight risk or danger to the community, despite overwhelming evidence to the contrary, "the government presumably has a basis for doing so grounded in evidence [and] [i]t need only present clear and convincing evidence to a neutral adjudicator, as prosecutors do every day across the country, even in the most serious of criminal cases." *See Rajnish*, 2020 WL 7626414, at *8.

CAUSES OF ACTION

COUNT ONE
VIOLATION OF THE PROCEDURAL COMPONENT ON THE DUE PROCESS CLAUSE OF THE FIFTH AMENDEMENT

114. Mr. De La Garza re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

115. 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.

116. Due Process does not permit the government to strip Mr. De La Garza of his liberty without notice and a hearing. *See Morrissey*, 408 U.S. at 487-488. Mr. De La Garza's arrest without notice and a hearing violated the Constitution. The only remedy of this violation is his immediate release from immigration detention until DHS proves to this Court, by clear and convincing evidence, that he should be detained. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405 (E.D.N.Y. 2025) (emphasizing that while federal courts "certainly defer[] to the immigration courts with respect to their areas of expertise and jurisdiction—including decisions to 'commence proceedings, adjudicate cases, or execute removal orders,' . . . neither the IJ nor the BIA has 'jurisdiction to decide constitutional issues. (quoting 8 U.S.C. § 1252(g)); *Ozturk v.*

Hyde, 136 F.4th 382, 400 (2d Cir. 2025)). *Garcia*, 2025 WL 1927596, at *6 (ordering the release of petitioner and a pre-deprivation hearing prior to any re-detention); *see also Singh*, 2025 WL 1918679, at *8 ("Petitioner's immediate release is required to return him to the status quo ante—"the last uncontested status which preceded the pending controversy.")

CAUSE OF ACTION

COUNT TWO

VIOLATION OF THE SUBSTANTIVE COMPONENT ON THE DUE PROCESS CLAUSE OF THE FIFTH AMENDEMENT

117. Mr. De La Garza re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

118. "[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The two permissible purposes of civil immigration detention are to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690.

119. Here, however, Mr. De La Garza's detention serves neither purpose. His conduct over the last many years evidences that he is not a danger to the community. His ties to the community, stable address history, and voluntary participation in the lawful immigration process evidence that he is not a flight risk. Therefore, in Mr. De La Garza's case, there is no legitimate justification for his detention, thereby rendering his detention punitive and unconstitutional. *Cf. Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (explaining that civil detention must serve "[l]egitimate, non-punitive government interests"). The Due Process Clause therefore requires Mr. De La Garza's immediate release.

PRAYER FOR RELIEF

WHEREFORE, Mr. De La Garza prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Mr. De La Garza outside the jurisdiction of the Northern District of California pending the resolution of this case;

(3) Declare that Mr. De La Garza's detention violated the Due Process Clause of the Fifth Amendment, that the immediate release of Mr. De La Garza is necessary to preserve his due process rights, and declare that once released, De La Garza's due process rights entitle him to a hearing before this Court at which the DHS must prove by clear and convincing evidence that his detention is warranted;

(4) Order the immediate release of Mr. De La Garza from DHS custody and enjoin Respondents from re-arresting Mr. De La Garza until DHS proves to this Court by clear and convincing evidence that his detention is warranted;

(5) In the alternative, issue a writ of habeas corpus or injunction and order Mr. De La Garza's release within 14 days unless Respondents-Defendants prove at a hearing before this Court, by clear and convincing evidence, that Petitioner-Plaintiff presents a risk of flight or danger; and (2) if Respondents-Defendants cannot meet its burden, this Court orders Petitioner-Plaintiff's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

(6) Award reasonable costs and attorney fees; and

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

Dated: December 1, 2025 Respectfully submitted,

/s/Judah Lakin

Judah Lakin

/s/Amalia Wille
Amalia Wille

LAKIN & WILLE LLP

Attorneys for Petitioner

ATTESTATION PURSUANT TO CIVIL L.R. 5.1(h)(3)

As the filer of this document, I attest that concurrence in the filing was obtained from the other signatory. Executed this 1st day of December, 2025.

/s/Judah Lakin
Judah Lakin