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6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Amin FAYAZI,
10 Petitioner-Plaintiff,

11 v.

12 John CANTU, Field Office Director of Phoenix
13 Office of Detention and Removal, U.S. Immigrations
and Customs Enforcement; U.S. Department of
14 Homeland Security;

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

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

19 Pam BONDI, in her Official Capacity, Attorney
20 General of the United States;

21 Respondents-Defendants.
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Case No.



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

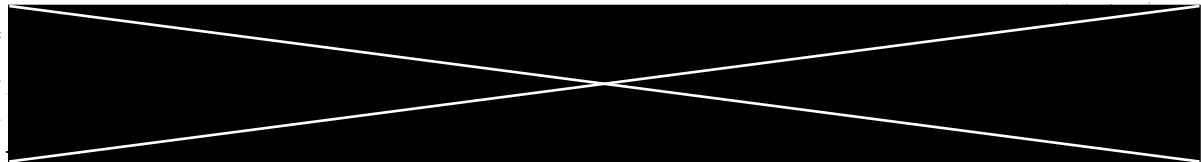
Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

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2 1. Petitioner, Ramin Vayazi (“Petitioner”), Agency number  by and through his
3 undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for
4 declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS),
5 U.S. Immigration and Customs Enforcement (ICE) from continuing to detain him in an
6 immigration detention pending resolution of his removal case without first providing him a due
7 process hearing where the government bears the burden to demonstrate to a neutral adjudicator
8 that he is a danger to the community or a flight risk by clear and convincing evidence.

9 2. Petitioner also seeks his immediate release from detention in Florence Service Processing
10 Center Facility where ICE unlawfully re-detained and continues to imprison him without a
11 hearing and without demonstrating that he is a flight risk or danger to the community, as required
12 by the Due Process clause of the Fifth Amendment.

13 3. As background, Petitioner and his wife fled Iran to seek asylum. An Immigration Judge
14 granted them with Withholding of Removal under the Convention Against Torture on February
15 15, 2001. As such they cannot be removed to Iran. The petitioner and his wife have no criminal
16 history. They have two United States children, the youngest being only sixteen years old.



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20 5. Pursuant to INA § 241(a)(6), 8 C.F.R. §1241.14(f), the Department of Homeland Security
21 must remove or release a detained alien within 90 days of a final order of removal when removal
22 is not reasonably foreseeable.

23 6. In recent months, ICE has engaged in highly publicized arrests of individuals who
24 presented no flight risk or danger, often with no prior notice that anything regarding their status
25 was amiss or problematic, whisking them away to faraway detention centers without warning.¹

26 ¹ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y.
27 Times (Mar. 15, 2025), available at
28 <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
(Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the

1 7. The arresting ICE officers did not articulate a reason as to why the Petitioner was
2 being detained, such as how he is now a flight risk, a danger to his community, or for any
3 purported violations of the conditions associated with his release from 2000.

4 8. Indeed, there have been no changes in the Petitioner's circumstances. For the
5 past two decades that the Petitioner has lived in freedom, he has been a devoted husband and
6 father to his sons, one of which is a minor.

7 9. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
8 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
9 change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9);
10 *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in
11 litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d
12 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
13 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause
14 because it is well-established that individuals released from incarceration have a liberty interest
15 in their freedom. In turn, to protect that interest, on the particular facts of Amezcua-Penalozza's
16 case, due process requires notice and a hearing, *prior to any re-arrest*, at which he is afforded the
17 opportunity to advance his arguments as to why his release should not be revoked.

18 10. That basic principle—that individuals placed at liberty are entitled to process before the
19 government imprisons them—has particular meaning here, where the Petitioner's detention was
20 *already* found to be unnecessary to serve its purpose. An Immigration Judge previously found
21 granted him Withholding of Removal.

22 11. Therefore, at a minimum, in order to lawfully re-arrest the Petitioner, the
23 government must first establish, by clear and convincing evidence and before a neutral decision

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25 Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025),
26 <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
27 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein,
28 *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
(Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington,
Virginia and transferred to Texas).

1 maker, that he is a danger to the community or a flight risk, such that his re-incarceration is
2 necessary. In the Alternative, the government would need to prove the Respondent's removal is
3 reasonably foreseeable. ICE's re-arrest of the Petitioner on June 23, 2025, violated these
4 regulations, laws, and due process.

5 **CUSTODY**

6 12. The Petitioner is currently in the custody of ICE at the Florence Service Processing Center
7 in Florence, Arizona. The Petitioner is therefore in "'custody' of [the DHS] within the meaning
8 of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

9 **JURISDICTION**

10 13. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331,
11 general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et*
12 *seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the
13 United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the
14 common law.

15 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

21 15. Courts have long recognized the significance of the habeas statute in protecting
22 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
23 important writ known to the constitutional law of England, affording as it does a *swift* and
24 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
25 400 (1963) (emphasis added).

26 16. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs
27 courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious
28 hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations

1 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
2 more concerned with efficient trial management than with the vindication of constitutional
3 rights.” *Id.*

4 **VENUE**

5 17. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
6 Respondents are employees or officers of the United States, acting in their official capacity;
7 because a substantial part of the events or omissions giving rise to the claim occurred in the
8 District of Arizona. The Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE
9 unlawfully re-arrested him in his Phoenix, Arizona neighborhood, in violation of 8 U.S.C. §
10 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), and he is
11 being imprisoned in Arizona. There is no real property involved in this action.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 18. For habeas claims, exhaustion of administrative remedies is prudential, not
14 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion
15 requirement if “administrative remedies are inadequate or not efficacious, pursuit of
16 administrative remedies would be a futile gesture, irreparable injury will result, or the
17 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
18 (9th Cir. 2004) (citation and quotation marks omitted)). The Petitioner asserts that exhaustion
19 should be waived because administrative remedies are (1) futile and (2) his continued detention
20 results in irreparable harm.

21 19. No statutory exhaustion requirements apply to the Petitioners claim of
22 unlawful custody in violation of his due process rights, and there are no administrative remedies
23 that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936,
24 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not
25 have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d
26 1098, 1099 (C.D. Cal. 2000) (same).

27 20. Moreover, Petitioner was denied bond on November 21, 2025, the Immigration Judge
28 citing lack of jurisdiction. Therefore, Petitioner has exhausted all remedies available. *Exhibit B.*

1 **PARTIES**

2 21. The Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has
3 remained in the country since.

4 22. Respondent John CANTU is the Field Office Director of ICE, in Phoenix, Arizona, and
5 is named in his official capacity. ICE is the component of the DHS that is responsible for detaining
6 and removing noncitizens according to immigration law and oversees custody determinations. In
7 his official capacity, he is the legal custodian of the Petitioner.

8 23. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
9 capacity. Among other things, ICE is responsible for the administration and enforcement of the
10 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
11 he is the legal custodian of the Petitioner.

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

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

24 **STATEMENT OF FACTS**

25 26. Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has remained
26 in the United States since.

27 27. On February 15,2001, he and his wife were granted Withholding of Removal under the
28 Convention Against Torture. *Exhibit C*.

1 28. On June 23, 2025, ICE detained the Petitioner and his wife in their neighborhood. Upon
2 their arrest, ICE officers did not articulate why the Petitioner was now a flight risk, a danger to
3 his community, or how they had violated any conditions of their release.

4 29. This is because ICE cannot make such a statement. Over the two decades that the
5 Petitioner has lived in freedom, he has been a devoted husband and father to his sons. He is
6 gainfully employed. He has had no criminal history.

7 30. Petitioner through counsel has asked ICE to release him through counsel and a request for
8 parole. ICE has denied multiple requests. Additionally, Petitioner was denied bond due to lack of
9 jurisdiction on November 20, 2025. Intervention from this Court is therefore required to ensure
10 that the Petitioner is released from his current custody based on his unlawful arrest, returned to
11 his home in Phoenix, Arizona, where ICE can then provide him with a hearing before determining
12 to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

13 LEGAL BACKGROUND

14 **Right to Release After 90 days**

15 1. The Petitioner's particular circumstances, pursuant to INA § 241(a)(6), 8 C.F.R.
16 §1241.14(f), the Department of Homeland Security must remove or release a detained alien within
17 90 days of a final order of removal when removal is not reasonably foreseeable.

18 **Petitioner's Protected Liberty Interest in His Conditional Release**

19 2. Petitioner's liberty from immigration custody is protected by the Due Process Clause:
20 "Freedom from imprisonment—from government custody, detention, or other forms of physical
21 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
22 *Davis*, 533 U.S. 678, 690 (2001).

23 3. Since 2000, the Petitioner has exercised that freedom under ICE's order releasing him
24 from custody. As he was released from custody, he retains a weighty liberty interest under the
25 Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v.*
26 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
27 *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

28 4. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has

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

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

25 6. In fact, it is well-established that an individual maintains a protectable liberty interest even
26 where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*,
27 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
28 considerations support the notion that an inmate released on parole by mistake, because he was

1 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
2 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
3 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
4 (internal quotation marks and citation omitted).

5 7. Here, when this Court ““ compar[es] the specific release in the Petitioner’s with the liberty
6 interest in parole as characterized by *Morrissey*,”” it is clear that they are strikingly similar. *See*
7 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
8 a wide range of things open to persons”” who have never been in custody or convicted of any
9 crime, including to live at home, work, care for his children, including his U.S. citizen sons for
10 whom he cares for, and “be with family and friends and to form the other enduring attachments
11 of normal life.” *Morrissey*, 408 U.S. at 482.

12 **Petitioner’s Private Interest in His Liberty is Profound**

13 8. Under *Morrissey* and its progeny, individuals conditionally released from serving
14 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
15 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
16 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
17 him to constitutional due process before he is re-incarcerated—apply with even greater force to
18 individuals like the Petitioner, who have been released pending civil removal proceedings, rather
19 than parolees or probationers who are subject to incarceration as part of a sentence for a criminal
20 conviction. Parolees and probationers have a diminished liberty interest given their underlying
21 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
22 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
23 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
24 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
25 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, the Petitioner retains a truly weighty liberty
26 interest even though he is under conditional release.

27 9. Thus, it is clear that there is a profound private interest at stake in this case, which must
28

1 be weighed heavily when determining what process he is owed under the Constitution. *See*
2 *Mathews*, 424 U.S. at 334-35.

3 **The Government's Interest in Re-Incarcerating the Petitioner Without a Hearing is Low**
4 **and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He**
5 **is Provided a Hearing That Comports with Due Process is Minimal**

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

17 11. As immigration detention is civil, it can have no punitive purpose. The government's only
18 interests in holding an individual in immigration detention can be to prevent danger to the
19 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
20 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
21 for detaining Petitioner. He has lived at liberty complying with the conditions of his release since
22 2000 while acting as the financial caretaker for his two sons. He is a dedicated family man and
23 has no criminal history.

24 12. An Immigration Judge found she did not have jurisdiction to grant a bond to the Petitioner
25 On November 20, 2025.

26 13. It is difficult to see how the government's interest in ensuring his presence at the moment
27 of removal has materially changed since he was released in 2001, when he was granted
28 withholding of removal. The government's interest in detaining the Petitioner at this time is

1 therefore low. That ICE has a new policy to make a minimum number of arrests each day under
2 the new administration does not constitute that the Petitioner will be removed in the reasonable
3 foreseeable future.²

4 14. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
5 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
6 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. Petitioner has a stay of removal, which means
7 that he will remain in custody until the agency adjudicates his case. ICE’s unlawful action of
8 placing him in custody is more of a financial burden than releasing him and providing any pre-
9 custody hearing before any future re-arrest occurs.

10 15. Releasing Petitioner from unlawful custody and enjoining Petitioner re-arrest until ICE
11 (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing
12 evidence that Petitioner is a flight risk or danger to the community is far *less* costly and
13 burdensome for the government than keeping him detained. g to a total daily cost of \$6.5 million.”
14 *Hernandez*, 872 F.3d at 996.

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

18 16. Due process also requires consideration of alternatives to detention at any custody
19 redetermination hearing that may occur. The primary purpose of immigration detention is to
20 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
21 Detention is not reasonably related to this purpose if there are alternatives to detention that could

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23 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January
24 26, 2025), available at: [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-
25 raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,”
26 *Forbes* (June 9, 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-
27 order-likely-sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/). (“At the end of May 2025, ‘Stephen
28 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.”).

1 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
2 detention must be considered in determining whether Petitioner's re-incarceration is warranted.

3 **FIRST CAUSE OF ACTION**

4 **Procedural Due Process**

5 **U.S. Const. amend. V**

6 17. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the
7 allegations in all the preceding paragraphs.

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

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

13 20. The Court must therefore order that ICE release Petitioner from his current
14 unlawful custody.

15 21. Prior to any re-arrest, the government must provide him with a hearing before a neutral
16 adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether clear and
17 convincing evidence demonstrates, taking into consideration alternatives to detention, that
18 Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted.
19 During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral
20 adjudicator must consider alternatives to detention when determining whether Petitioner's re-
21 incarceration is warranted.

22 **SECOND CAUSE OF ACTION**

23 **Substantive Due Process**

24 **U.S. Const. amend. V**

25 22. Petitioner re-alleges and incorporates herein by reference, as is set
26 forth fully herein, the allegations in all the preceding paragraphs.

27 23. The Due Process Clause of the Fifth Amendment forbids the government from depriving
28

1 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend.
2 V.

3 24. Petitioner has a vested liberty interest in his conditional release. Due Process does not
4 permit the government to strip him of that liberty without it being tethered to one of the two
5 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
6 community from danger.

7 25. Since 2000, Petitioner has fully complied with the conditions of release imposed on him
8 by ICE, thus demonstrating that he is neither a flight risk nor a danger.

9 26. For these reasons, Petitioner's continued unlawful custody and any
10 subsequent re-arrest without first being provided a hearing would violate the Constitution.

11 27. The Court must therefore order that he be released from custody.

12 28. The Court must order the government to not re-arrest him in any subsequent action
13 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
14 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into
15 consideration alternatives to detention, that Petitioner is a danger to the community or a flight
16 risk, such that his re-incarceration is warranted. During any custody redetermination hearing that
17 occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to
18 detention when determining whether Petitioner's re-incarceration is warranted.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Petitioner prays that this Court grant the following relief:

- 21 (1) Assume jurisdiction over this matter;
- 22 (2) Declare that ICE's June 23, 2025, apprehension and detention of Petitioner
23 was an unlawful exercise of authority because the ICE officer provided no
24 reason that he presents a danger to the community or is flight risk;
- 25 (3) Order ICE to immediately release Petitioner from his unlawful detention;
- 26 (4) Enjoin re-arresting Petitioner unless and until a hearing can be held before a
27 neutral adjudicator to determine whether his re-incarceration would be lawful
28

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

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

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

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

9
10 Dated: December 11, 2025

Respectfully submitted,

11 /s/ Bianca L. Torres
12 Bianca L. Torres, Esq.
13 Attorney for Petitioner

14
15 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

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

20 Executed on this December 11, 2025, in Phoenix, AZ.

21 /s/ Bianca L. Torres
22 Bianca L. Torres, Esq.
23 Attorney for Petitioner
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