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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 PETITIONER,

15 **LUIS GUILLERMO ORTEGA MACARIO,**

16 v.

17 SERGIO ALBARRAN, Acting Field Office  
Director of the San Francisco Immigration and  
18 Customs Enforcement Office; TODD LYONS,  
Acting Director of United States Immigration  
19 and Customs Enforcement; KRISTI NOEM,  
Secretary of the United States Department of  
20 Homeland Security, PAMELA BONDI,  
Attorney General of the United States, acting in  
21 their official capacities,

22 Respondents.

CASE NO. \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS  
CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner Luis Guillermo Ortega Macario (“Mr. Ortega” or “Petitioner”),<sup>1</sup> by and  
3 through undersigned counsel, hereby files this petition for writ of habeas corpus to compel his  
4 immediate release from the custody of the Department of Homeland Security (“DHS”). Mr.  
5 Ortega, a Guatemalan asylum seeker, was unlawfully re-detained today at a DHS check-in  
6 appointment in San Francisco without first being provided a due process hearing to determine  
7 whether his incarceration is justified. Mr. Ortega must be released from custody unless and until  
8 DHS proves to a neutral adjudicator by clear and convincing evidence that he presents a current  
9 danger and flight risk.

10 2. It is well-established that individuals released from custody have a protected liberty  
11 interest in their freedom. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). A chorus of district  
12 courts across California have recognized that noncitizens released from ICE custody share this  
13 strong liberty interest. *See, e.g., Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL  
14 691664 (E.D. Cal. Mar. 3, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL  
15 1927596 (E.D. Cal. July 14, 2025); *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO  
16 (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025  
17 WL 1771438, at \*3 (N.D. Cal. June 26, 2025) (collecting cases).

18 3. Mr. Ortega has accrued a strong liberty interest for over four years since he was  
19 released on his own recognizance by the Department of Homeland Security (“DHS”). Since his  
20 release from custody, Mr. Ortega has complied with all supervision requirements. He presented as  
21 required at check-ins, applied for asylum and fear-based relief, obtained work authorization, and  
22 maintains steady employment in home remodeling with a contractor. His asylum application was  
23 denied by the immigration judge in January, and he currently has a pending appeal with the Board  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Mr. Ortega respectfully requests that the Court use his initials, rather than his full last  
27 name, in any opinion in his case, as suggested by the Committee on Court Administration and  
28 Case Management of the Judicial Conference of the United States. *See* Memorandum Re:  
Privacy Concern Regarding Social Security & Immigration Opinions, May 1, 2018, available at:  
[https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion\\_cacm\\_0.pdf](https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf). *See also* *Walter*  
*A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at \*10 (E.D.  
Cal. June 24, 2025).

1 of Immigration Appeals (“BIA”). Mr. Ortega has also supported and co-parented his three  
2 children, over whom he shares half legal and physical custody.

3 4. Mr. Ortega has two misdemeanor arrests, neither of which resulted in a conviction.  
4 ICE has known of these arrests, but did not take any action to detain him until today.

5 5. In 2022, Mr. Ortega was arrested for misdemeanor domestic violence, but charges  
6 were dismissed by the prosecution. He continued checking in with ICE and abiding by the terms  
7 of his release. In September 2025, Mr. Ortega was arrested for a misdemeanor DUI and promptly  
8 released. The district attorney has so far declined to file charges. On November 21, 2025, he  
9 appeared for an ICE check-in, and was asked to return for another check-in on December 22, 2025.

10 6. When Mr. Ortega appeared today, ICE unilaterally decided to re-detain him without  
11 notice or a hearing. The basic principle—that individuals placed at liberty are entitled to neutral  
12 process before the government imprisons them—remains in force here. DHS necessarily  
13 determined in 2021 that he was not a flight risk or danger when it granted him release from custody  
14 on his own recognizance. In the four years since then, he has formed the “enduring attachments to  
15 normal life” that strengthen his liberty interest. *See Morrissey*, 408 U.S. at 482. His misdemeanor  
16 arrests, for which there are no convictions, do not diminish his liberty interest. *See e.g., Guillermo*  
17 *M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1036 (N.D. Cal. July 17, 2025); *Larrios v. Albarran*, No. 25-  
18 cv-08799-AMO, 2025 WL 3043391, at \*7-8 (N.D. Cal. Oct. 31, 2025). Due process still requires  
19 that he receive a neutral hearing *before* the government deprives him of his liberty. *See Zinermon*  
20 *v. Burch*, 494 U.S. 113, 127 (1990).

21 7. For these and the foregoing reasons, this Court should join its colleagues in holding  
22 that due process required notice and a hearing, *prior* to any re-detention, at which he would be  
23 afforded the opportunity to advance his arguments as to why his release should not be revoked. To  
24 restore the status quo ante, the Court should order Mr. Ortega’s immediate release until a neutral  
25 decisionmaker determines that DHS has justified his incarceration by clear and convincing  
26 evidence.

1 **JURISDICTION AND VENUE**

2 8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal  
3 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),  
4 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension  
5 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706  
6 (Administrative Procedure Act).

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

9 **REQUIREMENTS OF 28 U.S.C. §2243**

10 10. The Court must grant the petition for writ of habeas corpus or issue an order to  
11 show cause (“OSC”) to the Respondents “forthwith,” unless Mr. Ortega is not entitled to relief. 28  
12 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within  
13 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*  
14 (emphasis added).

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

20 12. Habeas corpus must remain a swift remedy. Accordingly, “the statute itself directs  
21 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious  
22 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations  
23 omitted). In *Yong*, the court warned against any action creating the perception “that courts are more  
24 concerned with efficient trial management than with the vindication of constitutional rights.” *Id.*  
25

26 **PARTIES**

27 13. Petitioner Luis Guillermo Ortega Macario (“Mr. Ortega” or “Petitioner”) is a  
28

1 citizen of Guatemala who fled to the United States seeking asylum in 2021.

2 14. Respondent Sergio Albarran is the Acting Field Office Director of the San  
3 Francisco ICE Field Office. In this capacity, he is responsible for the administration of immigration  
4 laws and the execution of immigration enforcement and detention policy within ICE's San  
5 Francisco Area of Responsibility, including the detention of Petitioner. Respondent Albarran  
6 maintains an office and regularly conducts business in this district. Respondent Albarran is sued  
7 in his official capacity.

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

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

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

24 **EXHAUSTION**

25 18. There is no requirement to exhaust because no other forum exists in which  
26 Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to  
27 challenging the constitutionality of an arrest or detention, or challenging a policy under the  
28 Administrative Procedure Act. Prudential exhaustion is not required here because it would be

1 futile, and Petitioner will “suffer irreparable harm if unable to secure immediate judicial  
2 consideration of [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further  
3 exhaustion requirements would be unreasonable.

4 **STATEMENT OF FACTS**

5 19. Mr. Ortega is a 34-year-old national of Guatemala who came to the United States  
6 in 2021 and has resided in San Francisco, California ever since then. *See* Declaration of Jennifer  
7 T. Friedman (“Exh.”) A, ¶ 4. He fled to the United States with his then-partner and their two young  
8 children, fleeing gang violence including multiple physical assaults and death threats. *Id.*

9 20. The family turned themselves in to immigration officials at or near the border on  
10 December 20, 2021, who processed them for removal proceedings and released them within  
11 approximately two days. *Id.* ¶ 5.

12 21. Mr. Ortega and his family moved to San Francisco, California, where they lived  
13 with his sister and brother-in-law for a few months before moving to their own home. *Id.* ¶ 6.

14 22. Their eldest child joined them in July 2023 after suffering additional threats in  
15 Guatemala. *Id.* ¶ 10.

16 23. On September 30, 2022, Mr. Ortega and his partner had a disagreement that resulted  
17 in the police coming and Mr. Ortega’s arrest. *Id.* ¶ 7. The couple have been separated since that  
18 day. Mr. Ortega returned to his sister and brother-in-law’s home in San Francisco, where he has  
19 lived ever since. *Id.*

20 24. On May 14, 2024, all criminal charges against Mr. Ortega were dismissed. *Id.* ¶ 8.

21 25. Since that time, Mr. Ortega and the mother of his children have been separated but  
22 remain committed co-parents who share legal and physical custody of their three children. *Id.* ¶  
23 10.

24 26. The couple’s children are currently 12, 9, and 6 and split their time between their  
25 parents’ homes. *Id.* ¶ 11. The three children are off of school this week and next for the holiday  
26 and the family was looking forward to spending time together over the holiday. *Id.* ¶ 11.

27 27. Mr. Ortega’s ex-partner was ultimately granted asylum and their three children  
28 were granted derivative asylum status. *Id.* ¶ 9.

1 28. Mr. Ortega has valid work authorization and works full-time in construction. *Id.* ¶  
2 12. He is currently working five days a week on home remodeling with a contractor. *Id.*

3 29. On January 27, 2025, the Immigration Judge denied Mr. Ortega’s application for  
4 asylum and related applications for relief. *Id.* ¶ 13. Mr. Ortega filed a timely appeal to the BIA on  
5 January 30, 2025. *Id.* ¶ 14. That appeal remains pending. *Id.*

6 30. On September 7, 2025, Mr. Ortega was stopped by police and cited for driving  
7 under the influence of alcohol. *Id.* ¶ 15. He was promptly released and no charges were filed. *Id.*  
8 To this day, no charges have been filed. *Id.*

9 31. On November 21, 2025, Mr. Ortega reported to his regular ICE check-in as  
10 required. *Id.* ¶ 16. He was asked to return on December 22, 2025 with documentation regarding  
11 the September arrest demonstrating that no criminal charges are pending. *Id.*

12 32. On December 22, 2025, Mr. Ortega returned to ICE check-in with documentation  
13 from the San Francisco Criminal Clerk’s Office showing that no charges were filed and no charges  
14 against him are pending. *Id.* ¶ 17.

15 33. Despite the fact that Mr. Ortega has no criminal convictions and no charges filed,  
16 he was detained today December 22, 2025. *Id.* ¶17. Undersigned pro bono counsel spoke with the  
17 Deportation Officer at 630 Sansome, who relayed that he understood that there were no charges  
18 and no conviction but that it was determined that he would be detained based solely on his “police  
19 contact”. *Id.* If he is not promptly ordered released, he will miss spending the Christmas holiday  
20 with his children.

21 34. Mr. Ortega has always complied with ICE requirements, including ISAP. *Id.* ¶ 18.  
22 He was originally reporting through an app on this phone, and more recently was fitted with a GPS  
23 ankle monitor. *Id.* He has also attended all immigration court appearances and complied with all  
24 ICE reporting requirements. *Id.*

25  
26 **ARGUMENT**

27 **Mr. Ortega Macario Has a Protected Liberty Interest in His Conditional Release**

28 35. “Freedom from imprisonment—from government custody, detention, or other

1 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”  
2 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For the past four years following his release on  
3 recognizance, Mr. Ortega exercised that freedom. He pursued his asylum application, complied  
4 with supervision requirements, and supported his family.

5 36. While that freedom may ultimately be revocable should circumstances materially  
6 change, see *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F.  
7 Supp. 3d 1168, 1196-97 (N. D. Cal. 2017), he nonetheless retains a weighty liberty interest under  
8 the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*,  
9 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v.*  
10 *Brewer*, 408 U.S. 471, 482-483 (1972); see also *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70  
11 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in remaining out of  
12 custody following an IJ’s bond determination); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020  
13 WL 5517277, at \*2 (N.D. Cal. 2020) (same); *Jorge M.F. v. Jennings*, 534 F.Supp.3d 1050, 1054-  
14 55 (N.D. Cal. 2021) (same).

15 37. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a  
16 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the  
17 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and  
18 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further  
19 noted that “the parolee has relied on at least an implicit promise that parole will be revoked only  
20 if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee,  
21 although indeterminate, includes many of the core values of unqualified liberty and its termination  
22 inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the  
23 liberty is valuable and must be seen as within the protection of the [Fifth] Amendment.” *Morrissey*,  
24 408 U.S. at 482.

25 38. This basic principle—that individuals have a liberty interest in their conditional  
26 release—has been reinforced by both the Supreme Court and the circuit courts on numerous  
27 occasions. See, e.g., *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-  
28 parole program created to reduce prison overcrowding have a protected liberty interest requiring

1 pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals  
2 released on felony probation have a protected liberty interest requiring pre-deprivation process).

3 39. As the First Circuit has explained, when analyzing the issue of whether a specific  
4 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue  
5 by comparing the specific conditional release in the case before them with the liberty interest in  
6 parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir.  
7 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*,  
8 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even  
9 if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due  
10 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,  
11 and *Morrissey*, 408 U.S. at 482).

12 40. An individual maintains a protectable liberty interest even where she obtains liberty  
13 through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*,  
14 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process supports the notion that an inmate  
15 released on parole by mistake, because he was serving a sentence that did not carry a possibility  
16 of parole, could not be re-incarcerated because the release was not his fault and he had  
17 appropriately adjusted to society, so it “would be inconsistent with fundamental principles of  
18 liberty and justice” to return him to prison) (cleaned up).

19 41. Moreover, because Mr. Ortega faces civil detention, “his liberty interest is arguably  
20 greater than the interest of the parolees in *Morrissey*.” *See Ortega v. Bonnar*, 415 F.Supp.3d 963,  
21 970 (N.D. Cal. 2019). Mr. Ortega was released pending removal proceedings, unlike parolees or  
22 probationers, who have a diminished liberty interest given their underlying convictions. *See, e.g.,*  
23 *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). As  
24 someone facing civil detention, therefore, “it stands to reason that [Mr. Ortega] is entitled to  
25 protections at least as great as those afforded to an individual . . . accused but not convicted of a  
26 crime.” *See Jones*, 393 F.3d at 932.

27 42. District courts have overwhelmingly held that noncitizens released during their  
28 removal proceedings have a similar liberty interest to that articulated in *Morrissey*. *See, e.g., Meza*

1 v. *Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963  
2 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal.  
3 Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2 (N.D.  
4 Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*4 (N.D. Cal.  
5 June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at \*4 (N.D. Cal. June 14,  
6 2025); *Guillermo M.R. v. Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, 2025).

7 43. In recent months, numerous California district courts have recognized the strength  
8 of a noncitizen's protected liberty interest following release from ICE custody. *See Garcia v.*  
9 *Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at \*5 (E.D. Cal. July 14, 2025);  
10 *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at \*1 (E.D.  
11 Cal. Aug. 4, 2025).

12 44. As in those cases, when this Court “‘compar[es] the specific conditional release in  
13 [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear  
14 that they are on all fours. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Ortega’s  
15 release “enables him to do a wide range of things open to persons” who have never been in custody  
16 or convicted of any crime, including to live at home, work, and “be with family and friends and to  
17 form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

18 45. Courts have also made clear that intervening arrests, or even convictions, do not  
19 diminish an individual’s liberty interest so as to allow ICE to unilaterally re-detain them without a  
20 neutral hearing. *See, e.g., Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1036 (N.D. Cal. July 17,  
21 2025); *Roa v. Albarran*, No. 25-cv-07802-RS, 2025 WL 2732923, at \*1 (N.D. Cal. Sept. 25, 2025);  
22 *Larrios v. Albarran*, No. 25-cv-08799-AMO, 2025 WL 3043391, at \*7-8 (N.D. Cal. Oct. 31,  
23 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, at \*2 (E.D.  
24 Cal. Sept. 9, 2025).

25 46. Since his release in 2021, Mr. Ortega has continued with his meaningful life  
26 surrounded by his family and friends. He has a stable job in construction, working on home  
27 remodeling jobs. He is an involved father with his three children, ages 12, 19, and 6 years old who  
28 live with him about fifty per cent of the time. He applied for asylum and is anxiously awaiting a

1 final decision on that application with the Board of Immigration Appeals. While released, he was  
2 able to participate in the “attachments of normal life,” *Morrissey*, 408 U.S. at 482, and as such, he  
3 has a protected liberty interest and his continued detention without adequate process violates his  
4 due process rights.

5  
6 **Mr. Ortega’s Liberty Interest Mandated a Hearing *Before* any Re-Arrest by ICE**

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). This is so even in cases where that freedom is lawfully  
10 revocable. *See Hurd*, 864 F.3d at 683 (citing *Young*, 520 U.S. at 152 (re- detention after pre-parole  
11 conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the  
12 same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole).  
13 Only in a “special case” where post-deprivation remedies are “the only remedies the State could  
14 be expected to provide” can post-deprivation process satisfy the requirements of due process.  
15 *Zinermon*, 494 U.S. at 985.

16 48. Because, in this case, the provision of a pre-deprivation hearing was both possible  
17 and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Mr.  
18 Ortega with notice and a hearing prior to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82;  
19 *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457  
20 U.S. 307, 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).

23 49. The decision in *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664,  
24 at \*8 (E.D. Cal. Mar. 3, 2025), illustrates what due process requires prior to re-detention by ICE.  
25 There, Mr. Doe, a noncitizen from India, had been re-detained by ICE at a standard check-in more  
26 than five years after his release on a bond. *Id.* at \*1. In granting a preliminary injunction, the Court  
27 held that even with new adverse facts following release, Mr. Doe had established a strong  
28 likelihood of success in showing that he had an interest in his continued liberty and that mandatory

1 detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due process rights  
2 unless he was afforded adequate process. *Id.* at \*5. The Court further held that, after applying the  
3 three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe was entitled to a  
4 hearing before an IJ to determine whether his detention is warranted. *Id.* at \*6, \*8. At this hearing,  
5 the government bore the burden of establishing, by clear and convincing evidence, whether Mr.  
6 Doe posed a danger or a flight risk.

7 50. As in *Doe*, Mr. Ortega has a protected liberty interest in his freedom, and before  
8 Respondents may deprive him of that, the Fifth Amendment requires they first prove that they  
9 have a lawful basis to do so. Thus, Mr. Ortega is entitled to release and a hearing to determine  
10 whether his re-detention would be unlawful. Here, that would mean a hearing in which a neutral  
11 judge can evaluate whether DHS can establish that Mr. Ortega presents a current danger or flight  
12 risk by clear and convincing evidence.

13  
14 **The Government's Interest in Keeping Mr. Ortega in Detention Without a Hearing is Low,  
15 and the Burden on the Government to Release Him from Custody Unless and Until He is  
16 Provided a Hearing is Minimal**

16 51. The government's interest in keeping Mr. Ortega in detention without a due process  
17 hearing is low and, when weighed against his significant private interest in his liberty, the scale  
18 tips sharply in favor of releasing him from custody unless and until the government demonstrates  
19 by clear and convincing evidence that he is a flight risk or danger to the community.

20 52. Immigration detention is civil and cannot be punitive in purpose or effect. The  
21 government's only interests in holding an individual in immigration detention can be to prevent  
22 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*  
23 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden  
24 interest in detaining Mr. Ortega based entirely on the uncharged police contact from September  
25 2025, when ICE officers evaluating his case are aware that the San Francisco District Attorney's  
26 Office has not filed any criminal charges, and where ICE officers have known of those arrests and  
27 declined to detain him.

28 53. Moreover, the "fiscal and administrative burdens" that release from custody would

1 pose—unless and until a pre-deprivation bond hearing is provided—are nonexistent. *See Mathews*,  
2 424 U.S. at 334-35. To the contrary, his release will save the government significant expenditure  
3 in resources until a neutral adjudicator decides whether his re-detention meets any valid civil  
4 purpose. As the Ninth Circuit noted, “[t]he costs to the public of immigration detention are  
5 ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”  
6 *Hernandez*, 872 F.3d at 996.

7 54. The minimal administrative cost of providing a bond hearing pales in comparison  
8 to the costs of detaining Mr. Ortega for what will likely be years as he pursues his application for  
9 relief from removal. *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. May 31, 2024) (cleaned up)  
10 (when a noncitizen “poses no danger and is not a flight risk, all the government does in requiring  
11 detention is separate families and remove from the community breadwinners, caregivers, parents,  
12 siblings and employees”).

13 55. Giving Mr. Ortega a custody hearing before a judge is a routine procedure that the  
14 government provides to those in immigration jails on a daily basis. *See Doe* at \*6 (“The effort and  
15 cost required to provide Petitioner with procedural safeguards is minimal and indeed was  
16 previously provided in his case.”). At that hearing, the court would have the opportunity to  
17 determine whether Mr. Ortega’s arrests without a conviction merits his indefinite detention without  
18 a hearing. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming  
19 interest in being able to return [a parolee] to imprisonment without the burden of a new adversary  
20 criminal trial if in fact he has failed to abide by the conditions of his parole. . .the State has no  
21 interest in revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

22  
23 **Without Release from Custody until the Government Provides a Due Process Hearing, the**  
24 **Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a**  
25 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That**  
26 **Risk**

27 56. Releasing Mr. Ortega from custody until he is provided a pre-deprivation hearing  
28 would decrease the risk of an erroneous deprivation of his liberty. Before Mr. Ortega can be  
lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the

1 government is held to show that there has been sufficiently changed circumstances such that his  
2 release from custody should be altered or revoked because clear and convincing evidence exists to  
3 establish that Mr. Ortega is a danger to the community or a flight risk. *See e.g. Diaz*, 2025 WL  
4 1676854, at \*3 (finding that “the three factors relevant to the due process inquiry set out in  
5 Mathews...support requiring a pre-detention hearing for [Mr. Ortega].”).

6 57. There is no change in circumstances to justify Mr. Ortega re-detention, much less  
7 a material change. *Saravia*, 280 F. Supp. 3d at 1197, aff’d sub nom. *Saravia for A.H.*, 905 F.3d  
8 1137 (DHS “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change  
9 in circumstances.”). The district attorney’s office has declined to pursue charges. Further, no  
10 current evidence suggests that Mr. Ortega is a danger to the community.

11 58. Nor is Mr. Ortega a flight risk. He has a large community of friends and is deeply  
12 connected to his church. He has a stable residence where he has lived with his sister and brother-  
13 in-law since December 2021 (but for a few months in 2022). He also has stable employment in  
14 construction. He has complied with his ICE check-ins and criminal court requirements. He is  
15 eligible for asylum and faces persecution if removed to Guatemala as someone who suffered  
16 physical assaults, death threats, and reported the gang’s activities to law enforcement. He has  
17 complied with all ICE reporting requirements, including in November and December 2025 when  
18 he was concerned that he might face detention but still appeared. He has the support of undersigned  
19 pro bono counsel in his asylum case. All of these factors indicate that he is not a flight risk and  
20 that he is likely to present himself at any future hearings or ICE appearances. Indeed, Mr. Ortega  
21 presented to ICE today despite the likelihood of his arrest.

22 59. In any event, the proper place for any alleged facts regarding danger and flight risk  
23 to be adduced is at a hearing before a neutral arbiter. As the court in *Doe* held:

24  
25 Given that Petitioner was previously found to not be a danger or risk of flight  
26 and the unresolved questions about the timing and reliability of the new  
27 information, the risk of erroneous deprivation remains high. Moreover, the  
28 value in granting Petitioner procedural safeguard is readily apparent. At a  
hearing, a neutral decisionmaker can consider all of the facts and evidence  
before him to determine whether Petitioner in fact presents a risk of flight or  
dangerousness.

1 *Doe*, 2025 WL 691664, at \*5.

2 60. The same principles hold true here. Mr. Ortega has already been erroneously  
3 deprived of his liberty, and the risk that he will continue to be so deprived is high if ICE is permitted  
4 to keep him detained after making a unilateral decision to re-detain him. *See Diouf v. Napolitano*,  
5 634 F.3d 1081, 1091-92 (9th Cir. 2011) (observing that the risk of an erroneous deprivation of  
6 liberty is reduced where a neutral decisionmaker, rather than ICE, makes custody determinations).  
7 No statutory mechanism provides Mr. Ortega any process before a neutral adjudicator following  
8 his re-detention. As a result, absent this Court’s intervention, the necessity of Mr. Ortega’s re-  
9 detention would evade review by the IJ or any other neutral arbiter.

10 61. Due process also requires consideration of alternatives to detention and ability to  
11 pay at any custody redetermination hearing that may occur. *See e.g., Hernandez v. Sessions*, 872  
12 F.3d 976, 997 (9th Cir. 2017) (“Plaintiffs are likely to succeed on their challenge under the Due  
13 Process Clause to the government’s policy of allowing ICE and IJs to set immigration bond  
14 amounts without considering the detainees’ financial circumstances or alternative conditions of  
15 release.”); *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL  
16 1744133, at \*10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to  
17 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.  
18 Detention is not reasonably related to this purpose if there are alternatives to detention that could  
19 mitigate risk of flight. *See Bell*, 441 U.S. at 538. Accordingly, alternatives to detention and ability  
20 to pay must be considered in determining whether Mr. Ortega’s re-incarceration is warranted.

21  
22 **FIRST CAUSE OF ACTION**

23 **Due Process**

24 **U.S. Const. Amend. V**

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

27 63. The Due Process Clause of the Fifth Amendment forbids the government from  
28 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

64. Mr. Ortega had a vested liberty interest in his conditional release. Due Process does

1 not permit the government to strip him of that liberty without a hearing before this Court. See  
2 *Morrissey*, 408 U.S. at 487-488.

3 65. For these reasons, Mr. Ortega's re-arrest without a hearing violated the  
4 Constitution. The only remedy of this violation is his immediate release from immigration  
5 detention until DHS proves to this Court or, in the alternative, a neutral adjudicator, by clear and  
6 convincing evidence, and taking into consideration alternatives to detention and ability to pay a  
7 bond, that he is a present danger to the community or an unmitigable flight risk, such that his re-  
8 incarceration is warranted. Further, to comply with due process, the government must provide Mr.  
9 Ortega with details regarding the date, time, place, and substance of any conduct being used by  
10 ICE justify his re-detention.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Mr. Ortega prays that this Court grant the following relief:

- 13 (1) Assume jurisdiction over this matter;
- 14 (2) Enjoin Respondents from transferring Mr. Ortega outside the jurisdiction of the  
15 Northern District of California pending the resolution of this case;
- 16 (3) Order the immediate release of Mr. Ortega from DHS custody on the conditions of  
17 his prior order of release and the reinstatement of that order until DHS proves to a  
18 neutral adjudicator by clear and convincing evidence that he is a present danger or an  
19 unmitigable flight risk after taking into consideration alternatives to detention and his  
20 ability to pay a bond, such that his re-incarceration is warranted.
- 21 (4) In the alternative, conduct an immediate bond hearing before this Court where DHS  
22 bears the burden of justifying Mr. Ortega's continued detention by clear and  
23 convincing evidence, after taking into consideration alternatives to detention and his  
24 ability to pay a bond, such that his re-incarceration is warranted.
- 25 (5) In the alternative, order an immediate bond hearing before a neutral decisionmaker  
26 where DHS bears the burden of justifying Mr. Ortega's continued detention by clear  
27  
28

1 and convincing evidence that he is a present danger or an unmitigable flight risk after  
2 taking into consideration alternatives to detention and his ability to pay a bond, such  
3 that his re-incarceration is warranted.

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

5 (7) Grant such further relief as the Court deems just and proper.  
6

7  
8 I declare under penalty of perjury under the laws of the United States of America that the  
9 foregoing is true and correct to the best of my knowledge. Executed on December 22, 2025 in  
10 San Francisco, California.

11  
12 Dated: December 22, 2025

Respectfully submitted,

13  
14 s/ Genna Beier  
Genna Beier

15  
16 Attorney for Petitioner  
17  
18  
19

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

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

25  
26 Dated: December 22, 2025

s/ Genna Beier  
Attorney for the Petitioner