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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Francisco Carlos ROMERO DIAZ,

Case No.: 3:25-cv-03616-LL-AHG

12  
13 Petitioner,

**AMENDED<sup>1</sup> PETITION FOR WRIT  
OF HABEAS CORPUS AND ORDER  
TO SHOW CAUSE WITHIN THREE  
DAYS AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

14 v.

15  
16 Kristi NOEM, Secretary of Homeland  
17 Security; Christopher J. LAROSE,  
18 Warden, Otay Mesa Detention Center;  
19 Daniel A BRIGHTMAN, Field Office  
20 Director, San Diego Field Office, United  
21 States Immigration and Customs  
22 Enforcement; Todd M. LYONS, Acting  
23 Director, United States Immigration  
and Customs Enforcement; Pamela Jo  
BONDI, Attorney General, in their  
official capacities,

24 Respondents.

25  
26  
27 <sup>1</sup> Pursuant to Federal Rules of Civil Procedure 15(a)(1)(A), Petitioner may amend the  
28 petition as of right if done so within 21 days of serving it. Petitioner served his initial petition  
on December 16, 2025; therefore, his amended petition is timely.

1 Petitioner Francisco Carlos Romero Diaz petitions this Court for a writ of  
2 habeas corpus under 28 U.S.C. § § 2241 to remedy Respondents' detaining him  
3 unlawfully, and states as follows:

#### 4 INTRODUCTION

5 1. Petitioner Francisco Carlos Romero Diaz is a noncitizen who was  
6 previously released from immigration custody but was abruptly re-detained and  
7 jailed for no legitimate reason. The Department of Homeland Security necessarily  
8 determined that he was neither a flight risk nor a danger to the community when  
9 it previously released him from its custody. However, U.S. Immigration and  
10 Customs Enforcement officials re-detained him even though Petitioner was doing  
11 exactly what the federal government ask him to do: appear for a "check in"  
12 appointment at ICE offices in downtown San Diego.

13 2. Petitioner has no criminal history of any kind. Nor does Petitioner,  
14 who has dutifully attended his hearings in his ongoing removal proceedings,  
15 present risk of flight that justify re-detention. Yet ICE continues to unlawfully  
16 detain him in prison-like conditions, keeping him separated from his community.

17 3. ICE provided Petitioner with no pre-deprivation hearing prior to their  
18 re-detention at the ICE check-in to determine whether material changes in his  
19 circumstances warrant his re-detention based on danger to the community or risk  
20 of flight, despite a growing consensus among United States district courts that  
21 such a hearing is necessary in similar circumstances.

22 4. Petitioner's detention under these circumstances violates his right to  
23 substantive and procedural Due Process, as it is not justified by a legitimate  
24 government purpose. Additionally, under *Mathews v. Eldridge*, 424 U.S. 319  
25 (1976), his fundamental liberty interest far outweighs the government's interest  
26 in detaining him, and the risk of error is great where, as here, there has been no  
27 pre-deprivation process to ensure his loss of liberty is justified. For similar  
28

1 reasons, his detention also contravenes the Immigration and Nationality Act (INA)  
2 and the Administrative Procedure Act (APA).

3 5. Petitioner's arrest occurred earlier this fall as part of a wave of ICE  
4 enforcement at the federal building at 880 Front Street in downtown San Diego  
5 targeting individuals appearing for immigration court and ICE check-in  
6 appointments.

7 6. After his arrest, ICE detained Petitioner at the basement of 880 Front  
8 Street overnight and denied him communication with the outside world,  
9 including his counsel.

10 7. After his detention in the federal building basement, ICE transferred  
11 Petitioner to the Otay Mesa Detention Center in south San Diego where he has  
12 languished in detention for months, with no recourse to seek release because  
13 Respondents claim that recent changes to decades-old agency policies and  
14 practices render Petitioner ineligible to seek bond from an immigration judge.

15 8. Accordingly, Petitioner seeks his release and challenges his detention  
16 as a violation of the Due Process Clause of the Fifth Amendment, the INA and the  
17 APA.

18 9. Petitioner respectfully requests that this Court issue the Writ of  
19 Habeas Corpus commanding Respondents to release him from custody, and enjoin  
20 Respondents from re-detaining him without notice to his counsel and a pre-  
21 deprivation hearing before a neutral decision-maker at which Respondents must  
22 prove material changes in circumstances justify re-detention. Petitioner seeks that  
23 relief under the federal habeas statute, 28 U.S.C. § 2241, which is the proper  
24 vehicle for challenging civil immigration detention. *See Doe v. Garland*, 109 F.4th  
25 1188, 1194 (9th Cir. 2024) (noting that a noncitizen's challenge to his present  
26 confinement falls within the "core of habeas").

27 //

1 **CUSTODY**

2 10. Petitioner Francisco Carlos Romero Diaz is currently in Respondents'  
3 legal and physical custody. They are detaining him at the Otay Mesa Detention  
4 Center in San Diego, California. He is under Respondents' and their agents' direct  
5 control.

6 **JURISDICTION**

7 11. This Court has jurisdiction to consider this habeas petition complaint  
8 under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth  
9 Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I,  
10 2.

11 **VENUE**

12 12. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C.  
13 § 2242 because at least one Respondent is in this District, Petitioner is detained in  
14 this District, Petitioner's immediate physical custodian is located in this District,  
15 and a substantial part of the events giving rise to the claims in this action have  
16 taken place in this District.

17 **PARTIES**

18 13. Petitioner Francisco Carlos Romero Diaz is currently detained by the  
19 Respondents at the Otay Mesa Detention Center, an immigration detention facility  
20 in San Diego, California. He has been in ICE custody since on or about October  
21 16, 2025. His removal proceedings are pending at the Otay Mesa Immigration  
22 Court.

23 14. Respondent Christopher J. LaRose is the Senior Warden at the Otay  
24 Mesa Detention Center, where Petitioner is being held. Respondent Larose is  
25 Petitioner's immediate custodian. Petitioner sues him in his official capacity.

26 15. On information and belief, Respondent Daniel A Brightman is the  
27 current Field Office Director responsible for the San Diego Field Office of ICE with  
28

1 administrative jurisdiction over Petitioner's immigration case. He is a Petitioner's  
2 legal custodian. Petitioner sues him in his official capacity.

3 16. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a  
4 component of the DHS, 6 U.S.C. § 271, and an "agency" within the meaning of  
5 the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency  
6 responsible for enforcing immigration laws, and it is detaining Petitioner.  
7 Respondent Lyons has custodial authority over Petitioner, who names him in his  
8 official capacity.

9 17. Respondent Kristi Noem is the Secretary of the DHS. DHS is the  
10 federal agency responsible for enforcing immigration laws and granting  
11 immigration benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem  
12 has ultimate custodial authority over Petitioner, who names her in her official  
13 capacity.

14 18. Respondent Pam Bondi is the Attorney General of the United States.  
15 She is responsible for the Immigration and Nationality Act's implementation and  
16 enforcement (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office  
17 for Immigration Review. Petitioner names her in her official capacity.

#### 18 STATEMENT OF FACTS

19 19. Petitioner Francisco Carlos Romero Diaz is a 54-year-old national and  
20 citizen of Peru and is currently detained at the Otay Mesa Detention Center  
21 ("OMDC") in San Diego, California.

22 20. Petitioner is a gay man who came to the United States to seek safety  
23 and freedom.

24 21. On or about April 1, 2024, Petitioner entered the United States at or  
25 near San Luis, Arizona, and this was his first entry to the United States.

26 22. Upon arrival, Petitioner informed immigration officers that he needed  
27 to seek asylum, and officers began processing him.

28

1           23. Immigration officers transported Petitioner by bus to a processing  
2 center where he remained for approximately seven days.

3           24. While at the processing center, Petitioner underwent a credible fear  
4 interview, passed the interview, and was found to have a credible fear of  
5 persecution.

6           25. On or about April 7, 2024, Petitioner was released from immigration  
7 custody and traveled to San Diego, California, where he intended to reside with a  
8 friend.

9           26. Upon release, Petitioner was issued a Notice to Appear (“NTA”)  
10 directing him to appear at the San Diego Immigration Court on May 14, 2024.

11           27. On May 14, 2024, Petitioner appeared at the San Diego Immigration  
12 Court but was informed that his case had not yet been filed.

13           28. At that appearance, Petitioner received a letter stating the case was  
14 “closed as a failure to prosecute,” and he was instructed to go to the ICE office on  
15 the second floor of the same building.

16           29. Petitioner went to the ICE office and was told to wait for a new NTA  
17 to be sent to him.

18           30. Petitioner did not receive a new NTA but nonetheless began seeking  
19 counsel and obtained pro bono representation for his asylum case.

20           31. Petitioner remained at liberty from April 7, 2024, until October 16,  
21 2025.

22           32. By February 2025, Petitioner still had not received a new NTA, and  
23 counsel advised him the one-year asylum filing deadline was approaching.

24           33. With counsel’s assistance, Petitioner filed an affirmative asylum  
25 application with USCIS on or about February 21, 2025, and the application was  
26 received and receipted as properly filed.

27           34. After the requisite waiting period, Petitioner applied for employment  
28 authorization based on the pending asylum application on or about July 21, 2025.

1 35. Petitioner's employment authorization application was approved, he  
2 received an employment authorization document valid for five years, and he  
3 began working in a hotel cleaning department.

4 36. While at liberty, Petitioner reports he had no problems in the United  
5 States, committed no crimes, and was not arrested.

6 37. In late September 2025, ICE sent Petitioner a "call-in letter" directing  
7 him to report for a "General Check In — Proxima Cita" on October 16, 2025.

8 38. Petitioner understood from news and community reports that  
9 individuals were being detained at such appointments, but he believed it was his  
10 obligation to attend.

11 39. On October 16, 2025, Petitioner appeared at ICE for the scheduled  
12 appointment accompanied by counsel.

13 40. At the appointment, counsel explained that Petitioner had timely  
14 applied for asylum and that his asylum application was pending with U.S.  
15 Citizenship and Immigration Services.

16 41. Despite this, Petitioner was taken into immigration custody, held  
17 overnight in the federal building, transferred to OMDC, and has remained  
18 detained there since.

19 42. After arriving at OMDC, Petitioner was scheduled for a bond hearing  
20 but withdrew the request because he had not prepared evidence and had been  
21 counseled that, based on recent cases, immigration judges were finding no  
22 jurisdiction to grant bond to similarly situated individuals. Petitioner's request to  
23 withdraw the bond hearing was granted.

24 43. After being taken back into custody, Petitioner was served with a new  
25 NTA.

26 44. Pro bono counsel appeared in immigration proceedings and informed  
27 the Immigration Judge that Petitioner had already filed an asylum application.  
28

1 45. ICE eventually located and filed Petitioner's pending asylum  
2 application in the immigration proceedings.

3 46. Petitioner has worked with counsel to prepare supplemental evidence  
4 and states he has attended all hearings.

5 47. Petitioner reports that detention has been very hard on him.

6 48. Petitioner asserts he is not a flight risk because he was diligent in  
7 seeking asylum and fulfilled obligations even when he believed detention was  
8 possible.

9 49. Petitioner asserts he is not a danger to the community because he has  
10 no criminal record anywhere in the world and followed U.S. laws while at liberty.

### 11 LEGAL FRAMEWORK

#### 12 I. Substantive Due Process Constraints on Immigration Detention

13 50. The Due Process Clause of the Fifth Amendment protects all  
14 "person[s]" from deprivation of liberty "without due process of law." U.S. Const.  
15 amend. V.

16 51. While the immigration laws afford ICE discretion over its decisions to  
17 arrest, detain, and revoke prior release decisions, those decisions are nonetheless  
18 constrained by the laws Congress has enacted and the requirements of the  
19 Constitution, including the Due Process Clause. *See generally Zadvydas v. Davis*,  
20 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir.  
21 2017).

22 52. This is because "[f]reedom from imprisonment—from government  
23 custody, detention, or other forms of physical restraint—lies at the heart of the  
24 liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

25 53. Immigration detention only comports with Due Process when it  
26 furthers the government's goals of "ensuring the appearance of [noncitizens] at  
27 future immigration proceedings and preventing danger to the community." *Id.*

28

1 (internal citations omitted). ICE detention violates substantive Due Process where  
2 it is not justified by flight risk or danger concerns. *See id.*

3 54. For that reason, ostensibly “nonpunitive” ICE detention pursuant to a  
4 blanket policy under which the agency claims authority to arrest and detain all  
5 noncitizens who it alleges are not lawfully present in the United States, without  
6 regard for whether they are a flight risk or danger, would violate the Due Process  
7 Clause. *See id.* So too would ICE detention for the purposes of meeting quotas,  
8 punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L.-R*  
9 *v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that “[i]n  
10 discussing civil commitment more broadly, the [Supreme] Court has declared  
11 such ‘general deterrence’ justifications impermissible” and finding likely contrary  
12 to Due Process a deterrence policy pursuant to which DHS detained “one  
13 particular individual” for purposes of “sending a message of deterrence to other[s  
14 ] who may be considering immigration” (citing *Kansas v. Crane*, 534 U.S. 407,  
15 412 (2002)).

16 55. All such detentions would be unlawful because they bear no  
17 reasonable relation to a legitimate government purpose. *See id.*; *Demore v. Kim*,  
18 538 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S.  
19 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

20 **II. Procedural Due Process Constraints on the Detention of an Individual**  
21 **Who Was Previously Released**

22 56. Procedural Due Process ensures that no persons are deprived of their  
23 liberty absent a fair process. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976),  
24 courts evaluate procedural Due Process by balancing (1) the private interest  
25 affected; (2) the risk of erroneous deprivation of such interest; and (3) the  
26 government’s interest. *Id.* at 335.  
27  
28

1 57. “[T]he liberty [of a person released from government custody] is  
2 valuable and must be seen as within the protection of the [Due Process Clause].”  
3 *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972).

4 58. “[E]ven when ICE has the initial discretion to detain or release a  
5 noncitizen pending removal proceedings, after that individual is released from  
6 custody she has a protected liberty interest in remaining out of custody.” *Pinchi v.*  
7 *Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No.  
8 22-cv-02508, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*  
9 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021);  
10 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at \*3 (N.D. Cal. Aug.  
11 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

12 59. Courts in this district have joined a growing chorus of district courts  
13 that have recognized that noncitizens have a significant liberty interest in both  
14 “continued freedom *after release on own recognizance*,” *Alegria Palma v. Larose*,  
15 No. 25-cv-1942-BJC-MMP, ECF No. 14, at \*6 (S.D. Cal. Aug. 11, 2025) (emphasis  
16 added), and in “freedom from imprisonment” after “the government grants a  
17 [noncitizen] *parole* into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JES-  
18 MMP, 2025 WL 2770629, at \*3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See*  
19 *also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov.  
20 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.  
21 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),  
22 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-  
23 01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen*  
24 *v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025);  
25 *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6,  
26 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex.  
27 Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-M JP-TLF, 2025 WL  
28

1 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE,  
2 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

3 60. “Where, as here, [the petitioner] has not received any bond or custody  
4 . . . hearing, the risk of an erroneous deprivation [of liberty] is high because  
5 neither the government nor [the petitioner] has had an opportunity to determine  
6 whether there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035  
7 (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July  
8 11, 2025)) (cleaned up). Indeed, where a petitioner “was previously released  
9 following a determination that he posed no flight risk or danger to the  
10 community, and absent any new evidence showing a material change in  
11 circumstances, the risk of erroneous detention without a hearing is substantial.”  
12 *Alegria Palma*, No. 25-cv-1942-BJC-MMP at \*6 (ordering petitioner’s immediate  
13 release where he was re-detained without pre-deprivation hearing).

14 61. The requirement of an individualized determination is even stronger  
15 in cases of re-detention because the prior “[r]elease reflects a determination by  
16 the government that the noncitizen is not a danger to the community or a flight  
17 risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub*  
18 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). “[T]o be lawful”  
19 the re-detention “must be based on evidence that the circumstances relevant to  
20 that original release decision have changed.” *Saravia*, 280 F. Supp. 3d at 1196.

21 62. “To satisfy due process, those changed circumstances must represent  
22 individualized legal justification for detention.” *Sanchez v. LaRose*, No. 25-CV-  
23 2396-JES-MMP, 2025 WL 2770629, at \*3 (S.D. Cal. Sept. 26, 2025) (internal  
24 citations omitted)).

25 63. The government can claim no interest in re-detention where there are  
26 no changed circumstances going to flight risk or danger sufficient to warrant re-  
27 detention. *See Pinchi*, 792 F. Supp 3d at 1036 (“The government does not claim  
28 that any material circumstances have changed that would warrant reassessment

1 of Ms. Garro Pinchi's risk of flight or dangerousness, and it has articulated no  
2 other reason for her detention.”). Even if the government asserted the existence of  
3 such changed circumstances, its interest in denying a pre-deprivation hearing to  
4 prove that claim is negligible, particularly because custody hearings are a routine  
5 practice for immigration courts. Compared to the “staggering” “costs to the public  
6 of immigration detention,” *Hernandez*, 872 F.3d at 996, “[t]he effort and cost  
7 required” of providing a hearing “is minimal.” *Doe v. Becerra*, 787 F. Supp. 3d  
8 1083, 1094 (E.D. Cal. 2025).

9 64. Thus, detention absent a pre-deprivation hearing establishing that  
10 changed circumstances justify re-detention violates procedural Due Process.

### 11 **III. The Statutory Framework Governing Petitioner’s Detention**

12 65. Petitioner is detained pursuant to 8 U.S.C. 1226(a), which provides,  
13 in pertinent part, that

14 On a warrant issued by the Attorney General, a [noncitizen] may be  
15 arrested and detained pending a decision on whether the [noncitizen]  
16 is to be removed from the United States. Except as provided in  
17 subsection (c) and pending such decision, the Attorney General--  
18 (1) may continue to detain the arrested [noncitizen]; and  
(2) may release the [noncitizen] on--  
(A) bond of at least \$1,500 with security approved by, and containing  
conditions prescribed by, the Attorney General; or  
(B) conditional parole.

19 66. Section 1226(a) governs the detention of noncitizens “inside the  
20 United States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281,  
21 288–89 (2018).

22 67. Section 1225(b)(2), in contrast, authorizes the detention of applicants  
23 for admission who are “seeking admission” but “not clearly and beyond a doubt  
24 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that  
25 individuals who fall under its authority “shall be detained” during the pendency of  
26 proceedings, though they too remain eligible for release through the parole  
27 process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8  
28

1 U.S.C. § 1182(d)(5)(A) remains available even for people held under otherwise-  
2 mandatory detention pursuant to section 1225(b)).

3 68. Petitioner was unquestionably detained in the interior of the country  
4 at his ICE check-in appointment, over a year after initially entering the United  
5 States; thus, he was not “seeking admission” at the time of his  
6 re-detention, so his detention is governed by section 1226(a). *See, e.g., Esquivel-*  
7 *Pina v. Larose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361, at \*5 (S.D. Cal.  
8 Oct. 24, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431,  
9 at \*6 (S.D. Cal. Sept. 3, 2025); *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL  
10 2591530, at \*5 (C.D. Cal. Sept. 8, 2025).

11 69. Immigration detention “has two regulatory goals: ensuring the  
12 appearance of [noncitizens] at future immigration proceedings and preventing  
13 danger to the community.” *Zadvydas*, 533 U.S. at 678 (internal citations omitted);  
14 *see also* 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

15 70. Those previously released by DHS, like Petitioner, have necessarily  
16 been deemed neither a flight risk nor a danger. 8 C.F.R. § 1236.1 (c)(8)  
17 (authorizing release of noncitizens under section 1226(a) if they “would not pose  
18 a danger to property or persons,” and are “likely to appear for any future  
19 proceeding”); 8 C.F.R. § 212.5(b) (authorizing parole from custody of noncitizens  
20 deemed “neither a security risk nor a risk of absconding”).

21 71. In cases of individuals previously released by DHS, re-detention under  
22 section 1226(a) requires an individualized determination of a material change in  
23 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968  
24 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”  
25 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.  
26 637, 640 (B.I.A. 1981) (“[W]here a previous bond determination has been made  
27 by an immigration judge, no change should be made by [DHS] absent a change of  
28 circumstance.”).

1 72. 117. Absent a material change in circumstances, the re-detention of  
2 noncitizens previously released by DHS violates the INA because it does not serve  
3 the purpose of the statute.

#### 4 **IV. Administrative Procedure Act**

5 73. Under the APA, courts may set aside agency action that is contrary to  
6 law or constitutional right. 5 U.S.C. § 706(2).

7 74. In order to be reviewable under the APA, the challenged action must  
8 constitute final agency action, which includes “the whole or a part of an agency  
9 rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure  
10 to act.” 5 U.S.C. § 551(13).

11 75. Petitioner’s detention occurred pursuant to reviewable agency action.  
12 Specifically, ICE’s San Diego Field Office has adopted a policy pursuant to which it  
13 claims authority to arrest and detain all noncitizens who it alleges are not lawfully  
14 present in the United States, without regard for whether they are a flight risk or  
15 danger. Such a policy marks the “consummation” of the ICE’s decision-making  
16 process and is an action “by which rights or obligations have been determined, or  
17 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178  
18 (1997) (internal citations omitted).

19 76. “[A]gency action . . . need not be in writing to be final and judicially  
20 reviewable . . . [a]n unwritten policy can still satisfy the APA’s pragmatic final  
21 agency action requirement.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d  
22 1168, 1206–07 (S.D. Cal. 2019) (internal citations omitted). “[A] contrary rule  
23 would allow an agency to shield its decisions from judicial review simply by  
24 refusing to put those decisions in writing.” *Id.* at 1207 (internal citations omitted).

25 77. Additionally, ICE’s decisions to re-detain Petitioner constitutes final  
26 agency action because the re-detentions mark the “consummation” of the ICE’s  
27 decision-making process on the question of Petitioner’s custody, and it is an action  
28 “by which rights or obligations have been determined, or from which legal

1 consequences will flow.” *Bennett*, 520 U.S. at 178 (internal citations omitted).  
2 Indeed, the “practical and legal effects of the agency action” are that Petitioner  
3 has been deprived of his liberty for over two months and with no end in sight. *Or.*  
4 *Natural Desert Ass’n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

5 78. Courts must “hold unlawful and set aside agency actions, findings and  
6 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise  
7 not in accordance with the law; (b) contrary to constitutional right, power,  
8 privilege or immunity; (c) in excess of statutory jurisdiction, authority, or  
9 limitations, or short of statutory right; or (d) without observance of procedures  
10 required by law. 5 U.S.C. § 706(2).

11 79. Final agency action is arbitrary and capricious if the agency fails to  
12 “articulate a satisfactory explanation for its action, including a rational connection  
13 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v.*  
14 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations  
15 omitted). Courts may not consider an agency’s “impermissible post hoc  
16 rationalizations.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020)  
17 (internal citations omitted).

18 80. Accordingly, ICE’s policy constitutes final agency action and, for the  
19 reasons discussed above, violates APA § 706(2) as arbitrary and capricious and  
20 contrary to Due Process and the INA.

21 81. Additionally, ICE’s decisions to re-detain Petitioners were arbitrary  
22 and capricious in violation of the APA where the agency failed to  
23 contemporaneously—or ever—articulate any flight-risk or danger-based  
24 justifications for those decisions.

25 //  
26 //  
27 //  
28 //

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of the Fifth Amendment Substantive Due Process

1  
2  
3  
4 82. Petitioner realleges and incorporates by reference each and every  
5 allegation contained above.

6 83. The Due Process Clause of the Fifth Amendment forbids the  
7 government from depriving any person of liberty without due process of law. U.S.  
8 Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas*, 533  
9 U.S. 678; *Demore v. Kim*, 538 U.S. 510 (2003).

10 84. “The Due Process Clause applies to all ‘persons’ within the United  
11 States, including [noncitizens], whether their presence here is lawful, unlawful,  
12 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

13 85. “Freedom from imprisonment—from government custody, detention,  
14 or other forms of physical restraint—lies at the heart of the liberty that Clause  
15 protects.” *Id.* at 690.

16 86. Immigration detention only comports with Due Process when it  
17 furthers the government’s goals of “ensuring the appearance of [noncitizens] at  
18 future immigration proceedings and preventing danger to the community.” *Id.*  
19 (cleaned up).

20 87. Immigration detention that does not serve the legitimate government  
21 purposes of preventing flight or mitigating danger violates substantive Due  
22 Process. *Id.*

23 88. Immigration detention pursuant to a blanket policy under which ICE  
24 claims authority to arrest and detain all noncitizens who it alleges are not lawfully  
25 present in the United States, without regard for whether they are a flight risk or  
26 danger—whether for deterrence, to satisfy a quota, or for other purposes that do  
27 not bear a reasonable relation to preventing danger or flight risk—violates the  
28 Due Process Clause. *Id.*; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

1 89. Petitioner's detention violates the Due Process Clause because it is not  
2 rationally related to any legitimate government purpose.

3 **SECOND CAUSE OF ACTION**  
4 **Violation of the Fifth Amendment Procedural Due Process**

5 90. Petitioner realleges and incorporates by reference each and every  
6 allegation contained above.

7 91. "In the context of immigration detention, it is well-settled that due  
8 process requires adequate procedural protections to ensure that the government's  
9 asserted justification for physical confinement outweighs the individual's  
10 constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872  
11 F.3d at 990 (cleaned up).

12 92. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate  
13 procedural Due Process by balancing 1) the private interest affected; 2) the risk of  
14 erroneous deprivation of such interest; and 3) the government's interest. *Id.* at  
15 335.

16 93. Immigration detention always implicates the liberty interest in  
17 "freedom from imprisonment." *Zadvydas*, 533 U.S. at 690. In addition, when the  
18 government releases someone, they retain a liberty interest in their on-going  
19 release from government custody. *Morrissey*, 408 U.S. at 482; *Alegria Palma*, No.  
20 25-cv-1942-BJC-MMP at \*6; *Sanchez*, 2025 WL 2770629 at \*3.

21 94. Where a detained individual does not receive any pre-deprivation  
22 hearing, "the risk of an erroneous deprivation of liberty is high because neither  
23 the government nor [the petitioner] has had an opportunity to determine whether  
24 there is any valid basis for her detention." *Pinchi*, 792 F. Supp 3d at 1035  
25 (cleaned up); *Alegria Palma*, No. 25-cv-1942-BJC-MMP at \*6 ("Given that  
26 Petitioner was previously released following a determination that he posed no  
27 flight risk or danger to the community, and absent any new evidence showing a  
28

1 material change in circumstances, the risk of erroneous detention without a  
2 hearing is substantial.”).

3 95. The government can claim no interest in re-detention where there are  
4 no changed circumstances going to flight risk or danger that warrant re-detention.  
5 *See Pinchi*, 792 F. Supp 3d at 1035. Thus, a fair process for proving the existence  
6 of such changed circumstances satisfies any government interest in re-detention.

7 96. Because the government has not afforded Petitioner a pre-deprivation  
8 hearing to determine whether changed circumstances going to flight risk or  
9 danger warrant his re-detention, his detention violates procedural Due Process.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Violation of Immigration and Nationality Act – 8 U.S.C. § 1226(a)**

12 97. Petitioner realleges and incorporates by reference each and every  
13 allegation contained above.

14 98. Petitioner was re-detained in the interior of the country at his ICE  
15 check-in appointment and thus is currently detained under 8 U.S.C. § 1226(a).

16 99. Detention under 8 U.S.C. § 1226(a) must serve a legitimate  
17 government purpose of mitigating danger or preventing flight. *See Zadvydas*, 533  
18 U.S. at 690; 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

19 100. Petitioner’s prior release by DHS necessarily reflects a determination  
20 he is neither a flight risk nor a danger to the community. 8 C.F.R. § 1236.1(c)(8)  
21 (outlining requirements for release on recognizance); 8 C.F.R. § 212.5(b)  
22 (outlining requirements for parole).

23 101. Thus, his re-detention pursuant to 8 U.S.C. § 1226(a) requires an  
24 individualized determination of a material change in circumstances going to flight  
25 risk or danger for his re-detention to serve a regulatory purpose.

26 102. Petitioner’s re-detention violates the INA, where he was not afforded  
27 an individualized determination of a material change in circumstances related to  
28 flight risk or danger justifying re-detention.

1 **FOURTH CAUSE OF ACTION**  
2 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**  
3 **(unlawful agency action)**

4 103. Petitioner realleges and incorporates by reference each and every  
5 allegation contained above.

6 104. The APA provides that a “reviewing court shall . . . hold unlawful and  
7 set aside agency action, findings, and conclusions found to be . . . not in  
8 accordance with law,” “contrary to constitutional right, power, privilege, or  
9 immunity,” and “in excess of statutory jurisdiction, authority, or limitation.” 5  
10 U.S.C. §§ 706(2)(A)–(C).

11 105. ICE has re-detained Petitioner pursuant to a blanket policy under  
12 which ICE’s San Diego Field Office claims authority to arrest and detain all  
13 noncitizens who it alleges are not lawfully present in the United States, without  
14 regard for whether they are a flight risk or danger.

15 106. Because re-detentions pursuant to Respondents’ policy violate  
16 Petitioner’s rights under the Due Process Clause of the Fifth Amendment and the  
17 INA, the policy additionally violates the APA as it is not in accordance with law, is  
18 contrary to constitutional right, and is in excess of statutory jurisdiction. *Id.*

19 **FIFTH CAUSE OF ACTION**  
20 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**  
21 **(arbitrary and capricious agency action)**

22 107. Petitioner realleges and incorporates by reference each and every  
23 allegation contained above.

24 108. The APA provides that a “reviewing court shall . . . hold unlawful and  
25 set aside agency action, findings, and conclusions found to be . . . arbitrary and  
26 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5  
27 U.S.C. §§ 706(2)(A)–(C).  
28

1 109. ICE's decisions to re-detain Petitioner constitutes final agency action  
2 where they mark the "consummation" of agency decision making and are actions  
3 "by which rights or obligations have been determined, or from which legal  
4 consequences will flow." *Bennett*, 520 U.S. at 178.

5 110. Because ICE has failed to articulate contemporaneous rational  
6 explanation for its decision to re-detain Petitioner at an ICE check-in without a  
7 pre-detention hearing, and because it cannot provide a post-hoc rationalization  
8 for this decision, it is arbitrary and capricious in violation of the APA. *Motor*  
9 *Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43  
10 (1983); *Regents*, 591 U.S. at 21.

11 111. Additionally, ICE's policy pursuant to which ICE's San Diego Field  
12 Office claims authority to arrest and detain all noncitizens who it alleges are not  
13 lawfully present in the United States, without regard for whether they are a flight  
14 risk or danger, is arbitrary and capricious in violation of the APA because it fails to  
15 "articulate a satisfactory explanation for its action including a rational connection  
16 between the facts found and the choice made." *State Farm*, 463 U.S. at 43.

17 **PRAYER FOR RELIEF**

18 Petitioner asks this Court to grant the following relief:

- 19 1. Assume jurisdiction over this matter;
- 20 2. Order Respondents to show cause why the writ should not be granted  
21 as to Petitioner within three days, and set a hearing on this Petition within five  
22 days of the return, as required by 28 U.S.C. 2243;
- 23 3. Enjoin Respondents from transferring Petitioner out of the jurisdiction  
24 during the pendency of the habeas petition;
- 25 4. Issue a writ of habeas corpus requiring that Respondents release  
26 Petitioner under the same conditions as his initial release;
- 27 5. Order Respondents to return all of Petitioner's belongings, including  
28 his identification documents;

1           6. Issue a temporary restraining order and preliminary injunction  
2 ordering Petitioner's release and enjoining Respondents from further detaining  
3 him without providing notice to the Court and Petitioner's counsel, and a hearing  
4 at which Respondents prove changed circumstances regarding his dangerousness  
5 or risk of flight warrant his detention;

6           7. Declare that Petitioner's detention violates the Due Process Clause of  
7 the Fifth Amendment, the INA, and the APA;

8           8. Set aside Respondents' unlawful practice pursuant to 5 U.S.C.  
9 § 706(2) as contrary to law, contrary to constitutional right, and in excess of  
10 statutory authority; and

11           9. Grant such further relief as this Court deems just and proper.

12  
13  
14 Dated: December 24, 2025

Respectfully submitted,

15  
16 By: /s/ Arwa J.Z. Kakavand  
17 Arwa J.Z. Kakavand

18 Pro Bono Attorney for Petitioner

19 **TABLE OF EXHIBITS**

20  
21 Exhibit 1: Petitioner Francisco Carlos Romero Diaz's Declaration  
22 Exhibit 2: EOIR Verification Letter, Case Closed as a Failure to  
23 Prosecute, dated May 14, 2024  
24 Exhibit 3: ICE Check-in Letter, dated September 18, 2025  
25 Exhibit 4: DHS Form I-200, Warrant for Arrest of Alien, dated  
26 October 16, 2025  
27 Exhibit 5: USCIS Memorandum to EOIR Regarding I-589  
28 Forwarding, dated October 30, 2025