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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **FRESNO DIVISION**

12 JHON JADER BORNACHERA FLOREZ

13 *Petitioner,*

14
15 v.

16 Timothy S. ROBBINS, Field Office Director of the
17 Los Angeles Field Office of U.S. Immigration and
18 Customs enforcement; Todd M. LYONS, Acting
19 Director of U.S. Immigration and Customs
20 Enforcement; U.S. DEPARTMENT OF
21 HOMELAND SECURITY, Kristi NOEM,
22 Secretary of the U.S. Department of Homeland
23 Security, Christopher CHESTNUT, Warden,
24 California City Corrections Center, and Pamela
25 BONDI, Attorney General of the United States

26 *Respondents,*

Case No. 25-1311

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §2241**

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Petitioner Jhon Jader Bornachera Florez (“Petitioner”) is an asylum seeker who fled Colombia. After Petitioner arrived in the United States on December 6, 2024, federal agents briefly detained him. After performing a credible fear interview and also determining that Petitioner was not a flight risk or danger to the community, they proceeded with releasing Petitioner on his own recognizance with a Notice to Appear for removal proceedings with the Immigration Court. Since then, Petitioner has done everything the government expected and asked him to do, including complying with all terms of his monitoring program, which includes sending pictures of himself to ICE on a monthly basis, agreeing to present himself at the ICE field office in person whenever instructed, and maintaining ICE informed of his whereabouts. In addition, Petitioner has no criminal history anywhere in the world. Until the time of his detention by Respondents, Petitioner already had filed an asylum application on his own, and he was the process of retaining the services of an immigration attorney in order to represent him with the immigration court. Until the time of his detention, Petitioner had a Master Calendar hearing scheduled with the San Francisco Immigration Court.

2. On October 30, 2025, and pursuant to a notification received merely three days before, Petitioner appeared for what he believed would be a routine in-person check-in at the ICE Field Office located at 630 Sansome Street, in San Francisco, California, in order to present himself to his monitoring officer, but he was promptly arrested by ICE officers, who alleged he had violated the terms of her Supervision Appearance Program. Prior to that date, Petitioner had taken and sent to ICE basically all of his selfie-pictures as directed at the scheduled date and time, and he always provided updates about his new address. During the monitoring process, in one occasion on July 15, 2025, Petitioner was late in taking a selfie-picture by one day due to the fact that at the scheduled day and time to take the picture, Petitioner was helping his sisters with moving to a new address. Still, as soon as Petitioner received a notification by phone from ICE the next day, he proceeded with taking and sending a selfie-picture immediately. Still, Petitioner always kept ICE informed about his whereabouts, including informing them about the July 15, 2025 move to his new address.

3. When Petitioner asked for the specific facts and proof supporting the allegation, the ICE officer

1 failed to provide any information, other than saying Petitioner had violated a number of unspecified
2 immigration laws, and after taking all of Petitioner's documents away from him, the ICE officer
3 mentioned to Petitioner ICE had orders to arrest everyone who was called to check-in with them.
4 Petitioner tried to explain that the only thing he believed he might have done wrong in regards to any
5 violations was being late with taking a selfie-picture by one day. Still, the ICE officers proceeded with
6 arresting him. On the same day, Petitioner was transferred to the California City Detention Center, in
7 California City, California.

8 4. Before re-detaining him, Respondent did not provide Petitioner with any written notice
9 Explaining the basis for the revocation of his release. Nor did they provide a hearing before a neutral
10 decisionmaker where ICE was required to justify the basis for re-detention or explain why Petitioner is a
11 flight risk or danger to the community.

12 5. A number of courts have held that due process demands such a hearing before the government's
13 Decision to terminate a person's liberty. (See *E.A. T.-B. v. Wamsley*, --- F.Supp. 3d --- No. C25-1192-
14 KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025.); also see *Labrador-Prato v. Noem*, No. 1:25-
15 CV-01598-DC-SCR (HC), 2025 U.S. Dist. LEXIS 235061 *, 2025 LX 502252, 2025 WL 3458802)
16 (E.D. Cal. Dec. 2, 2025); also see *Vilela v. Robbins*, No. 1:25-CV-01393-KES-HBK (HC), 2025 U.S.
17 Dist. LEXIS 219172 *, 2025 LX 474205 (E.D. Cal. Nov. 6, 2025).)

18 6. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional right
19 to due process. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and
20 order her immediate release. (See *E.A.T.-B.*, 2025 WL 2402130, at 6 *) (ordering immediate release
21 because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after
22 the fact and cannot prevent an erroneous deprivation of liberty."); *Vilela*, 2025 LX 474205, at *19-20
23 ("Petitioner's immediate release is required to return her to the status quo ante").)

24 JURISDICTION AND VENUE

25 7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
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28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

10. Habeas corpus is perhaps the most important writ known to the constitutional law... affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” (*Fay v. Noia*, 372 U.S. 391, 400 (1963).) “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” (*Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.”).

11. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he is in Respondents’ custody at California City Detention Facility.

PARTIES

12. Petitioner is a 26-year-old asylum seeker from Colombia. He has a pending case with the Adelanto Immigration Court¹, and has no criminal history. He is presently in civil immigration detention at the California City Correctional Center, in California City, California.

¹ Following his detention and transfer to the California City Detention Center, his case was transferred to the Adelanto Immigration Court. He has master calendar hearing scheduled for January 13, 2026. Prior to that, he initially had a case with the San Francisco Immigration Court.

1 13. Respondent Timothy S. Robbins is the Acting Field Office Director of the Los Angeles
2 ICE Field Office. In this capacity, he is responsible for the administration of immigration laws
3 and the execution of immigration enforcement and detention policy within ICE's Los Angeles
4 Area of Responsibility, including the detention of Petitioner. Respondent Robbins maintains an
5 office and regularly conducts business in this district. Respondent Robbins is sued in his official
6 capacity.

7 14. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
8 Performing the Duties of the Director of ICE, he is responsible for the administration and
9 enforcement of the immigration laws of the United States; routinely transacts business in this
10 District; and is legally responsible for pursuing any effort to detain and remove the Petitioner.
11 Respondent Lyons is sued in his official capacity.

12 15. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate
13 authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority
14 over and responsibility for the operation and enforcement of the immigration laws; routinely
15 transacts business in this District; and is legally responsible for pursuing any effort to detain and
16 remove the Petitioner. Respondent Noem is sued in her official capacity.

17 16. Respondent Christopher Chestnut is employed by the private corporation, CoreCivic, Inc., as the
18 Warden of the California City Corrections Center, where Petitioner is detained. He has immediate
19 physical custody of Petitioner. He is sued in his official capacity.

20 17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for
21 implementing and enforcing the INA, including the detention and removal of noncitizens.

22 18. Respondent Pamela Bondi is the Attorney General of the United States and the most
23 senior official at the Department of Justice. In that capacity and through her agents, she is
24 responsible for overseeing the implementation and enforcement of the federal immigration laws.
25 The Attorney General delegates this responsibility to the Executive Office for Immigration
26 Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her official
27 capacity.

EXHAUSTION

19. There is no requirement to exhaust because no other forum exists in which Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the constitutionality of an arrest or detention, or challenging a policy under the Administrative Procedure Act. Prudential exhaustion is not required here because it would be futile, and Petitioner will “suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim.” (*McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).) Any further exhaustion requirements would be unreasonable.

FACTUAL BACKGROUND

20. Petitioner is a 26-year-old citizen and national of Colombia.

21. Petitioner fled Colombia to seek asylum and related protections from persecution and torture in the United States. He fled Colombia on his own due to a series of threats and acts of persecution against him due to his sexual orientation.

22. On or about December 6, 2024, Petitioner arrived in the United States to seek asylum. That same day, Respondents arrested and detained Petitioner.

23. In or around December 20, 2024, Petitioner underwent a Credible Fear Interview. Following a determination by an asylum officer that Petitioner had established a credible fear of persecution on December 23, 2024, Respondent DHS paroled and released Petitioner from its custody into the United States under 8 U.S.C. § 1182(d)(5) on December 26, 2024. As a condition of Petitioner’s release, he was required to enroll in the Intensive Supervision Appearance Program (ISAP), a program operated by a private contractor that ICE uses to monitor released noncitizens. On that same day, DHS officials provided Petitioner with a Notice of Custody Determination (DHS Form I-286), stating that Petitioner was being released pursuant to section 236 of the Naturalization and Nationality Act. DHS officials also provided him with an Interim Notice Authorizing Parole. In addition, DHS officials also provided Petitioner with a Notice to Appear in Immigration Court (DHS Form I-862). The Notice to Appear stated that Petitioner would be appearing for a Master Calendar Hearing with the San Francisco Immigration Court, on a February 26, 2025. The same document also stated that the Notice to Appear

1 was being issued after an asylum officer had found that Petitioner had demonstrated a credible fear of
2 persecution or torture. In addition, the Notice to Appear also stated that the Section 235(b)(1) order was
3 vacated pursuant to 8 CFR § 208.30.

4 24. On December 26, 2024, Petitioner was released from DHS' custody. At the time of his release,
5 after Petitioner informed the ICE officers he would be relocating to Oakland, California to live his his
6 sister, Johanna Yiceth Bornachera Florez, immigration officials instructed Petitioner to present himself
7 to the ICE Field Office in San Francisco in early January 2025. They also placed an ankle monitor on
8 Petitioner.

9 25. In or around January 6, 2025, pursuant to the instructions provided to him by ICE, Petitioner
10 appeared at the ICE San Francisco field office for his check-in visit, where ICE officials conducted an
11 interview. After the interview, Petitioner was instructed to return for another in-person check-in visit on
12 December 18, 2025. In addition, the ICE officers removed Petitioner's ankle monitor and provided him
13 with a monitoring app. The ICE officers instructed Petitioner to send selfie-pictures to ICE once a
14 month, whenever ICE sent an alert to Petitioner on his cell phone monitoring app.

15 26. Although Petitioner expected to appear at his scheduled Master Calendar hearing of February
16 26, 2025, he was notified in that same day that his Master Calendar hearing had been rescheduled for
17 August 5, 2025. Prior to August 5, 2025, Petitioner was once again informed that his Master Calendar
18 Hearing was rescheduled once again to May 26, 2026.

19 27. Knowing that he had one year from the date of his entry into the United States in which to file
20 an asylum application, Petitioner retained the services of a legal provides, who proceeded with preparing
21 an asylum application for Petitioner. In or around June or July 2025, Petitioner filed the asylum
22 application with the San Francisco Immigration Court.

23 27. Between Petitioner's release from detention on December 26, 2024, and October 30, 2025,
24 Petitioner continued living his life. Petitioner's sister introduced him to many of her friends, and they
25 attended services at Sain Mary's Catholic church on most Sundays. Due to the fact Petitioner had no
26 employment authorization permit, Petitioner spent his time helping his sister by cleaning their residence
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1 and cooking while she was at work. In addition, Petitioner started taking English classes at an adult
2 school.

3 28. To the best of his knowledge, Petitioner complied with all of his monitoring requirements
4 during the ten months following his release. These requirements included selfie-photo check-ins through
5 the ISAP mobile phone application (ISAP app). Petitioner submitted a photo via the app every time he
6 was instructed via text to do so. Petitioner was informed he was expected to send a selfie-picture on a
7 monthly basis. He also had been notified that he was to appear for his in-person check-in visits at the
8 ICE San Francisco field office on December 18, 2025.

9 29. Unfortunately, during the monitoring process, on one occasion on July 15, 2025, Petitioner was
10 late in taking a selfie-picture by one day due to the fact that at the scheduled day and time to take the
11 picture, Petitioner was helping his sisters with moving from Oakland to a new address in Walnut Creek ,
12 California. At the time the alert text was sent, Petitioner had left his cell phone at their old address.
13 When Petitioner picked up his cell phone during the evening, he did not see that a text message by ICE
14 had been sent. Still, as soon as Petitioner received a notification by phone from ICE the next day, he
15 proceeded with taking and sending a selfie-picture immediately. He also informed ICE about his new
16 address.

17 30. Following that episode, Petitioner continued living his life. Although Petitioner initially had not
18 sought employment due to the lack of an employment authorization document, Petitioner was aware that
19 he needed to start making money, not only to help his sister with the household expenses; but also save
20 money to hire an immigration attorney to represent him in immigration court. Therefore, in early
21 October 2025, Petitioner borrowed some money from his sister and started his own business, where he
22 sold clothes through social media.

23 31. On October 27, 2025, Petitioner received a notification from ICE through his phone app,
24 instructing him to appear at the ICE field office in San Francisco for an in-person check-in visit. On
25 October 30, 2025, Petitioner presented himself at the ICE Field Office in San Francisco for what he
26 believed would be a routine visit, but he was promptly detained by ICE officers. When Petitioner asked
27 for the specific facts and reason for the arrest, the only information provided by the ICE officer was that
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Petitioner had violated a number of immigration laws. When Petitioner asked for more specific facts and evidence in support of the ICE officer's claim, the ICE official did not respond. Instead, she told him that they had orders to arrest everyone who came to see them at their office. Desperate for what was about to happen, Petitioner tried to explain that the only thing he believed he might have done wrong in regards to any violations was being late with taking a selfie-picture by one day. Still, the ICE officers proceeded with arresting him. On the same day, Petitioner was transferred to the California City Detention Center, in California City, California.

32. Prior to Petitioner's re-detention, she did not receive written notice of the reason for her re-detention.

33. Prior to Petitioner's re-detention, ICE did not provide notice of the revocation of his parole, as required by 8 C.F.R. § 212.5(e)(2).

34. Prior to Petitioner's re-detention, he never received a hearing before a neutral decisionmaker to determine if her re-detention is justified.

LEGAL BACKGROUND

35. Under current caselaw that governs the immigration court system, the mandatory detention scheme under 8 U.S.C. § 1225(b)(1) applies to individuals who are placed in expedited removal proceedings, pass a CFI, and are subsequently placed in removal proceedings. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).) Such individuals are subject to detention without any bond hearing until the conclusion of their proceedings unless DHS releases them on parole. (See *Id.* at 510, 518–19.)

36. However, once released, due process requires that a person like Petitioner receive a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community.

37. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) As a number of District Courts recently recognized, this is the "the most elemental of liberty interests." (*E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *3.) They also have recognized that these protections extend to all persons in the United States, including aliens, whether

1 their presence is lawful, unlawful temporary, or permanent. *Labrador-Prato*, 2025 U.S. Dist. LEXIS
2 235061, at *11 (Citing *Wong Wing v. U.S.S.* 228, 238, 16 S. Ct. 977, 41 D. Ed. 140 (1896)).)

3 38. Consistent with this principle, individuals released on parole or other forms of conditional
4 release have a liberty interest in their “continued liberty.” (*Morrissey v. Brewer*, 408 U.S. 471, 482
5 (1972).)

6 39. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it]
7 includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and
8 live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on
9 others.” (Id.)

10 40. To guarantee against arbitrary re-detention and to guarantee the right to liberty, due process
11 requires “adequate procedural protections” that ensure the government’s asserted justification for a
12 noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in
13 avoiding physical restraint.” (*Zadvydas*, 533 U.S. at 690 (citation modified)).

14 41. Due process thus guarantees notice and an individualized hearing before a neutral
15 decisionmaker to assess danger or flight risk before the revocation of an individual’s release. (*Goldberg*
16 *v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity
17 to be heard . . . at a meaningful time in a meaningful manner.” (citation modified)); *see also, e.g.*,
18 *Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine whether there is probable cause
19 or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole
20 conditions” and that such determination be made “by someone not directly involved in the case”
21 (citation modified)).

22 42. Several courts have recognized that these principles apply with respect to the re-detention of the
23 many noncitizens that DHS has recently begun taking back into custody, often after such persons have
24 been released for months and years.

25 43. For example, in *E.A. T.-B.*, the Federal Court for the Western District of Washington applied the
26 *Mathews v. Eldridge*, 424 U.S. 319 (1976), framework to hold that even in a case where the government
27 argued mandatory detention applied, a person’s re-detention required a hearing.

44. In applying the three *Mathews* factors, the Court held that the petitioner had “undoubtedly [been] deprive[d] . . . of an established interest in his liberty,” (*E.A. T.-B.*, 2025 WL 2402130, at *3), which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The Court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. (*Id.* at *4–5.) Finally, the Court explained that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” (*Id.* at *5.) As a result, this Court ordered the petitioner’s immediate release. (*Id.* at *6.)

45. The decision in *E.A. T.-B.* is consistent with many other district court decisions addressing similar situations. (See, e.g. *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

46. The same framework and principles apply here and compel Petitioner’s immediate release.

CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

47. Petitioner restates and realleges all paragraphs as if fully set forth here.

48. Due process does not permit the government to strip Petitioner of her liberty without written notice and a hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. (See *Morrissey*, 408 U.S. at 487–88.) Such written notice and a hearing must occur *prior* to any re-detention.

49. Respondents revoked Petitioner's release and deprived him of liberty without affording him any written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

50. Accordingly, Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause within three days as to why this Petition should not be granted as required by 28 U.S.C. § 2243;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately and permanently enjoining her re-detention absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that he is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;
- (4) Declare that Petitioner's detention without an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;
- (5) Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

DATE: 12/17/2025

/S/ Jose F. Vergara

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