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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

H.J.G.G.,
Petitioner,

v.

Case No.

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

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

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

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

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.

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF, H.J.G.G. v. Wofford, et al.**

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PRAYER FOR RELIEF

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

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INTRODUCTION

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4 1. Petitioner, H.J.G.G., has been civilly imprisoned by U.S. Immigration and Customs
5 Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since about
6 September 11, 2025. He was re-detained by ICE on July 13, 2025, after his release from the
7 custody of the Department of Homeland Security (DHS) since he was granted parole on
8 October 19, 2023. Since being released in October 2023, H.J.G.G. has built a stable foundation
9 for himself, forming enduring community connections and consistently showing full dedication
10 to his immigration case.

11 2. H.J.G.G.’s current detention may be permitted under the Constitution and Immigration
12 and Nationality Act only if Respondents can demonstrate before a neutral decision-maker that
13 he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking
14 individual who fled persecution in Ecuador in search of a better life in the United States and
15 with no criminal history, H.J.G.G. is not a flight risk or danger. He has a clear claim for relief of
16 removal through asylum, withholding of removal and protection under CAT. Thus, H.J.G.G.’s
17 continued detention without a bond hearing before a neutral decision-maker violates his rights
18 under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

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

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

CUSTODY

26 5. H.J.G.G. is currently in the custody of ICE at Mesa Verde in Bakersfield, California.
27 H.J.G.G. is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus
28 statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

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3 6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
4 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.
5 § 2241 (habeas corpus), U.S. Const. article I, § 9, cl. 2 (the Suspension Clause), U.S. Const.
6 amend IV and V, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

7 VENUE

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

10 REQUIREMENTS OF 28 U.S.C. § 2243

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

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

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

27 EXHAUSTION

28 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

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3 result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370
4 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). H.J.G.G. asserts that
5 exhaustion should be waived because administrative remedies are (1) futile and (2) his
6 continued detention results in irreparable harm.

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

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

17 PARTIES

18 14. H.J.G.G. is a 26-year-old male national and citizen of Ecuador who entered the U.S. on
19 August 27, 2023, and has remained in the country since. *See* Birth Certificate, *attached as* Exh.
20 1; *see also* Notice to Appear, *attached as* Exhibit 2. DHS detained H.J.G.G. for almost two
21 months upon entry and released him on parole pursuant to 8 C.F.R. § 212.5. *See* Interim Notice
22 Authorizing Parole, *attached as* Exh. 3. H.J.G.G. established a life with his partner in the
23 United States, is gainfully employed and is the primary financial provider for his family. *See*
24 Affidavit of H.J.G.G. (“H.J.G.G. Aff.”).

25 15. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
26 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
27 responsible for detaining and removing noncitizens according to immigration law and oversees
28 custody determinations. In her official capacity, she is the legal custodian of H.J.G.G.

16 16. Respondent Sergio ALBARRAN is the Acting Field Office Director of the San
17 Francisco ICE Field Office. In this capacity, he is responsible for the administration of
18 immigration laws and the execution of immigration enforcement and detention policy within

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2 ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent
3 Albarran maintains an office and regularly conducts business in this district. Respondent
4 Albarran is sued in his official capacity.

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

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

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

22 **FACTUAL ALLEGATIONS**



23 20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
24 targeting people who are in regular removal proceedings in immigration court, many of whom
25 have pending applications for asylum or other relief. This "coordinated operation" is "aimed at
26 dramatically accelerating deportations" by arresting people at the courthouse or at the ICE
27 office and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti,
28 *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>



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3 /; see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp*
4 *Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
5 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
6 administration implemented a policy to drastically increase immigration arrests to a target of at
7 least 3,000 per day. According to White House officials like Stephen Miller, this directive
8 prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct
9 mass round-ups in public spaces rather than targeted investigations.

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

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

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

24 24. H.J.G.G. left Ecuador in 2023 because of persecution he suffered on account of 
25  On or about August 27, 2023,
26 H.J.G.G. presented himself at a port-of-entry with the intention of seeking asylum. DHS
27 detained him for approximately two months before determining that he is not a danger to the
28 community nor a flight risk and releasing him pursuant to 8 C.F.R. § 212.5. Given his credible
positive credible fear interview, DHS paroled H.J.G.G. from its custody pursuant to INA
212(d)(5). DHS did not impose any specific conditions on his release. *See H.J.G.G. Aff; see*
also Exh. 2, Exh. 3.

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3 25. DHS released H.J.G.G. without bond and did not impose any specific conditions on his
4 release. Officers merely requested a phone number and address, which he provided as 
5  He maintained this address and regularly checked his
6 mail for any communication from ICE or the immigration court, but he received none. Thus,
7 H.J.G.G. has fully complied with the general conditions of his release: he kept his address
8 updated with ICE and the Immigration Court and did not fail to appear for any scheduled
9 hearing before the Immigration Court or ICE appointment. *See* H.J.G.G. Aff ¶ 10, 11; *see also*
Exh. 2, Exh. 3.

10 26. Upon release, H.J.G.G. was served with a Notice to Appear and was scheduled for a
11 Master Hearing in the Boston Immigration Court for February 24, 2026. *See* Exh. 2.
12 Approximately two months after his release, H.J.G.G. sought legal assistance, to which he was
13 informed there was no record of his case with EOIR. He did not understand what this meant
14 and, relying on the 2026 hearing date he had been given, he continued to wait to present his
15 case to an immigration judge. H.J.G.G. was awaiting this hearing when ICE arrested him. *See*
H.J.G.G. Aff. ¶ 12, 13.

16 27. The Notice to Appear had never been properly filed with the immigration court due to
17 DHS's failure to carry out its duties pursuant to 8 C.F.R. § 1003.14 and INA Section 239.
18 Accordingly, although his August 2023 entry into the United States was clearly processed and
19 recorded by DHS, his removal proceedings did not actually commence until August 13, 2025,
20 one month after his second arrest. *See* Automatic Case Information, *attached as* Exh. 4. Since
21 EOIR's online case-information system did not show any proceedings on his name until
22 August 13, 2025, he was unable to access information about his case status and upcoming
23 hearing through official channels prior to his arrest.

24 28. This directly impeded his ability to properly present his case and to move forward with
25 his asylum application. The resulting delay was not attributable to the Petitioner, but arose
26 entirely from an error falling squarely within DHS's responsibilities.

27 29. Since his release, H.J.G.G. has worked to rebuild his life responsibly, maintaining
28 continuous employment and taking all steps he understood to comply with his immigration
obligations. He has acted in good faith, following the instructions provided to him, and was

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2 prepared to appear before the Boston Immigration Court on the scheduled hearing date. *See*
3 H.J.G.G. Aff.

4 30. On July 13, 2025, in Buffalo, New York, H.J.G.G. was arrested while assisting a friend
5 with a move. H.J.G.G. did not understand why he was being taken into custody, because no
6 reason was ever given and no papers were provided regarding the basis for his detention. *See*
7 H.J.G.G. Aff. ¶ 14, 15, 18.

8 31. From Buffalo, H.J.G.G. was moved through several facilities and states until he
9 reached Mesa Verde ICE Processing Center on or about September 11. *See* H.J.G.G. Aff.

10 32. The unlawful detention has subjected H.J.G.G. to serious physical and psychological
11 harm, with him reporting feeling constantly anxious and depressed. *See* H.J.G.G. Aff. ¶ 34.
12 While held in the Batavia Service Processing Center, H.J.G.G. developed food poisoning due
13 to spoiled food served at the facility, which required a week of hospitalization. He continues to
14 report stomach pain and every day he remains in detention and is not able to access proper
15 medical care aggravates his condition. *See* H.J.G.G. Aff. ¶ 20. At Mesa Verde, he recently
16 developed a fungal skin infection from using the facility showers, underscoring the unsanitary
17 conditions of his detention and the cumulative harm being inflicted on his health. *See* H.J.G.G.
18 Aff. ¶ 29.

19 33. Upon his initial release, H.J.G.G. established a life in the United States. He is in a
20 stable relationship and plans to reside with his partner in Wallington, New Jersey upon release.
21 He has developed strong and positive ties with his community. Before detention, he worked
22 steadily in roofing in Buffalo and helped support his parents and younger siblings in Ecuador.
23 Friends, coworkers, and community members describe him as hardworking, responsible, and
24 helpful. *See* Letters of Support, *attached as* Exh. 5. He has no criminal record and has never
25 been charged, prosecuted, or convicted of any offense in either Ecuador or the United States.
26 *See* H.J.G.G. Aff.

27 34. H.J.G.G. expresses a clear intention to move forward with his asylum case. *See*
28 H.J.G.G. Aff. ¶ 22, 36. His conduct demonstrates respect for the legal order and a clear intention
to resolve his immigration situation through lawful means.

LEGAL ARGUMENT

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

6 36. In H.J.G.G.'s particular circumstances, the Due Process Clause of the Constitution
7 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation
8 hearing before a neutral decision maker to determine whether circumstances have materially
9 changed since his release from custody on about October 19, 2023, such that detention would
10 now be warranted on the basis that he is a danger or a flight risk by clear and convincing
11 evidence.

12 37. ICE released H.J.G.G. on parole pursuant to 8 C.F.R. § 212.5(b), which authorizes
13 release only for "for "urgent humanitarian reasons" or "significant public benefit," provided
14 the aliens present neither a security risk nor a risk of absconding". By choosing this form of
15 release, ICE necessarily determined that H.J.G.G. was neither a danger to the community nor a
16 flight risk and that his continued detention was not in the public interest.

17 38. Because ICE affirmatively chose to release H.J.G.G. on parole – thereby finding that
18 he was not a danger to the community and not a flight risk under 8 C.F.R. § 236.1(c)(8) – any
19 decision to re-detain him would represent a reversal of that prior determination. In these
20 circumstances it is the government that must justify the change by clear and convincing
21 evidence that re-detention is necessary to prevent danger or flight. *See Pinchi v. Noem*, No.
22 5:25-CV-05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025). Moreover, although
23 ICE's statutory authority to revoke bond or parole is broadly framed, it is nevertheless limited
24 by the requirement that any revocation be justified through an individualized, case-by-case
25 determination. Applying *Y-Z-H-L* and § 212.5(e), the court in *Mata Velasquez v. Kurzdorfer*,
26 No. 25-CV-493-LJV, 2025 WL 195 at *11 (W.D.N.Y. July 16, 2025), held that the INA
27 requires a case-by-case analysis when deciding whether to revoke humanitarian parole. The
28 court explained that "both common sense and the words of the statute require parole revocation
to be analyzed on a case-by-case basis" and that any decision to revoke parole "must attend to
the reasons an individual [noncitizen] received parole."

39. By statute and regulations, ICE has the ability to unilaterally revoke any noncitizen's

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3 immigration bond determination or parole, and re-arrest the noncitizen at any time. 8 U.S.C. §
4 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting
5 ICE the power to revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of*
6 *Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation
7 on ICE’s authority to re-arrest noncitizens. There, the BIA held that “where a previous bond
8 determination has been made by an immigration judge, no change should be made by [the
9 DHS] absent a change of circumstance.” *Id.* In practice, DHS “requires a showing of changed
10 circumstances both where the prior bond determination was made by an immigration judge and
11 and where the previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d
12 at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*,
13 ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v.*
14 *Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ...
15 ICE cannot redetain Panosyan.”).

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

22 41. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody
23 is also constrained by the demands of due process. *See Hernandez*, 872 F.3d at 981 (“the
24 government’s discretion to incarcerate non-citizens is always constrained by the requirements
25 of due process”). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires
26 pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471,
27 482 (1972) (same, in parole context). Petitioner’s release from custody on October 19 of 2023
28 and ties to his family and community provide him with a protected liberty interest. *See Ortega*
v. Bonnar, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

42. Federal district courts in California have repeatedly recognized that the demands of

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3 due process and the limitations on DHS's authority to revoke a noncitizen's release from
4 custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation
5 hearing for a noncitizen on ICE's supervision, like H.J.G.G. before ICE re-detains him. *See,*
6 *e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F.
7 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312,
8 at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
9 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
10 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if
11 re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*,
12 No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary
13 injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on
14 bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025
15 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before
16 any re-arrest).

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

43. The Due Process Clause protects H.J.G.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).

44. Since October 19, 2023, H.J.G.G. exercised that freedom under ICE's order releasing
him from custody. As he was released from custody, he 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 H.J.G.G. would be
permitted to live in the United States without being subject to arbitrary arrest and removal.

45. 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

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3 benefits” to certain applicants). These benefits are entitled to constitutional protections no
4 matter how they may be characterized by Respondents. *See, e.g., Newman v.*
5 *Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property
6 interests under constitutional law turns on the substance of the interest recognized, not the
7 name given that interest by the state or other independent source.”) (internal quotations
8 omitted).

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

19 47. This basic principle – that individuals have a liberty interest in their conditional release
20 – has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
21 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
22 program created to reduce prison overcrowding have a protected liberty interest requiring
23 pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals
24 released on felony probation have a protected liberty interest requiring pre-deprivation
25 process). As the First Circuit has explained, when analyzing the issue of whether a specific
26 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
27 issue by comparing the specific conditional release in the case before them with the liberty
28 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).

48. 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).

49. Here, when this Court compares the specific release in H.J.G.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*, H.J.G.G.’s release “enables him 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 partner and parents, 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

50. H.J.G.G. asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for over a year and a half; (3) where no change in circumstances exist that would justify his 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 he 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.

51. “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

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3 Court must “balance [H.J.G.G.’s] liberty interest against the [government’s] interest in the
4 efficient administration of” its immigration laws in order to determine what process he is owed
5 to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the
6 test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its
7 balancing test: “first, the private interest that will be affected by the official action; second, the
8 risk of an erroneous deprivation of such interest through the procedures used, and the probative
9 value, if any, of additional or substitute procedural safeguards; and finally the government’s
10 interest, including the function involved and the fiscal and administrative burdens that the
11 additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357
12 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the
13 *Mathews* factors in similar cases, and found that those in Petitioner’s position, noncitizens
14 granted the liberty of release pending removal proceedings, have due process rights. *See e.g.*,
15 *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22,
16 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal.
17 Aug. 21, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
18 July 24, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4
19 (N.D. Cal. Sept. 3, 2025).

20 52. The Supreme Court “usually has held that the Constitution requires some kind of a
21 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
22 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation
23 remedies are “the only remedies the State could be expected to provide” can post-deprivation
24 process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only
25 where “one of the variables in the *Mathews* equation—the value of predeprivation
26 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State
27 cannot be required constitutionally to do the impossible by providing predeprivation process,”
28 can the government avoid providing pre-deprivation process. *Id.*

53. Because, in this case, ICE is required to release H.J.G.G. from his unlawful custody
and provide H.J.G.G. with notice and a hearing prior to any re-incarceration and revocation of
his liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d

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3 at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982);
4 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary
5 civil commitment proceedings may not constitutionally be held in jail pending the
6 determination as to whether they can ultimately be recommitted). Under *Mathews*, the balance
7 weighs heavily in favor of H.J.G.G.’s liberty and requires a pre-deprivation hearing before a
8 neutral adjudicator.

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

9 54. Under *Morrissey* and its progeny, individuals conditionally released from serving a
10 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
11 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
12 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
13 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
14 force to individuals like H.J.G.G., who have been released pending civil removal proceedings,
15 rather than parolees or probationers who are subject to incarceration as part of a sentence for a
16 criminal conviction. Parolees and probationers have a diminished liberty interest given their
17 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
18 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the
19 courts have held that the parolee cannot be re-arrested without a due process hearing in which
20 they can raise any claims they may have regarding why their re-incarceration would be
21 unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, H.J.G.G.
22 retains a truly weighty liberty interest even though he is under conditional release.

23 55. What is at stake in this case for H.J.G.G. is one of the most profound individual
24 interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision
25 releasing him from custody and to take away—without a lawful basis—his physical freedom,
26 i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638
27 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint
28 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

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3 at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517
4 U.S. 348 (1996).

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

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

11 57. The government’s interest in detaining H.J.G.G. without a due process hearing is low,
12 and when weighed against H.J.G.G.’s significant private interest in his liberty, the scale tips
13 sharply in favor of enjoining Respondents to release H.J.G.G. from his unlawful custody and
14 refrain from re-arresting H.J.G.G. unless and until the government demonstrates by clear and
15 convincing evidence that he is a flight risk or danger to the community. It becomes abundantly
16 clear that the *Mathews* test favors H.J.G.G. when the Court considers that the process he
17 seeks—notice and a hearing regarding whether he has violated any conditions of his release,
18 and, if so, providing H.J.G.G. with a hearing before this Court (or a neutral decisionmaker) to
19 determine whether there is clear and convincing evidence that H.J.G.G. is a flight risk or
20 danger to the community would impose only a *de minimis* burden on the government, because
21 the government routinely provides this sort of hearing to individuals like H.J.G.G.

22 58. As immigration detention is civil, it can have no punitive purpose. The government’s
23 only interest in holding an individual in immigration detention can be to prevent danger to the
24 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*,
25 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
26 for detaining H.J.G.G. has lived at liberty complying with the conditions of his release since
27 October 19, 2023.

28 59. ICE determined H.J.G.G. not to be a danger to the community or a flight risk in
October 2023 and has done nothing to undermine that determination. To the contrary, he
complied with the terms of his 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

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3 freedom so long as he abides by the conditions on his release, than to his mere anticipation or
4 hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d
5 1079, 1086 (2d Cir. 1971)).

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7 60. It is difficult to see how the government’s interest in ensuring his presence at the
8 moment of removal has materially changed since he was released on October 19, 2023. The
9 government’s interest in detaining H.J.G.G. at this time is therefore low. That ICE has a new
10 policy to make a minimum number of arrests each day under the new administration does not
11 constitute a material change in circumstances or increase the government’s interest in detaining
12 him.

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14 61. Moreover, the “fiscal and administrative burdens” that his immediate release and a
15 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S.
16 at 334-35. H.J.G.G. does not seek a unique or expensive form of process, but rather a routine
17 hearing regarding whether his order of release should be revoked and whether he should be
18 re-incarcerated.

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

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26 63. In addition, providing H.J.G.G. with a hearing before this Court (or a neutral
27 decisionmaker) regarding release from custody is a routine procedure that the government
28 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 H.J.G.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 fact 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.

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

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

10 65. Releasing H.J.G.G. from unlawful custody and providing H.J.G.G. a pre-deprivation
11 hearing would decrease the risk of H.J.G.G. being erroneously deprived of his liberty. Before
12 H.J.G.G. can be lawfully detained, he must be provided with a hearing before a neutral
13 adjudicator at which the government is held to show that there has been sufficiently changed
14 circumstances such that ICE's October 19, 2023, release from custody determination should be
15 altered or revoked because clear and convincing evidence exists to establish that H.J.G.G. is a
16 danger to the community or a flight risk.

17 66. On July 13, 2025, H.J.G.G. did not receive this protection. Instead, he was detained by
18 ICE, without notice, and there have been no material changes in his circumstances.

19 67. By contrast, the procedure H.J.G.G. seeks – a hearing in front of a neutral adjudicator
20 at which the government must prove by clear and convincing evidence that circumstances have
21 changed to justify his detention before any re-arrest – is much more likely to produce accurate
22 determinations regarding factual disputes, such as whether a particular occurrence constitutes a
23 “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989)
24 (when “delicate judgments depending on credibility of witnesses and assessment of conditions
25 not subject to measurement” are at issue, the “risk of error is considerable when just
26 determinations are made after hearing only one side”). “A neutral judge is one of the most
27 basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001),
28 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 IF*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

10 CLAIMS FOR RELIEF

11 **FIRST CLAIM FOR RELIEF**

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

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

15 70. The Due Process Clause of the Fifth Amendment forbids the government from
16 depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

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

20 72. The Court must therefore order that ICE release H.J.G.G. from his current unlawful
21 custody.

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

29 **SECOND CLAIM FOR RELIEF**

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

31 74. H.J.G.G. re-alleges and incorporates herein by reference, as is set forth fully herein, the

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2 allegations in all the preceding paragraphs.

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

6 76. H.J.G.G. has a vested liberty interest in his conditional release. Due Process does not
7 permit the government to strip him of that liberty without it being tethered to one of the two
8 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
9 community from danger. Since October 19, 2023, H.J.G.G. has been demonstrating that he is
10 neither a flight risk nor a danger to the community. Re-arresting him now would be punitive
11 and violate his constitutional right to be free from the unjustified deprivation of his liberty.

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

14 78. The Court must therefore order that he be released from custody.

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

22 **PRAYER FOR RELIEF**

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

- 24 (1) Assume jurisdiction over this matter;
- 25 (2) Declare that ICE's July 13, 2025, apprehension and detention of H.J.G.G. was
26 an unlawful exercise of authority because the ICE officer provided no reason that he
27 presents a danger to the community or is flight risk;
- 28 (3) Order ICE to immediately release H.J.G.G. from his unlawful detention;
- (4) Enjoin re-arresting H.J.G.G. unless and until a hearing can be held before a
neutral adjudicator to determine whether his re-incarceration would be lawful because

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2 the government has shown that he is a danger or a flight risk by clear and convincing
3 evidence;

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

8 (6) Award reasonable costs and attorney fees; and

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

10
11 Respectfully submitted this 3rd day of December, 2025.

12 By counsel,

13 /s/ Natalia Vieira Santanna

14 Natalia Vieira Santanna, Esq.
15 Attorney for Petitioner
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21
22 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

23 I am submitting this verification on behalf of the Petitioner because I am one of
24 Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition.
25 Based on those discussions, I hereby verify that the factual statements made in the attached
26 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Executed
27 on December 3 2025, in Oakland, CA.

28 /s/ Natalia Vieira Santanna

Natalia Vieira Santanna, Esq.
Attorney for Petitioner