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**Application for pro hac vice admission forthcoming*

Attorneys for Petitioner

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Marcos Antonio Aguilar Rodriguez

Petitioner,

v.

Christopher Howard, Warden, Eloy
Detention Center; Christopher
McGregor, Phoenix Field Office
Director, U.S. Immigration and Customs
Enforcement; Todd Lyons, Acting
Director, U.S. Customs and Immigration
Enforcement; Kristi Noem, Secretary,
Department of Homeland Security; and
Pamela Bondi, Attorney General of the
United States,

Respondents.

Case No.

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
AND COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Petitioner Marcos Antonio Aguilar Rodriguez (“Petitioner” or “Mr.
3 Aguilar”) asks this Court to order his release from Immigration and Customs Enforcement
4 (“ICE”) custody at the Eloy Detention Center. Mr. Aguilar previously spent nearly six
5 years beginning in the summer of 2011 through 2017 detained in Eloy, a prison-like
6 detention center in the remote desert between Phoenix and Tucson. Even though
7 immigration judges repeatedly affirmed his release on bond, ultimately culminating in a
8 \$20,000 bond in his case, Mr. Aguilar initially had no way to pay it. He pursued relief
9 from removal without a lawyer for years, eventually obtaining pro bono counsel in
10 approximately 2017. That same year, Mr. Aguilar’s pro bono counsel connected him with
11 a community bond fund, which posted the \$20,000 bond for him. ICE released Mr.
12 Aguilar and he thrived in the Phoenix area: he continued to diligently pursue his defense
13 to removal and re-built a life for himself with meaningful work, and a small but tight-knit
14 community.
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17 2. But in June of 2025, after the Board of Immigration Appeals (“BIA”)
18 dismissed Mr. Aguilar’s removal proceedings after granting a motion by the Department
19 of Homeland Security (“DHS”) for dismissal on the basis of prosecutorial discretion, and
20 even though there was no change in circumstances in Mr. Aguilar’s situation – and in
21 fact, bond equities in his favor have only strengthened – ICE picked Mr. Aguilar up on
22 his way to work and re-detained him at the Eloy Detention Center.
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1 3. Following his re-detention, Mr. Aguilar requested bond from an
2 immigration judge. DHS argued that the immigration judge did not have jurisdiction to
3 consider whether Mr. Aguilar could be released from ICE custody, and that Mr. Aguilar
4 was a danger to the community based on his former gang membership as a boy in El
5 Salvador nearly 35 years ago, an argument it had made in four prior bond hearings
6 conducted in Mr. Aguilar’s case that immigration judges declined to accept. The
7 immigration judge disagreed with DHS on jurisdiction, conducted a bond hearing, and,
8 in contravention to two different immigration judges’ prior findings, deemed Mr. Aguilar
9 a danger to the community based on DHS’s representation of prior gang membership, and
10 denied bond. DHS pointed to no new information.

11
12 4. Subsequently, the BIA issued a precedential decision, *Matter of Hurtado*,
13 29 I&N Dec. 216 (BIA 2025), in which it held that individuals in Mr. Aguilar’s posture
14 – who are present without admission in the United States, regardless of how long they
15 have lived in the country – are categorically ineligible for bond, rendering any appeal of
16 bond in Mr. Aguilar’s case futile. The BIA’s decision in *Hurtado* reverses decades of
17 statutory interpretation and agency practice that recognized bond eligibility for this
18 population. Various federal courts around the country have rejected *Hurtado*. The Central
19 District of California has recently certified a nationwide class declaring that individuals
20 in Mr. Aguilar’s posture are indeed eligible for bond under 8 U.S.C. § 1226(a).

21
22 5. Mr. Aguilar brings this claim before the Court to challenge his unlawful
23 detention under the immigration statute, the Administrative Procedure Act (“APA”), and
24

1 the U.S. Constitution. An immigration judge determined that Mr. Aguilar was not a
2 danger or a flight risk nearly one decade ago, a finding repeatedly upheld over four
3 subsequent bond hearings, based on the same facts that DHS presented at Mr. Aguilar's
4 bond hearing in August of 2025. [REDACTED]

5 [REDACTED]
6 [REDACTED] There has been no material change in circumstances to alter the
7 immigration judge's findings. Rather, Mr. Aguilar's dangerousness and risk of flight have
8 only lessened over the past decade-and-a-half as his defense to removal and ties to the
9 community have strengthened and he has lived for years without any encounters with law
10 enforcement. As such, Mr. Aguilar's detention contravenes 8 U.S.C. § 1226(a).

11 6. The immigration judge's recent finding that Mr. Aguilar is a danger based
12 on the same set of facts – which have not changed – repeatedly presented by DHS and
13 rejected by other immigration judges resulted in the setting of a bond nearly fifteen years
14 ago and affirmed at various times throughout Mr. Aguilar's proceedings, which Mr.
15 Aguilar posted to gain his freedom, is further contrary to law and the constitution, and
16 arbitrary and capricious under the APA.
17

18 7. Mr. Aguilar's re-arrest and re-detention by ICE without justification is also
19 in violation of the Due Process Clause of the Fifth Amendment. It is well established that
20 Mr. Aguilar has a liberty interest in his current freedom, and that the Due Process Clause
21 mandates that immigration detention serves a legitimate purpose: to mitigate flight risk
22 and prevent danger to the community. Neither of those purposes are served by Mr.
23 Aguilar's detention, given various immigration judge determinations spanning nearly six
24

1 years over one decade ago that Mr. Aguilar was neither a danger or a flight risk such as
2 to preclude bond in his case, and there is no material change in circumstances that alters
3 those findings. Moreover, Mr. Aguilar's detention is punitive in nature, where it is
4 unjustified and there are alternative means, such as the existing \$20,000 bond that he
5 posted in 2017, to safeguard the government's interests. As such, Mr. Aguilar's civil
6 detention is in violation of substantive due process.
7

8 8. Due process requires that Mr. Aguilar be immediately released from
9 custody. If DHS wants to argue that a material change in circumstances has occurred such
10 that the terms of Mr. Aguilar's release should be modified in some way, the Court should
11 find that procedural due process requires DHS to justify Mr. Aguilar's detention before a
12 neutral arbiter while Mr. Aguilar remains at liberty. Further, the Court should declare that
13 facts argued and adjudicated by Respondents throughout the first six years of Mr.
14 Aguilar's immigration detention, namely, his childhood gang membership from over 35
15 years ago, cannot be repurposed to now constitute a material change and render him a
16 danger to the community.
17

18 9. Habeas corpus is "perhaps the most important writ known to the
19 constitutional law . . . affording as it does a swift and imperative remedy in all cases of
20 illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
21 "The application for the writ usurps the attention and displaces the calendar of the judge
22 or justice who entertains it and receives prompt action from him within the four corners
23 of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted);
24

1 *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus
2 is “a speedy remedy, entitled by statute to special, preferential consideration to insure
3 expeditious hearing and determination.”).

4 10. For these reasons, Mr. Aguilar asks this Court to grant his petition and order
5 his immediate release swiftly and end his unlawful civil detention as soon as possible.
6

7 JURISDICTION AND VENUE

8 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331,
9 since this Petition arises under the Constitution and laws of the United States, namely the
10 detention provisions of the Immigration and Nationality Act, 8 U.S.C. § 1226; the
11 Administrative Procedure Act (“APA”); the habeas corpus statute, 28 U.S.C. § 2241; and
12 the Due Process Clause of the Fifth Amendment.

13 12. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C.
14 § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs
15 Act, 28 U.S.C. § 1651; and the Court’s inherent equitable powers.
16

17 13. Federal district courts have jurisdiction to hear habeas claims by
18 noncitizens challenging the lawfulness of their detention. *Zadvydas v. Davis*, 533 U.S.
19 678, 687 (2001).

20 14. Federal courts also have federal question jurisdiction, through the APA, to
21 “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of
22 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Courts may
23 also set agency actions and findings that are “contrary to constitutional right, power,
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1 privilege, or immunity,” 5 U.S.C. § 706(2)(B), and “without observance of procedure
2 required by law,” 5 U.S.C. § 706(2)(D). APA claims are cognizable via habeas. 5 U.S.C.
3 § 703 (providing that judicial review of agency action under the APA may proceed by
4 “any applicable form of legal action, including actions for declaratory judgments or writs
5 of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of
6 review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. §
7 702. Respondents’ continued detention of Mr. Aguilar has adversely and severely affected
8 his liberty.

10 15. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28
11 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained in the
12 Eloy Detention Center in Eloy, Arizona, within the jurisdiction of this Court; a substantial
13 part of the events and omissions giving rise to the claim occurred in this district;
14 Respondents McGregor and Howard reside in this district; and Respondents are officers
15 of the United States acting in their official capacity.

17 16. Exhaustion of administrative remedies is not required because it would be
18 futile.

19 **PARTIES**

20 17. Mr. Aguilar is an asylum-seeker from El Salvador who Respondents detain
21 without justification at the Eloy Detention Center in Eloy, Arizona.

22 18. Respondent Christopher Howard is the Warden of the Eloy Detention
23 Center, which detains individuals suspected of civil immigration violations pursuant to a
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1 contract with Immigration and Customs Enforcement (ICE). Respondent Howard is the
2 immediate physical custodian responsible for the detention of Petitioner. He is named in
3 his official capacity.

4 19. Respondent Christopher McGregor is the director of ICE's Phoenix Field
5 Office, which is responsible for ICE activities in Arizona and is responsible for the Eloy
6 Detention Center. Respondent McGregor's place of business is in the District of Arizona,
7 and he is an immediate legal custodian responsible for Petitioner's detention. He is named
8 in his official capacity.

9
10 20. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons
11 is responsible for ICE's policies, practices, and procedures, including those relating to
12 detention of immigrants during the removal process. Respondent Lyons is a legal
13 custodian of Petitioner. He is named in his official capacity.

14
15 21. Respondent Kristi Noem is the Secretary of the U.S. Department of
16 Homeland Security. She is named in her official capacity. In that capacity, Respondent
17 Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C.
18 § 1103.

19 22. Respondent Pamela J. Bondi is the Attorney General of the United States.
20 She is the head of the Department of Justice and oversees the Executive Office for
21 Immigration Review (EOIR), the administrative agency under which the immigration
22 courts and Board of Immigration Appeals (BIA) are housed. She is named in her official
23 capacity.
24

FACTUAL BACKGROUND

Mr. Aguilar's personal history

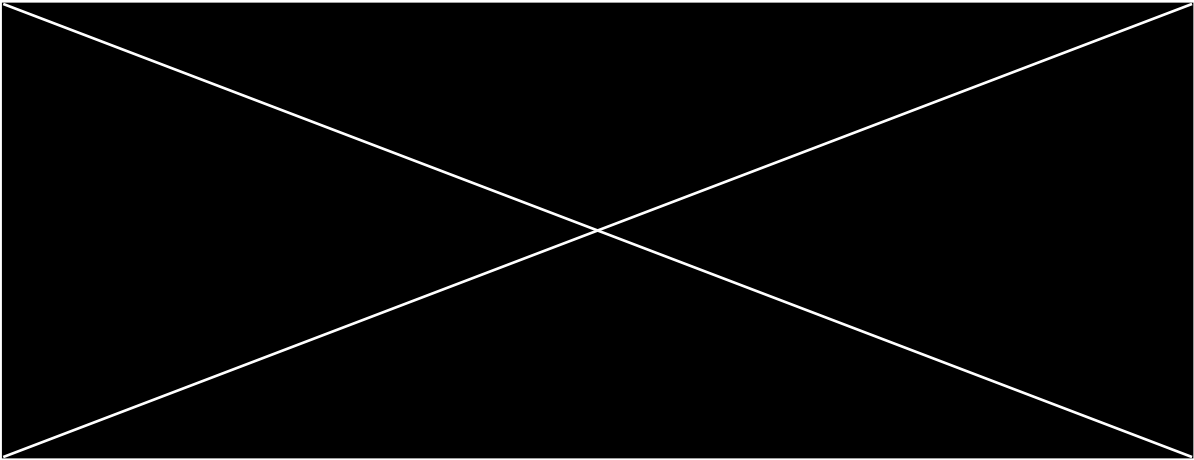
23. Mr. Aguilar was born in El Salvador in 1978. Ex. A, Declaration of Marcos Antonio Aguilar Ramirez. He grew up in impoverished circumstances. *Id.* His parents abandoned him as a child and left him in the care of his grandmother. *Id.*


24. When Mr. Aguilar was between 11 and 12 years old, approximately 35 years ago, [REDACTED]

[REDACTED]

[REDACTED]

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 and fearing for his life, Mr. Aguilar fled to the United States to seek safety. *Id.* He arrived in the U.S. in the early 2000's. Ex. A.

29. Mr. Aguilar endeavored to lead a peaceful, productive life once in the U.S. He began to work and maintained steady employment over the years.

30. In approximately 2007, he met his former partner, Alma. *Id.* Together, they had a U.S. citizen child, D.A.P. *Id.* Mr. Aguilar enjoyed a happy home life and being a father. *Id.*


31. In approximately the summer of 2011, Maricopa County police stopped Mr. Aguilar while Mr. Aguilar was driving. *Id.* At that time, the police charged Mr. Aguilar with driving under the influence as well as driving without a license. *Id.* Subsequently, the Maricopa authorities transferred Mr. Aguilar to ICE custody. *Id.* Mr. Aguilar would eventually plead guilty to driving on a suspended license (a Class 1 Misdemeanor), his only conviction in the United States, or anywhere. *Id.*


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1 **Mr. Aguilar's immigration proceedings**

2 32. ICE first served Mr. Aguilar with a Notice to Appear ("NTA"), initiating
3 removal proceedings under 8 U.S.C. § 1229a, on or about August 29, 2011, charging him
4 with being a noncitizen present in the United States without being admitted or paroled.
5 Ex. B. Concurrently, ICE detained Mr. Aguilar at the Eloy Detention Center. Ex. A.

6
7 33. At that time, DHS considered Mr. Aguilar eligible for bond under 8 U.S.C.
8 § 1226(a). An immigration judge originally granted Mr. Aguilar bond in the amount of
9 \$6000 on October 25, 2011, over 14 years ago. Ex. A. At that time, DHS raised Mr.
10 Aguilar's childhood  as a basis to deem Mr. Aguilar a danger to the
11 community. *Id.* The immigration judge acknowledged this fact in her decision but
12 nonetheless granted bond to Mr. Aguilar. *Id.* On information and belief, DHS did not
13 appeal the immigration judge's October 23, 2011 bond order.
14

15 34. During this time, Mr. Aguilar lost contact with his partner. Ex. A. Having
16 no one to post his bond, Mr. Aguilar proceeded to defend against removal while detained.
17 *Id.* While detained, Mr. Aguilar learned that he could request protection in the United
18 States based on the violence he had endured in El Salvador as a boy at the hands of the
19  and the Salvadoran police. *Id.*

20
21 35. Although Mr. Aguilar feared persecution and torture in El Salvador, he was
22 initially deemed ineligible for asylum under 8 U.S.C. § 1158(a) by the immigration court
23 because he had not applied for asylum within one year of entering the United States. As
24 such, Mr. Aguilar pursued withholding of removal under 8 U.S.C. § 1231(b)(3), as well
25

1 as under the Convention Against Torture. Mr. Aguilar initially represented himself in his
2 applications. *Id.*

3 36. An immigration judge first denied his applications for withholding and
4 CAT in approximately May of 2012. Ex. A, F. Mr. Aguilar appealed pro se to the Board
5 of Immigration Appeals. Ex. A. The BIA affirmed the immigration judge's denial and
6 Mr. Aguilar then appealed pro se to the Ninth Circuit Court of Appeals. Ex. A, F. The
7 Ninth Circuit granted Mr. Aguilar's petition in part, and remanded his case back to the
8 immigration agency in approximately June of 2014. *See Aguilar Rodriguez v. Holder*,
9 577 Fed. Appx. 648 (9th Cir. Jun. 9, 2014).
10

11 37. While Mr. Aguilar's case was initially pending at the Ninth Circuit, DHS
12 reviewed his custody status pursuant to *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir.
13 2008).¹ Ex. C. ICE determined that Mr. Aguilar could not be released at that time. *Id.* Mr.
14 Aguilar sought immigration judge review of that determination. At a bond hearing on
15 approximately November 29, 2012, the immigration judge again evaluated Mr. Aguilar's
16 dangerousness and flight risk factors and determined that Mr. Aguilar could be released
17 upon the posting of a bond. *Id.*
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20 ¹ *Casas-Castrillon* has since been abrogated by the Supreme Court's decision in *Jennings*
21 *v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Supreme Court rejected the Ninth
22 Circuit's previous holding that the immigration statute must be read to contain a temporal
23 limitation to avoid entanglement with the Constitution, and as such, required that the
24 government provide bond hearings to detained noncitizens at the 6-month point. *Jennings*,
25 583 U.S. at 298-301. That the Supreme Court rejected this legal theory does not alter the
analysis that the immigration judges undertook in assessing Mr. Aguilar's dangerousness
and flight risk factors in 2011, 2012 and again in 2017 and the bond decision falls within
the immigration judge's power to set a bond under 8 U.S.C. § 1226(a)(2).

1 38. In a written bond decision dated December 28, 2012, the immigration judge
2 addressed DHS's argument that Mr. Aguilar was a danger to the community based on Mr.
3 Aguilar's [REDACTED] *Id.* However, the immigration judge
4 credited Mr. Aguilar's testimony during the bond proceeding that Mr. Aguilar had been
5 [REDACTED] *Id.* The immigration judge
6 further noted DHS's concession that Mr. Aguilar had not been involved in any gang or
7 gang-related activities since arriving in the United States. *Id.*

9 39. Given these circumstances, the immigration judge determined that "a bond
10 in the amount of \$20,000 is reasonably calculated to ensure the respondent's appearance
11 at future proceedings." *Id.* Mr. Aguilar appealed the immigration judge's December 28,
12 2012 bond decision. Ex. F. On information and belief, DHS did not appeal the
13 immigration judge's decision. The BIA affirmed the immigration judge's December
14 2012 bond decision on February 12, 2013. *Id.* Mr. Aguilar was unable to post the bond at
15 that time. Ex. A.

17 40. Following the Ninth Circuit remand of his withholding and CAT
18 applications back to the immigration court, Mr. Aguilar again presented his claims pro
19 se. *Id.*; Ex. A. The immigration judge again denied his applications in approximately
20 March of 2015. Ex. A, Ex. F. Mr. Aguilar again appealed his case pro se to the BIA. Ex.
21 A, Ex. F. While his appeal was pending, Mr. Aguilar obtained pro bono counsel from the
22 National Immigrant Justice Center ("NIJC"). Ex. A. NIJC assisted him with his appeal
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1 and a motion to remand, based on new and material evidence that was not previously
2 available to Mr. Aguilar, who had been pro se up until that time. *Id.*

3 41. The BIA denied Mr. Aguilar's motion to remand and appeal of the
4 immigration judge's second denial of his claims on approximately July 30, 2015. Ex. A,
5 F. Mr. Aguilar, with the help of pro bono counsel, again appealed to the Ninth Circuit on
6 approximately August 10, 2015. Ex. A, Ex. F.
7

8 42. While Mr. Aguilar's case was pending for a second time at the Ninth
9 Circuit, he requested another bond hearing, via pro bono counsel, before the immigration
10 court pursuant to the Ninth Circuit's decision in *Rodriguez v. Robbins*, 804 F.3d 1060
11 (9th Cir. 2015).² Ex. D. The immigration court conducted another bond hearing on April
12 14, 2016. The immigration judge again determined that the \$20,000 bond was appropriate
13 to assuage flight risk. Mr. Aguilar again appealed to the BIA, which again upheld the
14 immigration judge's decision. On information and belief, DHS did not appeal the
15 immigration judge's April 14, 2016 bond decision.
16

17 43. Because his case was pending at the Ninth Circuit, Mr. Aguilar requested
18 bail before the Ninth Circuit in approximately October of 2016. Ex. F. The Ninth Circuit
19 found that it was without jurisdiction to consider granting bail to Mr. Aguilar. *Id.*
20

21 44. On February 23, 2017, Mr. Aguilar again requested a *Rodriguez* bond
22 hearing via pro bono counsel. *Id.*; *see also* Ex. D. In a written decision dated March 30,

23 ² *Rodriguez* has similarly been abrogated by *Jennings*. However, as noted supra n. 1, that
24 *Rodriguez* has been abrogated does not alter the immigration judge's analysis assessing
25 dangerousness and flight risk which resulted in the setting of a bond in Mr. Aguilar's
case.

1 2017, the immigration judge again determined that bond in the amount of \$20,000
2 remained appropriate. *Id.* The immigration judge reiterated that the amount was
3 “reasonably calculated” to ameliorate flight risk concerns. *Id.* On information and belief,
4 DHS did not appeal the immigration judge’s March 30, 2017 bond decision.

5
6 45. Subsequently, Mr. Aguilar’s pro bono counsel helped him connect with a
7 community organization, which posted the \$20,000 bond that had been pending in Mr.
8 Aguilar’s case for years. Ex. A. Mr. Aguilar’s bond was posted on approximately July 24,
9 2017, and ICE released Mr. Aguilar from its custody shortly thereafter. *Id.* Mr. Aguilar
10 had been in ICE custody for one month short of six years by that point.

11 46. After ICE released Mr. Aguilar, he searched for his former partner and his
12 daughter, finding them after a few months. *Id.* Initially, Mr. Aguilar and his partner
13 attempted to live together as a family. *Id.*

14
15 47. As a result, Mr. Aguilar pursued a new defense to removal on remand from
16 the Ninth Circuit to the immigration judge: cancellation of removal under 8 U.S.C. §
17 1229b(B). *Id.* Mr. Aguilar presented this claim, while renewing his claim for withholding
18 of removal under § 1231(b)(3) and under CAT. *Id.* In these remanded proceedings, Mr.
19 Aguilar was represented by pro bono counsel. *Id.*

20
21 48. The immigration judge again denied all of Mr. Aguilar’s applications in
22 October 2018. *Id.* Mr. Aguilar again appealed to the BIA. *Id.*

23 49. While Mr. Aguilar’s appeal was pending at the BIA, the situation in El
24 Salvador worsened dramatically, following the implementation of a “state of exception,”

1 in approximately March of 2022 by President Nayib Bukele, whom many international
2 human rights experts regard as a heavy-handed authoritarian responsible for widespread,
3 systemic human rights violations in El Salvador.

4 50. President Bukele's state of exception targets anyone suspected of being a
5 gang member, whether the person is a gang member or not. Thousands of individuals
6 have been swept up and incarcerated in deplorable conditions, subjected to violence
7 within these prisons. This country-wide change created a heightened danger for Mr.
8 Aguilar, given his former gang membership and the tattoos reflecting this membership.
9 To the present Salvadoran government, evidence suggests that it is irrelevant that Mr.
10 Aguilar left the gang over 35 years ago: he will be targeted just the same.

11
12 51. Given this situation, Mr. Aguilar, through pro bono counsel, filed a motion
13 to remand at the BIA in approximately December of 2022, asserting Mr. Aguilar's
14 eligibility for asylum, in addition to withholding of removal under § 1231(b)(3) and CAT,
15 under 8 U.S.C. § 1158(a)(2)(D). *Id* The immigration statute excuses the one-year filing
16 deadline for asylum applications where an applicant can demonstrate "...the existence of
17 changed circumstances which materially affect the applicant's eligibility for asylum." *Id*.
18 Thus, Mr. Aguilar is eligible to pursue asylum, which unlike withholding and CAT, can
19 lead to lawful permanent residence in the United States. *See generally* 8 U.S.C. §1159.
20

21 52. While Mr. Aguilar's motion to remand was pending, he separately
22 requested prosecutorial discretion from DHS in accordance with then-existing policy
23 sometime in 2023. *Id.*; Ex. G.
24

1 53. On December 11, 2023, DHS filed a motion to dismiss Mr. Aguilar's
2 removal proceedings, noting Mr. Aguilar's request for prosecutorial discretion. Ex. G.
3 Nearly two years later, on June 30, 2025, the BIA granted DHS's motion to dismiss Mr.
4 Aguilar's removal proceedings. Ex. H.

5 54. The dismissal of removal proceedings in Mr. Aguilar's case permitted him
6 to file an asylum application affirmatively with USCIS. Ex. A. Mr. Aguilar and his pro
7 bono counsel began the process of preparing an asylum application to file before USCIS.
8 *Id.*

9 55. They were not able to do so. Just a few weeks after the BIA dismissed Mr.
10 Aguilar's removal proceedings on DHS's motion from nearly two years ago, ICE agents
11 arrested him on his way to work. *Id.*

12 56. Since that time, ICE has detained Mr. Aguilar at Eloy. *Id.* Mr. Aguilar's re-
13 detention has caused emotional distress and physical complications. *Id.* Mr. Aguilar is
14 part of a small but tight-knit community in the Phoenix area. *Id.* The loss of community
15 has triggered anxiety and depression for him – which he had battled during his previous
16 six years in civil detention, a chapter in his life that he thought was behind him. *Id.*

17 57. Most recently, Eloy staff had to transport him to the hospital on an
18 emergency basis due to excruciating pain that Mr. Aguilar was experiencing. *Id.*
19 Subsequently, Mr. Aguilar had gallbladder surgery and his recovery has been impacted
20 by his detention. *Id.*
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1 58. Mr. Aguilar, through counsel, requested a bond hearing, which the Eloy
2 immigration court held on August 26, 2025. At the hearing, DHS argued initially that the
3 immigration judge did not have jurisdiction to grant bond in Mr. Aguilar's case because
4 Mr. Aguilar was an applicant for admission, presumably based on DHS policy issued in
5 July of 2025, re-interpreting 8 U.S.C. § 1225(b)(2).³ Alternatively, DHS again relied on
6 the argument, rejected in at least four bond adjudications spanning 2011 to 2017, that Mr.
7 Aguilar's [REDACTED]

9 59. On this occasion, the immigration judge conducting Mr. Aguilar August
10 2025 bond hearing agreed with DHS. Finding that he had jurisdiction, the immigration
11 judge summarily found that [REDACTED]

12 [REDACTED] The immigration judge denied bond.

13
14 60. Just days after Mr. Aguilar's bond hearing, the BIA issued a precedential
15 decision, *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), largely essentially
16 incorporating the arguments reflected in DHS previously released policy, on which it
17 appeared to rely at Mr. Aguilar's bond hearing. The BIA's holding in *Hurtado* purported
18 to foreclose bond eligibility for individuals in Mr. Aguilar's posture, who are present
19 without admission, without regard to how long they have resided in the United States.
20

21
22 ³ See [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
23 *for-applications-for-admission*. Two months after DHS issued its policy memo, the BIA
24 issued *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), discussed more fully *infra*.
25 *Hurtado* tracks similar arguments as those contained in the DHS policy. Previously, in
May of 2025, the BIA had issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025), which
began to chip away at decades of well-settled interpretation and practice regarding 8
U.S.C. § 1225.

1 Given this decision, Mr. Aguilar did not appeal the immigration judge’s August 2025
2 bond order.

3 **ARGUMENT**

4 **I. Mr. Aguilar’s Re-Detention Without Any Material Change in His**
5 **Circumstances Violates 8 U.S.C. § 1226(a)**

6 61. Two statutory provisions governing immigration detention are at play in
7 Mr. Aguilar’s case. In the first instance, at Mr. Aguilar’s August 2025 bond hearing, DHS
8 argued that the immigration judge did not have jurisdiction over the question of Mr.
9 Aguilar’s custody, presumably by virtue of its policy re-interpreting its (and the BIA’s)
10 prior interpretation of 8 U.S.C. § 1225.
11

12 62. Section 1225 “applies primarily to [noncitizens] seeking entry into the
13 United States” (applicants for admission) and “mandate[s] detention” of these noncitizens
14 “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. As the Supreme
15 Court has clarified, this provision applies “at the Nation’s borders and points of entry.”
16 *Id.* at 287.

17 63. For decades, noncitizens who had previously entered without inspection,
18 but had resided for years within the United States were not deemed ‘arriving aliens’ under
19 § 1225(b) but were instead subject to § 1226(a). *See Maldonado Vazquez v. Feeley*, --- F.
20 Supp. 3d ----, 2025 WL 2676082, at *4 (D. Nev. Sept. 17, 2025). “Accordingly in the
21 decades since [Illegal Immigration Reform and Immigrant Responsibility Act] was
22 enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals
23
24
25

1 apprehended within the continental U.S. who entered without inspection and provided
2 them access to release on bond.” *Id.*

3 64. Recently, the BIA has issued two precedential decisions, essentially
4 precluding many noncitizens in the United States from eligibility for bond and release
5 from detention by itself re-interpreting 8 U.S.C. § 1225.
6

7 65. In July 2025, the BIA issued a decision holding that “an applicant for
8 admission who is arrested and detained without a warrant while arriving in the United
9 States” is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), regardless of
10 whether the noncitizen was arrested at the border or shortly after crossing into the United
11 States. *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

12 66. In doing so, the BIA acknowledged the Supreme Court’s characterization
13 of § 1225 as applying to noncitizens “seeking entry into the United States” and arrested
14 “without a warrant at the border.” *Id.* at 70 (quoting *Jennings*, 583 U.S. at 303).
15 Conversely, the BIA acknowledged that § 1226 “applies to [noncitizens] already present
16 in the United States and arrested on a warrant.” *Id.* (quoting *Jennings*, 583 U.S. at 302-
17 03).
18

19 67. On September 5, 2025, the BIA issued another decision further broadening
20 the classes of noncitizens subject to mandatory detention than the narrower interpretation
21 it had reached two months prior. *Matter of Hurtado*, 29 I. & N. Dec. at 228.
22

23 68. In *Matter of Hurtado*, the BIA reversed decades of well-settled law and
24 procedure, holding that any noncitizen who was not formally admitted into the United
25

1 States—such as noncitizens who entered without inspection or arriving noncitizens who
2 were arrested at the border and released on parole—are applicants for admission subject
3 to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have
4 resided in the United States. *Id.*

5
6 69. Recently, the Central District of California certified a nationwide class of
7 detained noncitizens, after having granted a motion for partial summary judgment by the
8 putative class seeking declaratory relief rejecting the BIA’s reasoning in *Hurtado*. Order
9 Granting Petitioner’s Motion for Partial Summary Judgment at *11, *Bautista v.*
10 *Santacruz*, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025) (No. 25 Civ.
11 1873); Order Granting Motion for Class Certification, *Bautista v. Santacruz*, --- F.R.D. -
12 ---, 2025 WL 3289861 (C.D. Cal. Nov. 25, 2025) (No. 25 Civ. 1873). The district court’s
13 order in *Bautista*, reflects the culmination of the overwhelming consensus amongst
14 federal district courts that have rejected the argument that § 1225(b)(2)(A) applies to all
15 noncitizens present in the U.S. without admission. *See, e.g., See Echevarria v. Bondi*,
16 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (Lanza, J.); *Vargas-Murillo v. Bondi*, CV-25-
17 3396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Rodriguez Plascencia v. Bondi*, CV-25-4140
18 (D. Ariz. Nov. 21, 2025) (Lanza, J.); *Perez Rodriguez v. Noem*, CV-25-3921 (D. Ariz.
19 Nov. 13, 2025) (Tuchi, J.); *Gonzalez Rodriguez v. Bondi*, CV-25-3917 (Tuchi, J.); *Benitez-*
20 *Cornejo v. Cantu*, CV-25-3672, 2025 WL 2992211 (D. Ariz. Oct. 17, 2025) (Tuchi, J.);
21 *see also Lepe v. Andrews*, --- F.Supp.3d ----, 2025 WL 2716910, at *4-9 (E.D. Cal. Sept.
22 23, 2025) (collecting cases).

1 70. In Mr. Aguilar’s case, DHS initially argued that Mr. Aguilar is not eligible
2 for bond under the rationale in *Hurtado*. The immigration judge rejected this argument.
3 The district court in *Maldonado Bautista* has now upheld a rejection to *Hurtado* via
4 nationwide declaratory relief. Thus, it is plainly established that Mr. Aguilar is not subject
5 to mandatory detention under 8 U.S.C. § 1225(b)(2).
6

7 71. Conversely, 8 U.S.C. § 1226 “applies to [noncitizens] already present in the
8 United States.” *Jennings*, 583 U.S. at 303. Section 1226(a) “creates a default rule”
9 permitting detention of removable noncitizens but allowing for release on bond. *Id.*
10 Section 1226(c) operates as an exception to § 1226(a)’s general rule by mandating
11 detention of noncitizens who “fall[] into one of the enumerated categories involving
12 criminal offenses and terrorist activities,” without access to bond. *Id.* As immigration
13 judges repeatedly found, Mr. Aguilar has no disqualifying offenses for purposes of bond
14 under 8 U.S.C. § 1226(a).
15

16 72. Immigration agency precedent provides guidance on the criteria to be
17 considered in bond hearings under 8 U.S.C. § 1226(a). *Matter of Guerra*, 24 I&N Dec.
18 37, 40 (BIA 2006) (citing *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976)). This precedent
19 incorporates the twin justification for immigration detention: danger to the community
20 and flight risk. *Zadvydas v. Davis*, 533 U.S. at 690–91, 699. These factors were
21 exhaustively considered in Mr. Aguilar’s case during a total of approximately four bond
22 hearings, over more than a decade. Each time, immigration judges reaffirmed that Mr.
23 Aguilar was eligible for a bond.
24



1 73. “[W]here a previous bond determination has been made by an immigration
2 judge, no change should be made by [the DHS] absent a change of circumstance.” *Ortega*
3 *v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. Nov. 22, 2019) (quoting *Matter of Sugay*,
4 17 I. & N. Dec. 637, 640 (BIA 1981)). “In practice, the DHS re-arrests individuals only
5 after a ‘material’ change in circumstances” as to dangerousness or flight risk. *Rios v.*
6 *Noem*, No. 25-cv-2866-JES-VET, 2025 WL 3141207, at *2 (S.D. Cal. Nov. 10, 2025)
7 (quoting *Ortega*, 415 F. Supp. 3d at 968); *see also Y.M.M. v. Wamsely*, No. 25-cv-02075
8 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025), citing *Panosyan v. Mayorkas*, 854
9 F. App'x 787, 788 (9th Cir. 2021) .

11 74. Here, there is no material change regarding the facts of Mr. Aguilar’s
12 circumstances pertaining to danger to the community or flight risk. In fact, Mr. Aguilar
13 has only demonstrated that any concerns about flight risk and danger are misplaced: he
14 has engaged repeatedly with the government to resolve his case and has not had contact
15 with law enforcement. Mr. Aguilar has lived a completely law-abiding life and has
16 diligently pursued his defenses to removal.

18 **A. DHS’s Reliance on Mr. Aguilar’s [REDACTED] to**
19 **Argue Dangerousness Where It Has Had Ample Opportunity to**
20 **Litigate the Issue Over Nearly 15 Years and the Facts Have Not**
21 **Changed Violates the Administrative Procedure Act (APA)**

22 75. Under the APA, a “reviewing court shall (1) compel agency action
23 unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency
24 action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of
25 discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

1 76. Collateral estoppel applies where “...(1) the issue necessarily decided at
2 the previous proceeding is identical to the one which is sought to be relitigated; (2) the
3 first proceeding ended with a final judgment on the merits; and (3) the party against whom
4 collateral estoppel is asserted was a party or in privity with a party at the first
5 proceeding.” *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir.2000) (quoting
6 *Younan v. Caruso*, 51 Cal.App.4th 401, 406–07, 59 Cal.Rptr.2d 103 (1996)). The Ninth
7 Circuit has recognized that the doctrine of collateral estoppel applies to immigration
8 proceedings. *See e.g., Belayneh v. I.N.S.*, 213 F.3d 488, 492 (9th Cir.2000).

10 77. Here, the Court should find that DHS was precluded from arguing at Mr.
11 Aguilar’s August 2025 bond hearing that Mr. Aguilar’s 
12 which it repeatedly raised in bond hearings spanning 2012 through 2017, and which the
13 immigration judges declined to credit, renders Mr. Aguilar a danger to the community in
14 the present. As the immigration judge noted as far back as December of 2012, DHS
15 conceded that Mr. Aguilar had not 
16 since he entered the U.S. In 2025, nearly 25 years later, that remains the case.

18 78. As noted, the query in immigration bond proceedings is whether the
19 noncitizen constitutes a danger to the community or a flight risk. *Matter of Patel* at 666.
20 Similarly, in all of Mr. Aguilar’s four bond proceedings, the issue litigated was whether
21 he constituted a danger or a flight risk. This was the same issue litigated at his August
22 2025 bond hearing.
23
24
25

1 79. At each of his prior bond hearings preceding Mr. Aguilar's August 2025
2 bond hearing, immigration judges found that Mr. Aguilar was not a danger to the
3 community, and as such, they evaluated his risk of flight to set an appropriate bond. Both
4 DHS and Mr. Aguilar had the opportunity to present evidence and arguments.
5 Subsequently, Mr. Aguilar filed appeals with the BIA to challenge the bond amount as
6 beyond his means to pay. DHS had the opportunity to appeal the immigration judge's
7 decision to grant bond, but did not. Mr. Aguilar's appeals were definitively decided each
8 time by the BIA, which affirmed bond in the amount of \$20,000.
9

10 80. DHS has been the same party at all of Mr. Aguilar's bond proceedings.

11 81. Given that the issues litigated in Mr. Aguilar's August 2025 bond
12 proceedings – danger and flight risk - are identical to the issues litigated in his past three
13 bond hearings; that Mr. Aguilar's past bond proceedings were fully litigated, including
14 an appeal each time, resulting in a final decision on the merits by the BIA affirming bond
15 in Mr. Aguilar's case, and that DHS has been the same party in all of these proceedings,
16 DHS was estopped from attempting to re-litigate Mr. Aguilar's dangerousness based on
17 a fact known to it since at least 2011, during Mr. Aguilar's second bond hearing.
18

19 **B. The Immigration Court's August 2025 Finding that Mr. Aguilar Is a**
20 **Danger Even Though Various Immigration Judges Had Found**
21 **Otherwise on the Same Facts Violates the APA**

22 82. The APA permits review and the setting aside of an agency finding that is
23 "arbitrary and capricious." 5 U.S.C. § 706(2)(D). The Supreme Court has instructed that
24 an agency decision is arbitrary and capricious where "...the agency has relied on factors
25

1 which Congress has not intended it to consider, entirely failed to consider an important
2 aspect of the problem, offered an explanation for its decision that runs counter to the
3 evidence before the agency, or is so implausible that it could not be ascribed to a
4 difference in view or the product of agency expertise.” See *Motor Vehicle Mfr. Ass’n v.*
5 *State Farm Ins.*, 463 U.S. 29, 44 (1983).
6

7 83. When ICE originally detained Mr. Aguilar in approximately 2011, both
8 DHS and an immigration judge deemed him eligible for bond under 8 U.S.C. § 1226(a),
9 under the same basic facts that exist in Mr. Aguilar’s case in the present.

10 84. There has been no material change such as to disturb the immigration
11 judges’ repeated findings in Mr. Aguilar’s various bond proceedings that Mr. Aguilar
12 is not a danger to the community based on his prior gang membership. These immigration
13 judge decisions spanned the six years during which ICE detained Mr. Aguilar at Eloy,
14 from approximately 2011 through 2017.
15

16 85. The immigration judge’s August 2025 decision denying Mr. Aguilar bond
17 based on his alleged gang membership from over 35 years ago, already considered by
18 prior immigration judges and rejected as the basis of a dangerousness finding, where
19 nothing has changed and no new facts have emerged since the original decision setting a
20 bond nearly fifteen years ago, is the epitome of “arbitrary and capricious” under the APA.
21

22 **II. Mr. Aguilar’s Re-Detention Without Justification Violates Substantive Due
23 Process**

24 86. Mr. Aguilar’s re-arrest and re-detention without justification is also
25 unlawful under the Due Process Clause of the United States Constitution.

1 87. The Due Process Clause protects “all ‘persons’”—including all
2 noncitizens—against arbitrary detention. *See Zadvydas v. Davis*, 533 U.S. at 693.
3 “Freedom from imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects.
5 *Id.* at 690. There is no question that Mr. Aguilar possesses a liberty interest.

6
7 88. To be constitutionally sound, the nature of an individual’s civil detention
8 must have a reasonable relation to its purpose. *Foucha v. Louisiana*, 504 U.S. 71, 80
9 (1992) (citing *Jones v. United States*, 463 U.S. 354, 368 (1983)). Where the detention
10 exceeds the justification, due process is compromised. *Jones v. United States*, 463 U.S.
11 at 370.

12
13 89. The purpose of immigration detention is to effectuate removal and
14 safeguard the community. *See Zadvydas*, 533 U.S. at 690–91 (discussing twin
15 justifications of detention as preventing flight and protecting the community); *id.* at 699
16 (purpose of detention is “assuring the [noncitizen]’s presence at the moment of removal”).
17 Neither purpose is satisfied here, where Mr. Aguilar is neither a danger to the community
18 nor a flight risk, as found by an immigration judge over 14 years ago and where
19 circumstances have not materially changed since then.

20
21 90. Moreover, substantive due process prohibits civil detention that is punitive
22 in purpose or in effect. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise,
23 “due process requires that the nature and duration of commitment bear some reasonable
24 relation to the purpose for which the individual is committed”; otherwise, the commitment
25

1 amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting
2 *Jackson*, 406 U.S. at 738).

3 91. Applying these principles, the Ninth Circuit has held that civil detention
4 violates substantive due process (1) when it is “expressly intended to punish,” or (2) when
5 “the challenged restrictions serve an alternative, non-punitive purpose but are nonetheless
6 excessive in relation to the alternative purpose, . . . or are employed to achieve objectives
7 that could be accomplished in so many alternative and less harsh methods.” *Jones*, 393
8 F.3d at 932 (internal quotation marks and citations omitted). Mr. Aguilar’s detention is
9 punitive for both reasons.
10

11 92. Immigration judges repeatedly found that Mr. Aguilar was not a danger in
12 four bond hearings spanning six years before his release from ICE custody in 2017. There
13 has been no material change in Mr. Aguilar’s circumstances that could even arguably alter
14 the immigration judges’ repeated findings dating back to 2011 that Mr. Aguilar is neither
15 a danger nor a flight risk such that a bond is unwarranted.
16

17 93. In fact, Mr. Aguilar has proven that the immigration judge’s assessment in
18 approximately 2011, and affirmed repeatedly thereafter, that he is neither a danger nor a
19 flight risk such that no bond was warranted was correct. Mr. Aguilar has displayed an
20 exemplary, law-abiding history since ICE released him from detention in 2017. He has
21 maintained steady employment, re-built a community support network, paid taxes, and
22 had no issues with law enforcement. He has diligently pursued his defense to removal,
23 most recently raising a bona fide argument that he is presently eligible for asylum, given
24
25

1 the changed circumstances in El Salvador permitting him to raise an asylum claim,
2 strengthening his claim for protection before the immigration court.

3 94. Moreover, Mr. Aguilar endures adverse conditions of detention. The
4 anxiety and anguish that he experienced during his nearly six years of previous
5 confinement has returned. Further, Mr. Aguilar battles consistent pain in his knees.
6 Recently, he had to be taken for emergency gallbladder surgery.
7

8 95. For this reason, ICE has no justification for re-detaining Mr. Aguilar, as the
9 twin justifications for immigration detention are not at issue in his circumstances. Given
10 that ICE's arbitrary re-detention of Mr. Aguilar is not "reasonably related" – or even
11 arguably related – to ICE's purpose in detaining noncitizens, its re-detention of Mr.
12 Aguilar is arbitrary, unjustified, and punitive. Respondents are without legal authority to
13 detain Mr. Aguilar, and thus, Respondents have violated Mr. Aguilar's substantive due
14 process rights by re-detaining him without any lawful basis.
15

16 96. Because there is no justification for Mr. Aguilar's civil re-detention, the
17 Court should find that Respondents are unlawfully detaining Mr. Aguilar in contravention
18 of the U.S. Constitution and order his immediate release on this basis.

19 **III. Mr. Aguilar's Re-Detention Without Adequate Safeguards Constitutes a**
20 **Procedural Due Process Violation**

21 97. Mr. Aguilar's re-arrest and re-detention violates his procedural due process
22 rights. ICE cannot be permitted to re-detain Mr. Aguilar without justification. If ICE seeks
23 Mr. Aguilar's re-detention, Respondents should provide him with a pre-deprivation
24 hearing before a neutral adjudicator to determine whether circumstances have materially
25

1 changed since his release in 2017 pursuant to an immigration judge’s grant of bond, such
2 that his re-detention is justified.

3 98. “Courts analyze procedural due process claims in two steps: the first asks
4 whether there exists a protected liberty interest under the Due Process Clause, and the
5 second examines the procedures necessary to ensure any deprivation of that protected
6 liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884-
7 TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep’t of*
8 *Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). Mr. Aguilar has both a protected
9 liberty interest in his release, and the government was required to give him a pre-
10 deprivation hearing before detaining him.
11

12 **A. Mr. Aguilar Has a Protected Liberty Interest in Remaining Free from**
13 **Custody**

14 99. Mr. Aguilar has a liberty interest in being free from civil immigration
15 custody.

16 100. Mr. Aguilar has lived at liberty since his release from ICE custody in July
17 of 2017, pursuant to an immigration judge bond order finding him not to be a danger and
18 finding that any risk of flight is mitigated by bond. He thus retains a weighty liberty
19 interest under the Due Process Clause of the Fifth Amendment in avoiding re-
20 incarceration. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*,
21 411 U.S. 788, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see*
22 *also Hogarth v. Santacruz*, No. 25-cv-09472-SPG-MAR, 2025 WL 3211461, at *6 (C.D.
23 Cal. Oct. 23, 2025).
24
25

1 101. In *Morrissey v. Brewer*, the Supreme Court examined “the nature of the
2 interest” that a parolee has in “his continued liberty”: “[S]ubject to the conditions of his
3 parole, [a parolee] can be gainfully employed and is free to be with family and friends
4 and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 481–
5 82.

6
7 102. Accordingly, “the parolee has relied on at least an implicit promise that the
8 parole will be revoked only if he fails to live up to the parole conditions.” *Id.* at 482. The
9 Court clarified that “the liberty of a parolee, although indeterminate, includes many of the
10 core values of unqualified liberty and its termination inflicts a grievous loss on the parolee
11 and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be
12 seen within the protection of” due process. *Id.*

13
14 103. This basic principle – that individuals have a liberty interest in their
15 conditional release – has been reinforced by the Supreme Court. *See, e.g., Young*, 520
16 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce
17 prison overcrowding have a protected liberty interest requiring pre-deprivation process);
18 *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have
19 a protected liberty interest requiring pre-deprivation process).

20
21 104. When analyzing the issue of whether a specific conditional release rises to
22 the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing
23 the specific conditional release in the case before them with the liberty interest in parole
24 as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir.

1 2020).

2 105. Accordingly, courts in this Circuit have recently and repeatedly held that
3 noncitizens previously released by ICE have a liberty interest in their conditional release
4 pursuant to *Morrissey*. See *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D.
5 Cal. 2025); *Doe v. Becerra*, 787 F.Supp.3d 1083, 1093 (E.D. Cal. 2025); *Nazarian v.*
6 *Noem*, No. 25-cv-02694-KK-ADSx, 2025 WL 3236209, at *3 (C.D. Cal. Nov. 3, 2023);
7 *J.O.L.R. v. Wofford*, 25-cv-1241, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025);
8 *Rodriguez v. Kaiser*, 25-cv-1111-KES-SAB, 2025 WL 2545359, at *4 (E.D. Cal. Sept. 4,
9 2025); *Sun v. Santacruz*, 25-cv-02198-JLS-JC, 2025 WL 2730235, at *5 (C.D. Cal. Aug.
10 26, 2025); *Maklad v. Murray*, 25-cv-946, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025);
11 *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL1771438, at *3 (N.D. Cal. June 26,
12 2025).
13

14
15 106. “This is particularly so with regard to the present circumstance, when an
16 individual, who has been present in the United States with the government's acquiescence
17 for a number of years, has been subjected to an infringement of their liberty interest, as
18 discussed *infra*, for no other reason than a regime change's desire to expel a large number
19 of non-criminal noncitizens as quickly as possible under whatever conditions it deems
20 warranted.” *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL
21 2337099, at *10 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom.
22 *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D.
23 Ariz. Aug. 13, 2025)
24

1 107. Similarly, Mr. Aguilar has a liberty interest in his prior release pursuant to
2 *Morrissey*. Since his release, Mr. Aguilar has been able to resume “do[ing] a wide range
3 of things open to persons” who have never been in custody, including to live at home,
4 work, and “be with family and friends and to form the other enduring attachments of
5 normal life.” *Morrissey*, 408 U.S. at 482. Mr. Aguilar has been able to resume living with
6 his partner and close-knit community -- “undoubtedly one of the most ‘enduring
7 attachments of normal life.’” *Rodriguez*, 2025 WL 2545359, at *4 (quoting *Morrissey*,
8 408 U.S. at 482).

10 108. ICE released Mr. Aguilar pursuant to an immigration judge order finding
11 that he did not pose a danger to the community or a flight risk sufficient to preclude
12 release on bond. As noted, two immigration judges repeatedly found that Mr. Aguilar’s
13 childhood gang membership did not render him a danger to the community. Mr. Aguilar.
14 ICE rearrested Mr. Aguilar “without showing any changed circumstances, contradicting
15 the ‘implicit promise that [petitioner’s freedom] will be revoked only if []he fails to live
16 up to the [release] conditions.’” *Rodriguez*, 2025 WL 2545359, at *4 (quoting *Morrissey*,
17 408 U.S. at 482).

19 **B. Mr. Aguilar’s Liberty Interest Warrants a Hearing Before Re-Arrest**

20 109. Mr. Aguilar asserts that, here, where (1) he faces civil detention; (2) he was
21 ordered released by an immigration judge who found he was not a danger and that any
22 risk of flight could be mitigated by a monetary bond, which he posted; (3) ICE released
23 him in approximately 2017, and (4) no material change in circumstances exist that would
24

1 justify his re-detention, due process requires that he receive notice and a hearing before a
2 neutral adjudicator *prior* to any re-arrest.

3 110. Due process “is a flexible concept that varies with the particular situation.”
4 *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). “The more important the interest and the
5 greater the effect of its impairment, the greater the procedural safeguards that
6 [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350,
7 1355–56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481–82). The procedural
8 protections required in a given situation are evaluated under the test set forth in *Mathews*
9 *v. Eldridge*, 424 U.S. 319 (1976):
10

11 First, the private interest that will be affected by the official action;
12 second, the risk of an erroneous deprivation of such interest through the
13 procedures used, and the probable value, if any, of additional or
14 substitute procedural safeguards; and finally, the government's interest,
including the function involved and the fiscal and administrative burdens
that the additional or substitute procedural requirement would entail.

15 *Id.* at 335; *see also Hogarth v. Santacruz*, 2025 WL 3211461, at *6 (applying
16 *Mathews* balancing test); *Sun v. Santacruz*, 2025 WL 2730235, at *5 (same).

17 111. Under *Mathews*, the government is required to adhere to procedural
18 safeguards before it can deprive Mr. Aguilar of his freedom.
19

20 112. First, Mr. Aguilar has a profound private interest in remaining free from
21 detention. “Freedom from imprisonment – from government custody, detention, or other
22 forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause
23 protects.” *Zadvydas*, 533 U.S. at 690.

24 113. Mr. Aguilar has been at liberty since July of 2017, and during that time, he
25

1 has resumed his life, rejoined his community and maintained adherence to the law. His
2 detention now deprives him of that freedom. *See Hogarth v. Santacruz*, 2025 WL
3 3211461, at *10 (finding that petitioner had a liberty interest in remaining free on bond
4 following BIA's vacatur of bond order); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969
5 (N.D. Cal. Nov. 22, 2019) (finding a liberty interest in remaining outside of immigration
6 custody on bond); *see also Rodriguez*, 2025 WL 2545359, at *5. Thus, Mr. Aguilar has a
7 profound private interest at stake in this case, which must be weighed heavily when
8 determining the process due under the Constitution. *See Mathews*, 424 U.S. at 334–35.

10 114. Second, the risk of erroneous deprivation of liberty is high where, as here,
11 immigration judges concluded that Mr. Aguilar could be released from custody by posting
12 a bond that contemplated danger and flight risk factors beginning in 2011 and spanning
13 through 2017 and there are no materially changed circumstances relating to Mr. Aguilar's
14 dangerousness or risk of flight since to change these determinations.

16 115. In fact, Mr. Aguilar's bond equities have only strengthened. Mr. Aguilar
17 became eligible for asylum as a defense, reunited with his family and community,
18 resumed a productive life and complied with all immigration court obligations since ICE
19 released him. Mr. Aguilar's equities led DHS to agree to file a motion to dismiss his
20 removal proceedings with the BIA in 2023. Inexplicably, ICE arrested Mr. Aguilar
21 without notice and without providing any procedural safeguards to determine whether the
22 circumstances had changed such that his re-detention was justified. *See Galindo Arzate*,
23 2025 WL 2230521, at *5.

1 116. ICE cannot justify Mr. Aguilar's re-detention. There have been no
2 materially changed circumstances as to Mr. Aguilar's risk of flight or danger to overcome
3 repeated immigration judge findings that he is neither a danger nor a flight risk such that
4 bond is unwarranted. As noted, any dangerousness or risk of flight factors have only
5 lessened in the eight years since ICE released Mr. Aguilar from its custody.
6

7 117. Given the absence of any procedural safeguards to determine if Mr.
8 Aguilar's re-detention is justified and given the absence of any apparent justification for
9 re-detaining Mr. Aguilar, "the probable value of additional procedural safeguards, i.e., a
10 bond hearing, is high." *Rodriguez*, 2025 WL 254359, at *5 (quoting *A.E. v. Andrews*, 25-
11 cv-00107-KES-SKO (HC), 2025 WL 1424382, at *5). "...[D]ue process requires notice
12 and a hearing, prior to any re-arrest, at which hearing the individual is afforded the
13 opportunity to advance their arguments as to why their release should not be revoked.
14 This most basic American principle—that individuals placed at liberty are entitled to
15 process before the government reimprisons them—has particular meaning here, where
16 Rosado's detention was already found, in 2018, to be unnecessary." *Rosado v. Figueroa*,
17 2025 WL 2337099, at *12.
18

19 118. This high likelihood of erroneous deprivation thus counsels heavily in favor
20 of providing procedural safeguards to Mr. Aguilar.
21

22 119. Third, the government's interest in detaining Mr. Aguilar without a pre-
23 deprivation hearing is low. *Doe v. Becerra*, 787 F.Supp.3d 1083 at 1094 ("The effort and
24 cost required to provide [p]etitioner with procedural safeguards is minimal and indeed
25

1 was previously provided in his case.”). Here, the “fiscal and administrative burdens” that
2 a pre-deprivation bond hearing would impose is nonexistent in the immigration context.

3 *See Mathews*, 424 U.S. at 334–35.

4 120. The government’s interest in detaining Mr. Aguilar is further diminished
5 where Mr. Aguilar has complied with all immigration obligations throughout the nearly
6 fifteen years he has either been detained or at liberty. *See Morrissey*, 408 U.S. at 482 (“It
7 is not sophistic to attach greater importance to a person’s justifiable reliance in
8 maintaining his conditional freedom so long as he abides by the conditions on his release,
9 than to his mere anticipation or hope of freedom.”) (internal quotation omitted); *Pinchi v.*
10 *Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) (“[T]he government’s decision to
11 release an individual from custody creates an ‘implicit promise,’ upon which that
12 individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the
13 . . . conditions [of release].’”) (quoting *Morrissey*, 408 U.S. at 482).

14
15
16 121. In fact, given Mr. Aguilar’s compliance with all obligations, both as to the
17 immigration court and as a law-abiding resident overall, DHS, ICE’s parent agency,
18 recently agreed that Mr. Aguilar’s removal proceedings could be dismissed as a matter of
19 prosecutorial discretion.

20
21 122. Continued freedom from confinement until ICE demonstrates that there has
22 been a material change in Mr. Aguilar’s circumstances such as to rebut repeated
23 determinations regarding dangerousness and flight risk is far *less* costly and burdensome
24 for the government than keeping him detained. *See Hernandez v. Sessions*, 872 F.3d 976,

1 996 (9th Cir. 2017) (“The costs to the public of immigration detention are staggering.”);
2 *Pinchi*, 792 F.Supp.3d 1025 at 1037.

3 123. As the Supreme Court noted, even where the government has an
4 “overwhelming interest in being able to return [a parolee] to imprisonment without the
5 burden of a new adversary criminal trial if in fact he has failed to abide by the conditions
6 of his parole . . . the State has no interest in revoking parole without some informal
7 procedural guarantees.” *Morrissey*, 408 U.S. at 483.

8
9 124. Here, where immigration judges repeatedly approved of a bond for Mr.
10 Aguilar, ICE released him pursuant to these bond determinations in 2017 – which it did
11 not appeal - where there has been no material change in circumstances, and where Mr.
12 Aguilar has complied with all obligations, the cost of providing such a hearing is
13 extremely low, the government’s interest in detaining Mr. Aguilar is equally low and
14 counsels heavily in favor of requiring a hearing before detention. Because ICE failed to
15 provide Mr. Aguilar any process before re-detention, Mr. Aguilar’s detention is unlawful,
16 and Mr. Aguilar is likely to succeed on his procedural due process claim.

17
18 125. For these reasons, should the Court not order Mr. Aguilar’s immediate
19 release based on a statutory or substantive due process violation, the Court should order
20 Respondents to provide Mr. Aguilar a hearing before a neutral arbiter at which DHS bears
21 the burden of proving a material change in circumstances warranting Mr. Aguilar’s re-
22 detention. The Court should further instruct that the facts known to the immigration
23 agencies in granting bond in 2017 – namely, Mr. Aguilar’s childhood gang membership
24

1 – is not a material change such as to override the immigration court’s original finding that
2 this fact does not support a dangerousness finding, especially where Mr. Aguilar has given
3 no reason to conclude otherwise in the nearly fifteen years since his release.

4 **CLAIMS FOR RELIEF**

5 **Count I – Violation of 8 U.S.C. § 1226(a)**
6 **(All Respondents)**

7 126. Mr. Aguilar re-alleges and incorporates by reference all preceding
8 paragraphs.

9 127. Mr. Aguilar’s detention is governed by 8 U.S.C. § 1226(a). *Bautista v.*
10 *Noem*, --- F.Supp.3d ----, at *11. An immigration judge previously determined that Mr.
11 Aguilar was not a danger to the community or a flight risk – the justification for
12 immigration detention, relevant factors incorporated into agency precedent governing
13 bond determinations.

14 128. Based on the immigration judge’s finding in 2017, Mr. Aguilar posted bond
15 and ICE released him in 2017.

16 129. There has been no material change in the immigration judge’s original
17 determination that a bond was appropriate in Mr. Aguilar’s case. The fact of Mr. Aguilar’s
18 childhood gang membership was known to the agency when it first sent bond in his case
19 nearly 15 years ago in 2011. In fact, Mr. Aguilar’s record in the eight years since his
20 release from ICE custody reflects that his dangerousness and flight risk factors have only
21 diminished in the present.
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1 130. Because there has been no material change in circumstances since an
2 immigration judge issued bond to Mr. Aguilar in 2011 and since he was released after
3 posting the bond in 2017, the Court should find that Mr. Aguilar's present detention is in
4 violation of 8 U.S.C. § 1226(a).

5
6 **Count II –Administrative Procedure Act –5 U.S.C. § 706(2)(A)**
7 **(Department of Homeland Security)**

8 131. Mr. Aguilar re-alleges and incorporates herein by reference, as if set forth
9 fully herein, the allegations in all the preceding paragraphs.

10 132. Under the APA a court “shall compel agency action unlawfully withheld,”
11 and “set aside agency action, findings, and conclusions found to be...(A) arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with law...”. 5 U.S.C.
13 § 706(2)(A).

14 133. DHS's reliance on Mr. Aguilar's childhood gang membership is subject to
15 collateral estoppel where DHS previously raised this fact to allege that Mr. Aguilar
16 constitutes a danger to the community in four prior bond hearings at which immigration
17 judges repeatedly rejected DHS's argument and affirmed bond in his case. DHS did not
18 appeal these findings. DHS and Mr. Aguilar were the same parties at all prior bond
19 hearings, decided on the merits in Mr. Aguilar's favor. *Hydranautics v. FilmTec Corp.*,
20 204 F.3d 880 at 885 (citations omitted).

21
22 134. The Court should find that DHS is collaterally estopped from relying on
23 Mr. Aguilar's childhood gang membership and that to rely on this fact violates the APA
24 as contrary to law.

1 **Count III –Administrative Procedure Act –**
2 **5 U.S.C. § 706(2)(A), (B) and (D)**
3 **(Department of Justice)**

4 135. The APA directs that a court “shall compel agency action unlawfully
5 withheld,” and “set aside agency action, findings, and conclusions found to be...(A)
6 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...”.
7 5 U.S.C. § 706(2)(A).

8 136. Further, a reviewing court may set aside agency action, findings, and
9 conclusions that are “contrary to constitutional right, power, privilege, or immunity,” or
10 “without observance of procedure required by law.” 5 U.S.C. § 706(a)(B), (D).

11 137. The immigration judge’s finding at Mr. Aguilar’s August 2025 bond
12 hearing that Mr. Aguilar is a danger to the community based on a fact previously rejected
13 at four prior bond hearings is arbitrary and capricious. *Motor Vehicle Mfr. Ass’n v. State*
14 *Farm Ins.*, 463 U.S. 29 at 44.

15 138. Further, there has been no material change in circumstances since the time
16 that immigration judges rejected the contention that Mr. Aguilar constitutes a danger to
17 the community. Mr. Aguilar’s detention is not presently justified and he has not received
18 a pre-deprivation hearing otherwise that comports with procedural due process.
19

20 139. The Court should find that the immigration judge’s August 2025 finding
21 violates the APA as arbitrary and capricious, contrary to constitutional right, and without
22 observance of procedure required by law.
23

24 //

1 **Count IV – U.S. Constitution – Substantive Due Process Violation**
2 **(All Respondents)**

3 140. Mr. Aguilar re-alleges and incorporates herein by reference, as if set forth
4 fully herein, the allegations in all the preceding paragraphs

5 141. The Due Process Clause of the Fifth Amendment protects individuals
6 against detention that is arbitrary, unjustified or punitive.

7 142. To comport with substantive due process, civil detention must be
8 reasonably related to a legitimate governmental purpose. *Foucha v. Louisiana*, 504 U.S.
9 at 80; *Jones v. United States*, 463 U.S. at 368.

10 143. Civil detention that is punitive in purpose or in effect violates substantive
11 due process. *See Jackson v. Indiana*, 406 U.S. at 738; *Jones v. Blanas*, 393 F.3d 918 at
12 931.

13 144. The justification for civil immigration detention is to effectuate removal
14 and safeguard the community. *Zadvydas*, 533 U.S. at 690–91.

15 145. ICE’s detention of Mr. Aguilar without justification, where an immigration
16 judge found bond in consideration of dangerousness and flight risks factors was warranted
17 and there has been no material change to alter that finding, is unjustified and punitive. As
18 such, the Court should find that Mr. Aguilar’s detention violates his substantive due
19 process rights and order that Respondents immediately release him on this basis.
20
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1 **Count V - Procedural Due Process**
2 **(All Respondents)**

3 146. Mr. Aguilar re-alleges and incorporates herein by reference, as if set forth
4 fully herein, the allegations in all preceding paragraphs.

5 147. The Due Process Clause of the Fifth Amendment forbids the government
6 from depriving any “person” of liberty “without due process of law.” U.S. Const. amend.
7 V.

8 148. Mr. Aguilar was released from ICE custody pursuant to the posting of a
9 bond set by an immigration judge, following an individualized determination by the
10 immigration judge that considered Mr. Aguilar’s dangerousness and risk of flight. Mr.
11 Aguilar has a liberty interest in remaining free from physical confinement on conditional
12 release under the Due Process Clause. *See Morrissey*, 408 U.S. at 482–83. The Due
13 Process Clause does not permit the government to strip him of that liberty without a
14 hearing before a neutral arbiter. *See id.* at 487–88.

15 149. Accordingly, “[i]n the context of immigration detention, it is well-settled
16 that due process requires adequate procedural protections to ensure that the government’s
17 asserted justification for physical confinement outweighs the individual’s constitutionally
18 protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (citations
19 omitted); *Zinermon*, 494 U.S. at 127.

20 150. In the immigration context, for such hearings to comply with due process,
21 the government must bear the burden to demonstrate that there has been a material change
22 in circumstances such as to justify re-detention where an immigration judge has
23
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1 previously allowed for release on bond. *Hogarth v. Santacruz*, 2025 WL 3211461, at *10;
2 *Sun v. Santacruz*, 2025 WL 2730235, at *5. Here, where an immigration judge determined
3 that Mr. Aguilar could be released on bond nearly fifteen years ago on the same facts now
4 known to the immigration court and DHS, the government bears the burden to show that
5 there has been a material change in circumstances that now makes Mr. Aguilar a danger
6 or a flight risk, warranting his re-detention.
7

8 151. Mr. Aguilar's re-detention without a pre-deprivation hearing violated due
9 process where ICE re-detained him without notice, and without being required to
10 otherwise justify Mr. Aguilar's re-detention before a neutral arbiter when an immigration
11 judge had previously found Mr. Aguilar eligible for bond and no material changes have
12 occurred since.
13

14 152. Mr. Aguilar has a profound personal interest in his liberty. Because he
15 received no procedural protections, the risk of erroneous deprivation is high, and ICE has
16 no legitimate interest in detaining him without a hearing.
17

18 153. Moreover, to comport with procedural due process, DHS should be
19 estopped from attempting to re-litigate Mr. Aguilar's dangerousness based on his
20 childhood gang membership, which it has raised and has been litigated fully on at least
21 two occasions. Further, as a matter of fairness, the immigration court cannot rely on this
22 fact, which it previously rejected on four occasions.
23

24 154. For these reasons, Respondents have violated the Due Process Clause of the
25 Fifth Amendment. If the Court does not order Mr. Aguilar's release, it should order that

1 Respondents provide Mr. Aguilar with a hearing before a neutral arbiter at which DHS
2 bears the burden by clear and convincing evidence of demonstrating a material change in
3 circumstances justifying Mr. Aguilar's re-detention.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner, Marcos Antonio Aguilar, respectfully requests that this
6 Court:

- 7
- 8 (a) Assume jurisdiction over this matter;
 - 9 (b) Declare that the statute governing Mr. Aguilar's detention is 8 U.S.C. § 1226(a)
10 and not 8 U.S.C. § 1225(b)(2);
 - 11 (c) Declare that Mr. Aguilar's detention violates 8 U.S.C. § 1226(a), the
12 Administrative Procedure Act, and the Due Process Clause of the Fifth
13 Amendment;
 - 14 (d) Declare that DHS was collaterally estopped under the APA from relying on
15 Mr. Aguilar's childhood gang membership, which it repeatedly raised over the
16 course of four prior bond hearings spanning six years, and which immigration
17 judges declined to credit in granting Mr. Aguilar a bond;
 - 18 (e) Declare that the immigration judge's August 2025 finding that Mr. Aguilar's
19 childhood gang membership renders him a danger where prior immigration
20 judges determined this fact did not evince dangerousness and there has been no
21 change in these circumstances is arbitrary and capricious and violates the APA;
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1 (f) Issue a writ of habeas corpus and order Respondents to release Mr. Aguilar
2 from detention per the immigration judge's 2017 bond order under 8 U.S.C. §
3 1226(a);

4 (g) Enjoin Respondents from re-detaining Mr. Aguilar considering that there has
5 been no material change in circumstances since ICE released him in 2017
6 pursuant to a bond repeatedly affirmed by two different immigration judges
7 over a span of six years;

9 (h) Alternatively, enjoin Mr. Aguilar's re-detention unless a pre-deprivation
10 hearing is held before a neutral arbiter, while Mr. Aguilar is free, at which DHS
11 is collaterally estopped from raising Mr. Aguilar's childhood gang membership
12 to argue his dangerousness and at which it bears the burden of proving, by clear
13 and convincing evidence, that materially changed circumstances have
14 established that Mr. Aguilar is a danger to the community or a flight risk;

15 (i) Award Mr. Aguilar his reasonable attorneys' fees and costs pursuant to the
16 Equal Access to Justice Act or other applicable law;

17 (j) Grant any other relief that this Court deems just and proper.
18

19
20 Dated: December 18, 2025

Respectfully submitted,

21
22 /s/ Laura Belous

Laura Belous, 028132

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner Marcos Aguilar because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 18, 2025

Respectfully submitted,

/s/ Laura Belous
Laura Belous