

1 Natalia Vieira Santanna
CA Bar No. 337502
2 MI Bar No. P76443
SANTANNA LAW OFFICES
3 PO Box 7528, Oakland, CA 94601
(510) 922-0154 (Telephone)
4 natalia@santannalaw.com (Email)
Attorney for Petitioner

5 Otavio Haverroth Silva
6 CA BAR No. 343846
HS LAW CORP
7 PO Box 90487, San Diego, CA 92169
(510) 241-9336 (Telephone)
8 otavio@legalhs.com (Email)
Attorney for Petitioner

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 N.A.L.C.,

13 Petitioner,
14

15 v.

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

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

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

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

25 Pam BONDI, in her Official Capacity,
26 Attorney General of the United States.

27 Respondents.
28

No.

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

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

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INTRODUCTION

1. Petitioner, N.A.L.C., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) since about August 7, 2025, and is currently held at the Mesa Verde ICE Processing Center (“Mesa Verde”), after having diligently pursued his immigration case and complied with the terms of his Release on Recognizance (ROR) from the custody of the Department of Homeland Security (DHS) on October 19, 2023. During this period, he appeared for his immigration hearings, timely filed his Form I-589 Application for Asylum and for Withholding of Removal on October 28, 2024, maintained a stable residence in Buffalo, New York, worked consistently in construction, and cleaning jobs to support his family members in Venezuela and to build a life with his U.S. citizen girlfriend, Autumn Danielle Saxbury. He was originally released from border custody under an order of release in INA § 240 removal proceedings, reflecting DHS’s determination that he was neither a danger to the community nor a flight risk.

2. N.A.L.C.’s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking and soon to be parent with no criminal history, N.A.L.C. is not a flight risk or danger. His asylum case remains pending before EOIR, and thus, removal is not imminent. Thus, N.A.L.C.’s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

3. This Court should issue a writ of habeas corpus and determine that N.A.L.C. is entitled to immediate release under reasonable conditions and pending further order of the Court.

4. Alternatively, this Court should order N.A.L.C.’s release unless he receives a bond hearing before a neutral arbiter where: (1) to justify his continued detention, the government bears the burden to establish by clear and convincing evidence that N.A.L.C. is a danger or flight risk; and (2) if the government cannot meet its burden, N.A.L.C. must be ordered released on

1 reasonable conditions, taking into account his ability to pay bond.

2 **CUSTODY**

3 5. N.A.L.C. is currently in the custody of ICE at Mesa Verde in Bakersfield,
4 California. N.A.L.C. is therefore in “‘custody’ of [the DHS] within the meaning of the habeas
5 corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

6 **JURISDICTION**

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

11 **VENUE**

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

14 **REQUIREMENTS OF 28 USC § 2243**

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

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

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

3 EXHAUSTION

4 11. For habeas claims, exhaustion of administrative remedies is prudential, not
5 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the
6 prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious,
7 pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the
8 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
9 (9th Cir. 2004) (citation and quotation marks omitted)). N.A.L.C. asserts that exhaustion should
10 be waived because administrative remedies are (1) futile and (2) his continued detention results in
11 irreparable harm.

12 12. It would be futile for N.A.L.C. to seek a bond hearing from an Immigration Judge.
13 His request would be summarily denied based on the current interpretation of the BIA’s recent
14 decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado*. *See Matter of Q. Li*, 29 I&N Dec. 66
15 (BIA 2025)(finding that noncitizens deemed applicants for admission are detained under 8 U.S.C.
16 § 1225(b) and ineligible for bond under 8 U.S.C. § 1226(a)); *see also Matter of Yajure Hurtado*,
17 29 I&N Dec. 216 (BIA 2025)(finding that under EOIR lacks the authority to hear bond requests
18 or to grant bonds to noncitizens present in the U.S. without admission 8 § U.S.C. 1225(b)). While
19 the U.S. District Court for the Central District of California recently certified a nationwide class
20 of noncitizens denied by DHS and denied bond hearings for having entered without admission or
21 inspection and granted declaratory relief declaring that members of the class are entitled to bond
22 hearings, practitioners across the nation are reporting that bonds are still being denied regularly.
23 *See Lazaro Maldonado Bautista v. Ernesto Santacruz, Jr.*, 5:25-cv-01873, (C.D. Cal.); *see also*
24 Affidavit of Natalia Vieira Santanna (“Santanna Aff.”).

25 13. Further, no statutory exhaustion requirements apply to N.A.L.C.’s claim of
26 unlawful custody in violation of his due process rights, and there are no administrative remedies
27 that he needs to exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936,
28

1 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not
2 have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d
3 1098, 1099 (C.D. Cal. 2000) (same).

4 PARTIES

5 14. N.A.L.C. is a citizen and national of Venezuela who entered the United States in
6 around September 2023, and has remained in the country since. *See* Affidavit of N.A.L.C.
7 (“N.A.L.C. Aff.”). DHS detained him in border and immigration custody until around October
8 2023, when it determined that he was not a danger to the community or a flight risk and released
9 him under an order of release in INA § 240 proceedings, pursuant a Notice to Appear. He
10 established a life in Buffalo, New York, where he lives with friends, spends most of his time with
11 his U.S. citizen girlfriend, who he planned to marry in October 2025. N.A.L.C. Aff. ¶ 5. N.A.L.C.
12 worked steadily in construction and cleaning jobs, and sends money to support his daughters and
13 his father in Venezuela. *Id.* ¶ 8.

14 15. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
15 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
16 responsible for detaining and removing noncitizens according to immigration law and oversees
17 custody determinations. In her official capacity, she is the legal custodian of N.A.L.C.

18 16. Respondent Sergio ALBARRAN is the Acting Field Office Director of the San
19 Francisco ICE Field Office. In this capacity, he is responsible for the administration of
20 immigration laws and the execution of immigration enforcement and detention policy within
21 ICE’s San Francisco Area of Responsibility, including the detention of Petitioner. Respondent
22 Albarran maintains an office and regularly conducts business in this district. Respondent Albarran
23 is sued in his official capacity.

24 17. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
25 official capacity. Among other things, ICE is responsible for the administration and enforcement
26 of the immigration laws, including the removal of noncitizens. In his official capacity as head of
27 ICE, he is the legal custodian of N.A.L.C.
28

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

20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office and placing them into expedited removal. *See* Arelis R. Hernández & Maria Sacchetti, “Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push,” Wash. Post (May 23, 2025), available at:

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1 available at: [https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-](https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-stephen-miller-b2878376.html)
2 [stephen-miller-b2878376.html](https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-stephen-miller-b2878376.html). According to White House officials like Stephen Miller, this
3 directive prioritized arrest numbers over the individuals' criminal history, encouraging agents to
4 conduct mass roundups in public spaces rather than targeted investigations. *Id*; *see also* Santanna
5 Aff.

6 21. As a result, arrests of non-citizens have surged – and more than half of those
7 arrested had no criminal record. *See* Albert Sun, “Most Immigrants Arrested in City Crackdowns
8 Have No Criminal Record,” N.Y. Times (December 4, 2025), available at:
9 <https://www.nytimes.com/interactive/2025/12/04/us/ice-arrests-criminal-records-data.html#>. This
10 focus on quantity over public safety led to a new and aggressive tactic: systematically arresting
11 immigrants at courthouses and ICE appointments, regardless of the status of their legal cases.
12 This has created a climate of fear, discouraging people from attending their mandatory hearings
13 or ICE appointments. DHS’s aggressive tactics (including the arrests of U.S. citizens) and failure
14 to abide by statutes and judicial orders continue to be the subject of ongoing congressional
15 investigations. *See* Marianne LeVine, “Democrats lambaste Noem, demand she resign at
16 combative congressional hearing,” The Washington Post (December 11, 2025), available at:
17 <https://www.washingtonpost.com/immigration/2025/12/11/noem-dhs-congress-house-hearing/>;
18 *see also* Santanna Aff.

19 22. In addition, individuals are now held for extended periods, sometimes days, in
20 temporary holding cells that are not designed for overnight or prolonged detention, often under
21 inhumane conditions. Government officials have justified these harsh conditions not as a matter
22 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
23 detention. *See* Associated Press and Guardian staff, “Louisiana prisons notoriety key to its
24 selection as immigration jail, says Noem,” The Guardian (September 4, 2025), *available at*:
25 [https://www.theguardian.com/us-news/2025/sep/04/louisiana-prison-chosen-for-immigration-](https://www.theguardian.com/us-news/2025/sep/04/louisiana-prison-chosen-for-immigration-detainees-due-to-its-notoriety-say-noem)
26 [detainees-due-to-its-notoriety-say-noem](https://www.theguardian.com/us-news/2025/sep/04/louisiana-prison-chosen-for-immigration-detainees-due-to-its-notoriety-say-noem).

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

4 24. N.A.L.C. fled Venezuela in 2023 because of severe political persecution and
5 threats to his life due to his opposition to the government [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 25. In around September 2023, N.A.L.C. crossed the border into the United States near
12 Brownsville, Texas, with the intention of seeking protection in the United States. N.A.L.C. Aff.
13 ¶3. DHS held him in border and immigration custody until October 2023, when officers
14 determined that he was not a danger to the community or a flight risk and released him on his
15 own recognizance, after placing him in removal proceedings under INA § 240. *Id* ¶4; *see also*
16 Arrest record dated September 20, 2023 *attached as* Exhibit 1 and Order of Release on
17 Recognizance *attached as* Exhibit 2; *see also* Asylum Application of N.A.L.C. - first page
18 (“Asylum App.”), *attached as* Exhibit 6.

19 26. Upon his release, N.A.L.C. relocated to Buffalo, New York. N.A.L.C. Aff. ¶5. He
20 lived with friends at [REDACTED] and spent most of his time with his U.S. citizen
21 girlfriend, [REDACTED] with whom he has been in a committed relationship for
22 approximately one and a half years. *Id* ¶5. They planned to marry in October 2025, but the
23 wedding could not take place because he was arrested and detained again in August 2025. *Id* ¶5;
24 *see also* Arrest record dated September 20, 2023 Letters of support, *attached as* Exhibit 5.

25 27. While living in Buffalo, N.A.L.C. worked in construction and cleaning jobs. He
26 used his earnings to support himself and to send money to his daughters and his father in
27 Venezuela, who depend on him financially. N.A.L.C. Aff. ¶8. He has never committed any
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1 crimes and has never been arrested for any reason other than immigration custody. *Id.* ¶ 8. Letters
2 and information gathered from his girlfriend, friends, and community attest to his reliability,
3 strong work ethic, and good character. *See* Exh. 5.

4 28. N.A.L.C. has diligently complied with all requirements of his removal
5 proceedings. He received a Notice to Appear placing him in INA § 240 proceedings and appeared
6 for his Master Hearings. *See* Exh. 4; N.A.L.C. Aff. ¶ 10. On October 28, 2024, N.A.L.C. timely
7 filed his Form I-589 (Application for Asylum and for Withholding of Removal), given his fear of
8 return to Venezuela because of the persecution and death threats he received, and he was awaiting
9 further hearings on his asylum application when he was arrested and detained again. *See* Exh. 6;
10 N.A.L.C. Aff. ¶ 9.

11 29. On August 7, 2025, N.A.L.C. was detained by immigration agents in Buffalo, NY
12 while he was returning from work in a company vehicle with his co-workers. José, who had a
13 valid driver's license, was driving. *Id.* ¶ 11. The agents stopped the company vehicle, approached,
14 asked the occupants for documents, and then placed N.A.L.C. and others in handcuffs. *Id.* ¶ 11.
15 Even though he was in removal proceedings and had been attending his hearings, they did not
16 present a judicial warrant, did not inform him that he had violated any condition, and did not
17 clearly explain why he was being arrested. *Id.* ¶ 11.

18 30. He was first taken to an ICE office in New York, then moved to the Buffalo
19 Federal Detention Facility in Batavia, transferred through additional detention centers, including
20 in Louisiana and other states, and ultimately relocated to Mesa Verde, where he is currently
21 detained. *Id.* ¶ 12. During these transfers, he was shackled by his feet, hands, and waist. *Id.* ¶ 12.
22 The trips were long, uncomfortable, and extremely stressful. *Id.* ¶ 12.

23 31. N.A.L.C.'s asylum case remains pending. Prior to his re-detention, he diligently
24 appeared at all scheduled hearings in his removal proceedings. *Id.* ¶¶ 6, 7, 12. He attended Master
25 Calendar Hearings on October 30, 2024, and June 25, 2025, both held before the Buffalo
26 Immigration Court, as well as a subsequent Master Calendar Hearing on October 30, 2025, before
27 the Mesa Verde ICE Processing Center. *Id.* ¶¶ 6, 7, 12. His next master calendar hearing is
28

1 currently set for December 18, 2025. *See* Automatic Case Information for N.A.L.C., *attached as*
2 Exhibit 7.

3 LEGAL ARGUMENT

4 32. N.A.L.C.'s removal proceedings before the Adelanto Immigration Judge are
5 governed by INA § 240 ("section 240 proceedings"). Section 240 proceedings provide important
6 statutory protections, including hearings before an Immigration Judge. *See* 8 U.S.C. §
7 1229a(a)(1), (a)(4).

8 33. In N.A.L.C.'s particular circumstances, the Due Process Clause of the Constitution
9 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation
10 hearing before a neutral decision maker to determine whether circumstances have materially
11 changed since his release from custody in October 2023, such that detention would now be
12 warranted on the basis that he is a danger or a flight risk by clear and convincing evidence. U.S.
13 Const. amend. V.

14 34. By statute and regulations, ICE has the ability to unilaterally revoke any
15 noncitizen's immigration bond determination or parole, and re-arrest the noncitizen at any time. 8
16 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language
17 of 8 U.S.C. § 1226(b) granting ICE the power to revoke an immigration bond "at any time the
18 BIA has recognized an implicit limitation on ICE's authority to re-arrest noncitizens. *See Matter*
19 *of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). In *Matter of Sugay*, the BIA held that "where a
20 previous bond determination has been made by an immigration judge, no change should be made
21 by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of
22 changed circumstances both where the prior bond determination was made by an immigration
23 judge and where the previous release decision was made by a DHS officer." *Saravia*, 280 F.
24 Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of*
25 *Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v.*
26 *Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE
27 cannot redetain Panosyan.").

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

7 36. ICE’s power to re-arrest a noncitizen who is at liberty following a release from
8 custody is also constrained by the demands of due process. *See Hernandez*, 872 F.3d at 981 (“the
9 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
10 due process”). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-
11 deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482
12 (1972) (same, in parole context). Petitioner’s release from custody in October of 2023 and ties to
13 his family and community provide him with a protected liberty interest. *See Ortega v. Bonnar*,
14 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

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

2025) (holding the Constitution requires a hearing before any re-arrest).

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

38. The Due Process Clause protects N.A.L.C.’s liberty from immigration custody: “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

39. Since October 2023, N.A.L.C. exercised that freedom under ICE’s order releasing him from custody. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that N.A.L.C. would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

40. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 136 S. Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.”) (internal quotations omitted).

41. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a

1 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
2 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever
3 name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.”
4 *Id.* at 482.

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

20 43. In fact, it is well-established that an individual maintains a protectable liberty
21 interest even where the individual obtains liberty through a mistake of law or fact. *See id.*;
22 *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982)
23 (noting that due process considerations support the notion that an inmate released on parole by
24 mistake, because he was serving a sentence that did not carry a possibility of parole, could not be
25 re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted
26 to society, so it “would be inconsistent with fundamental principles of liberty and justice” to
27 return him to prison) (internal quotation marks and citation omitted).
28

1 44. Here, when this Court compares the specific release in N.A.L.C.'s case "with the
2 liberty interest in parole as characterized by *Morrissey*," they are strikingly similar. *See Gonzalez-*
3 *Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, N.A.L.C.'s release "enables him to do a wide
4 range of things open to persons"" who have never been in custody or convicted of any crime,
5 including to live at home, practice his faith, care for his grandmother, and "be with family and
6 friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

7
8 **II. Petitioner's Liberty Interest Mandates a Hearing Before Any Re-Arrest or
Revocation of Release from Custody**

9 45. N.A.L.C. asserts that, here, (1) where his detention would be civil; (2) where he
10 has been at liberty for over two years; (3) where no change in circumstances exist that would
11 justify his lawful detention; and (4) where the only circumstance was ICE's move to arrest as
12 many people as possible because of the new administration, due process mandates that he be
13 released from his unlawful custody and receive notice and a hearing before a neutral adjudicator
14 prior to any re-arrest or revocation of his custody release.

15 46. "Adequate, or due, process depends upon the nature of the interest affected. The
16 more important the interest and the greater the effect of its impairment, the greater the procedural
17 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
18 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
19 "balance [N.A.L.C.'s] liberty interest against the [government's] interest in the efficient
20 administration of" its immigration laws in order to determine what process he is owed to ensure
21 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
22 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
23 "first, the private interest that will be affected by the official action; second, the risk of an
24 erroneous deprivation of such interest through the procedures used, and the probative value, if
25 any, of additional or substitute procedural safeguards; and finally the government's interest,
26 including the function involved and the fiscal and administrative burdens that the additional or
27 substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
28 *Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the *Mathews* factors in

1 similar cases, and found that those in Petitioner’s position, noncitizens granted the liberty of
 2 release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No.
 3 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v.*
 4 *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v.*
 5 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez*
 6 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

7 47. The Supreme Court “usually has held that the Constitution requires some kind of a
 8 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
 9 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
 10 are “the only remedies the State could be expected to provide” can post-deprivation process
 11 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one
 12 of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible
 13 in preventing the kind of deprivation at issue” such that “the State cannot be required
 14 constitutionally to do the impossible by providing predeprivation process,” can the government
 15 avoid providing pre-deprivation process. *Id.*

16 48. Because, in this case, ICE is required to release N.A.L.C. from his unlawful
 17 custody and provide N.A.L.C. with notice and a hearing prior to any re-incarceration and
 18 revocation of his liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56;
 19 *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307,
 20 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
 21 awaiting involuntary civil commitment proceedings may not constitutionally be held in jail
 22 pending the determination as to whether they can ultimately be recommitted). Under *Mathews*,
 23 the balance weighs heavily in favor of N.A.L.C.’s liberty and requires a pre-deprivation hearing
 24 before a neutral adjudicator.

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

26 49. Under *Morrissey* and its progeny, individuals conditionally released from serving a
 27 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
 28

1 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
2 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
3 him to constitutional due process before he is re-incarcerated—apply with even greater force to
4 individuals like N.A.L.C., who have been released pending civil removal proceedings, rather than
5 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
6 conviction. Parolees and probationers have a diminished liberty interest given their underlying
7 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
8 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
9 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
10 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
11 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, N.A.L.C. retains a truly weighty liberty interest
12 even though he is under conditional release.

13 50. What is at stake in this case for N.A.L.C. is one of the most profound individual
14 interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision
15 releasing him from custody and to take away—without a lawful basis—his physical freedom, i.e.,
16 his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d
17 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has
18 always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
19 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—
20 from government custody, detention, or other forms of physical restraint—lies at the heart of the
21 liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

22 51. Thus, there is a clear profound private interest at stake in this case, which must be
23 weighed heavily when determining what process he is owed under the Constitution. *See Mathews*,
24 424 U.S. at 334-35.

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

28 52. The government’s interest in detaining N.A.L.C. without a due process hearing is

low, and when weighed against N.A.L.C.'s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release N.A.L.C. from his unlawful custody and refrain from re-arresting N.A.L.C. unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors N.A.L.C. when the Court considers that the process he seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing N.A.L.C. with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that N.A.L.C. is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like N.A.L.C.

53. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis for detaining N.A.L.C. has lived at liberty complying with the conditions of his release since October 2023.

54. ICE determined N.A.L.C. not to be a danger to the community or a flight risk in October 2023 and has done nothing to undermine that determination. To the contrary, he complied with the terms of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a person’s justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

55. It is difficult to see how the government’s interest in detaining him has materially changed since he was released in October 2023, when he has appeared at every ISAP and ICE appointment. The government’s interest in detaining N.A.L.C. at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new

1 administration does not constitute a material change in circumstances or increase the
2 government's interest in detaining him.

3 56. Moreover, the "fiscal and administrative burdens" that his immediate release and a
4 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
5 334-35. N.A.L.C. does not seek a unique or expensive form of process, but rather a routine
6 hearing regarding whether his order of release should be revoked and whether he should be re-
7 incarcerated.

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

13 58. In addition, providing N.A.L.C. with a hearing before this Court (or a neutral
14 decisionmaker) regarding release from custody is a routine procedure that the government
15 provides to those in immigration jails daily. At that hearing, the Court would have the opportunity
16 to determine whether circumstances have changed sufficiently to justify his re-arrest. But there is
17 no justifiable reason to re-incarcerate N.A.L.C. prior to such a hearing taking place. As the
18 Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being
19 able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if
20 in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
21 revoking parole without some informal procedural guarantees." *Morrissey*, 408 U.S. at 483.

22 59. Releasing N.A.L.C. from unlawful custody and enjoining his re-arrest until ICE
23 (1) moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates
24 by clear and convincing evidence that N.A.L.C. is a flight risk or danger to the community.
25 *Hernandez*, 872 F.3d at 996.

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

1 60. Releasing N.A.L.C. from unlawful custody and providing N.A.L.C. a pre-
2 deprivation hearing would decrease the risk of N.A.L.C. being erroneously deprived of his
3 liberty. Before N.A.L.C. can be lawfully detained, he must be provided with a hearing before a
4 neutral adjudicator at which the government is held to show that there has been sufficiently
5 changed circumstances such that ICE's October 2023 release from custody determination should
6 be altered or revoked because clear and convincing evidence exists to establish that N.A.L.C. is a
7 danger to the community or a flight risk.

8 61. In August 2025, N.A.L.C. did not receive this protection. Instead, he was detained
9 by ICE, without notice, as he attended his appointment with ICE, demonstrating compliance, and
10 there have been no material changes in his circumstances.

11 62. By contrast, the procedure N.A.L.C. seeks—a hearing in front of a neutral
12 adjudicator at which the government must prove by clear and convincing evidence that
13 circumstances have changed to justify his detention before any re-arrest—is much more likely to
14 produce accurate determinations regarding factual disputes, such as whether a particular
15 occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375,
16 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses and
17 assessment of conditions not subject to measurement” are at issue, the “risk of error is
18 considerable when just determinations are made after hearing only one side”). “A neutral judge is
19 one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th
20 Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).
21 The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews*
22 can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
23 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

24 63. Due process also requires consideration of alternatives to detention at any custody
25 determination hearing that may occur. The primary purpose of immigration detention is to ensure
26 a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
27 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
28

1 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
2 must be considered in determining whether N.A.L.C.'s reincarceration is warranted.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**

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

6 64. N.A.L.C. re-alleges and incorporates herein by reference, as is set forth fully
7 herein, the allegations in all the preceding paragraphs.

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

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

13 67. The Court must therefore order that ICE release N.A.L.C. from his current
14 unlawful custody.

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

22 **SECOND CLAIM FOR RELIEF**

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

24 69. N.A.L.C. re-alleges and incorporates herein by reference, as is set forth fully
25 herein, the allegations in all the preceding paragraphs.

26 70. The Due Process Clause of the Fifth Amendment forbids the government from
27 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
28

1 amend. V.

2 71. N.A.L.C. has a vested liberty interest in his conditional release. Due Process does
3 not permit the government to strip him of that liberty without it being tethered to one of the two
4 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
5 community from danger. Since October 2023, N.A.L.C. has attended all his appointments, thus
6 demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be
7 punitive and violate his constitutional right to be free from the unjustified deprivation of his
8 liberty.

9 72. For these reasons, N.A.L.C.'s continued unlawful custody and any subsequent re-
10 arrest without first being provided a pre-deprivation hearing would violate the Constitution.

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

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

19 **PRAYER FOR RELIEF**

20 WHEREFORE, N.A.L.C. prays that this Court grant the following relief:

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

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

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

(6) Award reasonable costs and attorney fees; and

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

Respectfully submitted this 18th day of December 2025.

By counsel,

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna, Esq.
Attorney for Petitioner
Bar #P76443 (Michigan)/ Bar #337502 (California)
PO Box 7528
Phone: (510) 922-0154
Email: natalia@santannalaw.com
Attorney for Petitioner

/s/ Otavio Haverroth Silva

Otavio Haverroth Silva
CA BAR No. 343846
HS LAW CORP
PO Box 90487, San Diego, CA 92169
(510) 241-9336 (Telephone)
otavio@legalhs.com (Email)
Attorney for Petitioner

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

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

Executed on December 18, 2025, in Oakland, CA.

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna, Esq.
Attorney for Petitioner