UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Sebastián MELENDEZ BREGAL and Jhonny TOCOCARI SALGUERO Petitioners, v. Kristi NOEM, *Secretary of Homeland Security*, Todd LYONS, *Acting Director, U.S. Immigrations and Customs Enforcement*, Russell HOTT, *Washington Field Office Director, U.S. Immigration and Customs Enforcement*, Pamela BONDI, *Attorney General of the United States*, Jeffrey CRAWFORD, *Warden of Farmville Detention Center*, Respondents.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioners Sebastián Melendez Bregal and Jhonny Tococari Salguero are noncitizens who traveled to the United States to seek asylum, were previously released from immigration custody years ago, but then were abruptly re-detained and jailed for no legitimate reason.

2. In Honduras, Mr. Melendez Bregal advocated for [redacted] Because of his ethnic and racial identity, and his political

beliefs, he suffered [redacted] Fearing for his life, Mr. Melendez Bregal sought asylum in the United States.

3. In Bolivia, Mr. Tococari Salguero was brutally attacked by [redacted] because of his [redacted] for participating in a peaceful protest to demand rights and dignity for his [redacted] Seeking a life free from the violent repression of his identity and the risk of further serious harm, Mr. Tococari Salguero sought asylum in the United States.
4. Respondents have previously released both men from immigration custody on their own recognizance, with required periodic check-ins with Immigration and Customs Enforcement (ICE). To release Petitioners, the Department of Homeland Security (DHS) necessarily determined that neither was a flight risk or a danger to the community.
5. In the years since their respective releases from immigration custody, Petitioners complied with every request, demand and requirement imposed by Respondents, in addition to complying with all court and legal obligations in their asylum cases. Mr. Melendez Bregal's case has been pending on appeal at the Board of Immigration Appeals (BIA) since 2021, while Mr. Tococari Salguero was awaiting his next immigration court hearing to take place in January 2026. In the meantime, both men started families and are devoted spouses and fathers., Neither has any criminal history.
6. Nonetheless, ICE agents suddenly re-arrested both men, upon no new probable cause or change of circumstances. Respondents continue to detain Petitioners, not based on any personal circumstances or individualized facts – or for any legitimate purpose of civil detention. Instead, the re-detention of both men and thousands more like them is part of a new, nationwide strategy implemented by Respondents: mass arrests without any individualized determination, and

subjecting people detained inside the U.S. to mandatory detention under 8 U.S.C. § 1225(b)(2), when their detention has always previously been considered discretionary under § 1226(a).

7. The Constitution protects Petitioners from such arbitrary deprivations of their liberty and guarantees them due process of law. Accordingly, to vindicate their rights, Petitioners respectfully request that this Court grant the instant petition for a writ of habeas corpus and order their immediate release.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of Virginia, the judicial district in which Petitioners are currently detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Virginia.

12. Venue is proper within the Alexandria Division because Respondent Russell Hott has a principal place of business in Chantilly, Virginia and ICE's ultimate decision to continue to detain Petitioners giving rise to the claims in this action took place there.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioners are not entitled to relief. 28 U.S.C. § 2243. If an order to show

cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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

PARTIES

16. Petitioner Sebastián Melendez Bregal is currently detained by Respondents at the Farmville Detention Center, an immigration detention facility in Farmville, Virginia. He has been in ICE custody since October 8, 2025.

17. Petitioner Jhonny Tococari Salguero is currently detained by Respondents at the Farmville Detention Center, an immigration detention facility in Farmville, Virginia. He has been in ICE custody since December 1, 2025.

18. Respondent Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioners' detention. Secretary Noem has ultimate custodial authority over Petitioners.

19. Respondent Todd Lyons is the Acting Director of ICE. He is the head of the federal agency responsible for all immigration enforcement in the United States. Acting Director Lyons is a legal custodian of Petitioners.

19. Respondent Russell Hott is the Director of the Washington ICE Field Office. As such, he is the immediate legal custodian of Petitioners and is responsible for the ICE offices that unlawfully arrested them, and such arrests took place under his direction and supervision.
20. Respondent Pamela Bondi is the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.
21. Respondent Jeffrey Crawford is employed by a private prison company, CoreCivic, as the warden of the Farmville Detention Center, where Petitioners are detained. He has immediate physical custody of Petitioners.
22. All Respondents are sued in their official capacities.

STATEMENT OF FACTS

I. SEBASTIAN MELENDEZ BREGAL

23. Petitioner Sebastián Melendez Bregal is a 27-year-old member of [redacted] who is seeking asylum based on the severe harm he suffered at the hands of [redacted] because of his race, political activism, and membership in a particular social group.
24. In July 2019, Mr. Melendez Bregal arrived in the United States to seek asylum and was taken into custody by DHS. Mr. Melendez Bregal remained detained for almost two years while he pursued his asylum claim.
25. After a final hearing on the merits that took almost six hours, Mr. Melendez Bregal's application for asylum was denied on December 30, 2020. Mr. Melendez Bregal filed a Motion to Reopen and Reconsider.

26. On about March 4, 2021 – after around 20 months detained – ICE released Mr. Melendez Bregal on an Order of Release on Recognizance, and pursuant to periodic ICE check-in appointments. *See* Exhibit A.

27. The Immigration Judge subsequently denied his Motion to Reopen and Reconsider on March 19, 2021, and Mr. Melendez Bregal appealed that decision to the Board of Immigration Appeals (BIA). Since April 2021, Mr. Melendez Bregal's appeal remains pending at the BIA.

28. In the more than four years since his release, Mr. Melendez Bregal has dutifully complied with every obligation imposed by ICE. He has attended his periodic check-in appointments, first in New Orleans, Louisiana, and then at the Richmond, Virginia field office after he resettled in Charlottesville. He made a life for himself in Virginia and as upstanding member of the community – getting a driver's license, paying taxes, working first at the University of Virginia hospital, and then making deliveries for Amazon and Uber with an employment authorization recently renewed until the year 2030. He fell in love, and his partner's two children look to him as their father figure. He has never so much as received a traffic infraction, and has no criminal history of any kind, anywhere in the world.

29. On October 8, 2025, Mr. Melendez Bregal reported to the Richmond ICE field office for his routine check-in appointment. However, it turned out to be anything but routine. When he sensed something might be off, Mr. Melendez Bregal called his attorney. But an officer then told him he had to hang up the call and simply said, "put your hands out, you're being detained." The officer did not provide Mr. Melendez Bregal any process or access to counsel, even though he had been on the phone with his immigration attorney attempting to seek her counsel at that moment.

30. While handcuffed, Mr. Melendez Bregal tried to get agents to take out his cell phone from his pocket and let him show them proof of his pending appeal he had on his phone, but his requests were denied.

31. From the Richmond ICE office, agents took Mr. Melendez Bregal to the Riverside Regional Jail in North Prince George, Virginia. His so-called "mugshot" photo was taken and released on the Internet by the jail as if he were any criminal inmate, not an individual seeking protection from the United States because of persecution by his government and only charged with a civil immigration violation. The picture was further disseminated by at least one "mugshot website," creating perhaps indelible damage to his public reputation.

32. After about three days at the jail, agents took Mr. Melendez Bregal to the Farmville Detention Center, where he remains. Mr. Melendez Bregal is suffering in detention without his family and without being able to help his partner pay for rent and put food on the table. Moreover, given his history of abuse by law enforcement in his home country, and the previous experience of almost two years in U.S. immigration detention, being again in a carceral setting as he continues to seek asylum protections is profoundly distressing to Mr. Melendez Bregal. As he describes it, his sudden re-detention reopened the wounds he had been working hard to heal.

33. His appeal at the BIA remains to be adjudicated. Considering likelihood of success on the merits and irreparable harm absent the court's intervention, on October 10, 2025, the BIA concluded that a stay of removal is warranted pending review of the appeal and issued an order granting a stay. Mr. Melendez Bregal's attorney promptly informed ICE about the stay.

II. JHONNY TOCOCARI SALGUERO

34. Petitioner Jhonny Tococari Salguero is a 32-year-old national of the Plurinational State of Bolivia who is seeking asylum protections on account of [redacted] and political

opinion after he was [redacted].

35. On about May 7, 2023, Mr. Tococari Salguero arrived in the United States to seek asylum and was taken into custody by DHS, who charged him under INA § 212(a)(6)(A)(i) as being a noncitizen present in the United States without being admitted or paroled. Days later, DHS released Mr. Tococari Salguero on an Order of Release on Recognizance and pursuant to periodic ICE check-in appointments. *See* Exhibit B.

36. In the over two years since, Mr. Tococari Salguero dutifully appeared for his court hearings and ICE reporting obligations, first in New York and then at the Hyattsville Immigration Court and Baltimore ICE field office after he moved to Maryland. ICE had him reporting yearly, and the most recent check-in he attended was in June 2025. His next check-in was scheduled for the following year.

37. Mr. Tococari Salguero filed an asylum application *pro se* and later hired an immigration attorney to represent him. The next court hearing for his case – another preliminary hearing requested by his attorney – was coming up in January 2026. In the meantime, he fell in love with a resident of Arlington, Virginia, and divided his time between her residence and his in Hyattsville, especially since welcoming a child together.

38. On December 1, 2025, Mr. Tococari Salguero was driving his partner and their two-month-old baby to a doctor's appointment at a hospital near Arlington, Virginia. He took an incorrect off-ramp or turn, and suddenly the road ended at the entrance gate to Joint Base Myer-Henderson Hall. When he explained to the soldier at the gate that they had entered the roadway by mistake and were trying to get to the hospital, the soldier did not permit Mr. Tococari Salguero to simply back up or turn around. Instead, he requested identification and then told Mr. Tococari

Salguero that someone could come for his partner and baby – who were both crying profusely – but that he was being detained.

39. Despite Mr. Tococari Salguero explaining that he had a pending asylum case before the Immigration Court, the soldier took Mr. Tococari Salguero onto the military base, gave him citations, and called ICE. The ICE agent arrived and took him to the Washington ICE field office in Chantilly, Virginia. Mr. Tococari Salguero's pleas about his pending asylum claim, lack of criminal history, and newborn baby, were again ignored.

40. In the early morning hours of December 2, 2025, agents took Mr. Tococari Salguero to the Riverside Regional Jail in North Prince George, Virginia. His so-called "mugshot" photo was taken and released on the Internet by the jail as if he were any criminal inmate, not an individual seeking protection from the United States because of persecution by his government and only charged with a civil immigration violation.

41. At the jail, Mr. Tococari Salguero was strip-searched and kept alone in a tiny cell, which he was only allowed to leave for mealtimes. He was held in those conditions for about a week, before ICE transferred him to Farmville Detention Center, where he remains detained.

42. Mr. Tococari Salguero is suffering in detention, separated from his partner and newborn baby and unable to assist her with their baby's care.

LEGAL FRAMEWORK

The Statutory Right to Seek Asylum

43. The cornerstone of the U.S. asylum system, the Refugee Act of 1980, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

44. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985). The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

45. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Individuals generally satisfy that definition and are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. § 1101(a)(42)(A).

46. Although a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act broadly bestows the right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

47. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1129a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

48. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

49. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the BIA of removal orders entered against them and judicial review in federal circuit court of appeals upon a petition for review. 8 U.S.C. § 1252(a) *et seq*.

The Immigration Detention Statutory Scheme

50. The two primary provisions that govern the detention of noncitizens prior to an order of removal are 8 U.S.C. § 1226 and 8 U.S.C. § 1225.

51. Petitioners are detained pursuant to § 1226(a), which provides in pertinent part, that

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

52. In contrast, §1225(b)(2) governs detention of "applicants for admission" on the threshold of entry into the United States. Section 1225(b)(2)(A) mandates the detention without eligibility for release of a narrow subset of individuals who meet all the requirements of being "applicants for admission," actively "seeking admission," and "not clearly and beyond a doubt entitled to be admitted." *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.) (citing § 1225(b)(2)(A)).

53. Petitioners were unquestionably detained in the interior of the country, at their ICE check-in appointment and en route to a doctor's appointment, respectively, and years after initially entering the United States. Thus, they were not "seeking admission" at the time of their detention, so their detention is governed by section 1226(a), as this Court has repeatedly when rejecting Respondents' premise that individuals who have already entered the country are within the scope of § 1225(b)(2)(A) and subject to mandatory detention. *See e.g., Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Hernandez v. Crawford, et al.*, No. 1:25-CV-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025) (Trenga, J.); *Teyim v. Perry, et al.*, No. 1:25-CV-01615-MSN-WEF, 2025 WL 2950183 (Oct. 15, 2025) (Nachmanoff, J.); *Singh v. Lyons, et al.*, No. 1:25-CV-01606-AJT-WBP, 2025 WL 2932635, at *1 (E.D. Va. Oct. 14, 2025) (Trenga, J.); *Ortiz Martinez v. Noem, et al.*, No. 1:25-cv-1816-LMB-WEF, (E.D. Va. Oct. 29, 2025) (Brinkema, J.); *Quintero Flores v. Noem, et al.*, No. 1:25-cv-1614-RDA-LRV, (E.D. Va. Oct. 29, 2025) (Alston, J.); *Gomez-Lopez v. Crawford, et al.*, No. 1:25-cv-1763-PTG-WEF, (E.D. Va. Nov. 24, 2025) (Giles, J.).

54. Instead, this Court has agreed with courts all around the country that, to be subjected to mandatory detention under § 1225(b)(2), requires more than just merely being a noncitizen present in the United States. *See e.g., Luna Quispe*, 2025 WL 2783799, at *5.

55. Under § 1226(a), detention is discretionary, not mandatory. Section 1226(a) provides that immigration officers may, in their discretion, detain noncitizens *or* may release them on conditional parole (also called an Order of Release on Recognizance, or "OREC"). 8 U.S.C. § 1226(a); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase 'released on recognizance' as another name for 'conditional

parole' under § 1226(a)"). Both Petitioners were previously detained and released on conditional parole pursuant to § 1226(a).

56. Immigration detention only "has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

57. Those previously released by DHS, like Petitioners, have already necessarily been deemed neither a flight risk nor a danger "to property or persons," since that is the required determination immigration officers must make prior to granting release. 8 C.F.R. § 1236.1(c)(8).

58. In cases of individuals previously released by DHS, re-detention under § 1226(a) requires an individualized determination of a material change in circumstances relating to flight risk or danger. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. Nov. 22, 2019) ("DHS re-arrests individuals only after a 'material' change in circumstances." (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Dos Santos v. Noem*, No. 25-CV-12052, 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025) (applying limitation on an official's discretionary revocation authority); *Chaudhari v. Crawford*, 1:25-cv-01772 (LMB/IDD), slip op. at 8 (E.D. Va. Oct. 23, 2025) (same); *Y.M.M. v. Wamsley, et al.*, No. 2:25-cv-02075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025) ("Respondents identify this standard but do not make any argument that a change in circumstance supports Y.M.M.'s re-detention. . . The brief appears to concede that there is no justification for Y.M.M.'s re-detention under the INA and its implementing regulations."); *Luna Sanchez v. Bondi, et al.*, No. 1:25-cv-018888-MSN-IDD, 2025 WL 3191922, at *4 (E.D.

Va. Nov. 14, 2025) (Nachmanoff, J.) (Ordering immediate release after finding that "the record reflects that ICE detained Petitioner simply because officers encountered him and confirmed Petitioner was present in the United States without being admitted or paroled, and took him into civil immigration custody.").

59. Absent a material change in circumstances specific to the noncitizen, the re-detention of noncitizens previously released by DHS violates the INA because it does not serve the purpose of the statute.

Substantive Due Process Constraints on Immigration Detention

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

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

62. This is because "[f]reedom 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*, 533 U.S. at 690.

63. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective." *Cnty. of Sacramento v. Lewis*, 523 U.S 833, 846 (1998).

64. Immigration detention only comports with Due Process when it furthers the government's goals of "ensuring the appearance of [noncitizens] at future immigration hearings and

preventing danger to the community." *Zadvydas*, 533 U.S. at 690. (internal citations omitted). ICE detention violates substantive Due Process when it is not justified by flight risk or danger concerns. *Id.*

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

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

Procedural Due Process Constraints on the Detention of Previously Released Individuals

67. The procedural component of the Due Process Clause prohibits the government from imposing even otherwise permissible physical restraints without adequate procedural safeguards. "That noncitizens *may* be detained prior to deportation has no bearing on whether the Constitution imposes procedural contours around such detention." *Bermeo Sicha v. Bernal*, No. 25-CV-2746-LL-BJW, 2025 WL 3158675, at *6 (S.D. Cal. Nov. 12, 2025).

68. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate procedural due process by balancing (1) the private interest affected; (2) the risk of erroneous deprivation of such interest; and (3) the government's interest. *Id.* at 335.

69. Addressing the first *Mathews* factor, freedom from imprisonment, physical restraint, or other forms of government custody are "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez v. Francis*, 2025 WL 2371588, *9 (S.D.N.Y. 2025) ("[Petitioner] invokes the most significant liberty interest there is – the interest in being free from imprisonment") (cleaned up.

70. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

71. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey*, 408 U.S. at 482. As the Supreme Court recognized, "[t]he 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.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*.

72. This principle is even more true in the context of immigration detention, as compared to criminal parole or probation which is predicated upon a criminal conviction. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration

custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

73. Thus, "even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citation omitted). A number of district courts have recognized that noncitizens have this significant liberty interest in "continued freedom *after release on own recognizance*." *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added); *See also, e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

74. With respect to the second *Mathews* factor, risk of erroneous deprivation, the Supreme Court has held that the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Numerous courts have held that "absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly when the government has previously determined that an individual is eligible for release pending their removal proceedings." *Y.M.M.*, 2025 WL 3101782, at *2 (quotation omitted) (collecting cases that have recognized this requirement).

75. "Where, as here, [the petitioner] has not received any bond or custody . . . hearing, the risk of an erroneous deprivation [of liberty] is high because neither the government nor [the petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi*, 792 F. Supp 3d at 1035. (internal citation omitted). Indeed, where a petitioner "was previously

released following a determination that he posed no flight risk or danger to the community, and absent any new evidence showing a material change in circumstances, the risk of erroneous detention without a hearing is substantial." *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6; *See also Luna Sanchez*, 2025 WL 3191922, at *5 (individual arbitrarily re-detained after previous release on bond).

76. For the third *Mathews* factor, the recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See e.g., Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez v. Joyce*, No. 25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025).

77. The requirement of an individualized determination is even stronger in cases of re-detention because the prior "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia*, 280 F. Supp. 3d at 1176. "[T]o be lawful" the re-detention "must be based on evidence that the circumstances relevant to that original release decision have changed." *Id.* at 1196. "To satisfy due process, those changed circumstances must represent individualized justification for detention." *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (internal citations omitted); *See also Chadhauri*, 1:25-cv-01772 (LMB/IDD), slip op. at 7-8 (Brinkema, J.) (determining that petitioner's detention is unlawful and requiring release where DHS revoked petitioner's bond without justification).

78. The government can claim no interest in re-detention where there are no changed circumstances going to flight risk or danger sufficient to warrant re-detention. *See Pinchi*, 792 F. Supp 3d at 1036; *Luna Sanchez*, 2025 WL 3191922 at *5 ("DHS already has additional procedural safeguards that it could have employed to avoid an erroneous deprivation of liberty, namely the procedures for revoking bond [and conditional parole] outlined in § 1226(b).").

79. If a noncitizen does not receive the individualized consideration and required procedural safeguards pre-deprivation, courts have found that no amount of procedure provided post-detention can remedy that violation and consequently have ordered immediate release. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here – ie. Respondents' failure to conduct any kind of individualized assessment before detaining him – any post-deprivation review by an immigration judge would be inadequate"); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause") (citation modified); *Luna Sanchez*, 2025 WL 3191922, at *5 ("Because Petitioner's continued detention violates his right to due process, he is entitled to immediate release"); *Ndiaye v. Jamison*, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) (ordering immediate release because "a bond hearing is unnecessary," since it is "clear" petitioner "is not likely to flee or harm the community" and a bond hearing would "only serve to delay relief"); *Oretega-Aguirre v. Noem*, No. 4:25-cv-4332 (S.D. Tex. Oct. 10, 2025) (previously released petitioner re-arrested with BIA appeal pending); *Dominguez Vega v. Thompson*, 5:25-cv-01439 (W.D. Tex. Nov. 19, 2025).

80. In tandem with immediate release, to vindicate the procedural due process rights of individuals previously released on recognizance and then suddenly re-detained without cause, either with asylum applications or BIA appeals pending, as here, numerous courts have enjoined the government from re-detaining such individuals without prior notice and a bond hearing *before* any re-arrest. *See e.g. Camacho Salinas v. Woosley*, 2025 WL 3243837 (W.D. Ky. Nov. 20, 2025) (ordering immediate release and enjoining re-detention absent a prior bond hearing); *Ramos v. Rokosky*, No. 25-CV-15892(EP), 2025 WL 3063588 (D.N.J. Nov. 3, 2025) (same); *Sandigo Manzanarez v. Bondi*, 2025 WL 3247258 (E.D. Cal. Nov. 20, 2025) (same); *Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025) (same).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fifth Amendment to the U.S. Constitution
(Substantive Due Process – Unlawful Detention)

81. The preceding paragraphs are incorporated by reference.

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

83. "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*, 533 U.S. at 690. And "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent. *Id.* at 693.

84. Immigration detention only comports with Due Process when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *Id.* at 690.

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

86. Petitioners' detention is punitive because it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690. (finding immigration is civil and thus ostensibly "nonpunitive in purpose and effect."). Here, the purpose of Petitioners' detention is "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring). Namely, to meet newly-imposed DHS quotas, fulfill Respondents' scheme of blanket mandatory detention for all noncitizens present without admission or parole in the United States, and pressure them to abandon applications for relief from removal with sudden carceral confinement, but not for any purpose recognized under the INA or the Constitution.

87. Neither petitioner poses a flight risk or danger to society, therefore their detention violates the Due Process Clause because it is punitive and not rationally related to any legitimate government purpose.

COUNT TWO

Violation of the Fifth Amendment to the U.S. Constitution (Procedural Due Process – Unlawful Re-Detention)

88. The preceding paragraphs are incorporated by reference.

89. "In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical

confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up).

90. Given the gravity of the deprivation of liberty when the government detains individuals, due process requires the jailers to bear the burden of proof. *See e.g., United States v. Salerno*, 481 U.S. 739, 751 (1987); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (in the immigration context). To evaluate whether the government can meet its burden to justify continued custodial detention, the *Mathews* factors apply. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

91. Respondents cannot meet their burden because Petitioners' re-detention without a pre-deprivation hearing violated due process. Years after releasing Petitioners, respectively in 2021 and 2023, Respondents re-detained them with no notice, no explanation of the justification for their re-detention, and no opportunity to contest the re-detention before a neutral adjudicator either before being taken into custody or at any point thereafter.

92. The Petitioners' private liberty interest at stake is profound. Prior to their re-arrest, each were living in the United States pursuant to release on recognizance (conditional parole). Although they were subject to conditions of release, such as periodic ICE check-in appointments, "[they] otherwise enjoyed the same freedom and bore the same responsibilities as all of us living in the United States." *Bermeo Sicha*, 2025 WL 3158675, at *6. Each worked to support their families and life partners and took strength from the company of their loved ones while they pursued protection from persecution in their asylum cases.

93. By contrast, since Respondents suddenly re-arrested them, Petitioners have been deprived of their liberty in multiple carceral facilities, far from their families. At one of those facilities, the Riverside Regional Jail, their "mugshot" photos were taken and blasted out on the Internet. Where they are detained currently, detainees have previously reported finding worms in the

food and flu-like symptoms abound, with medical attention virtually nonexistent. Both men are being deprived of their parental rights and their families are suffering greatly in their absence. Since being detained over two months ago, Petitioner Mr. Melendez Bregal has not been able to play with and care for his four-year-old stepdaughter who views him as her father. Nor has Petitioner Mr. Tococari Salguero been able to hold his baby.

94. Where a detained individual does not receive any pre-deprivation hearing, "the risk of an erroneous deprivation of liberty is high because neither the government nor [the petitioner] has had any opportunity to determine whether there is any valid basis for her detention." *Pinchi*, 792 F. Supp 3d at 1035 (cleaned up); *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 ("Given that Petitioner was previously released following a determination that he posed no flight risk or danger to the community, and absent any new evidence showing a material change in circumstances, the risk of erroneous deprivation without a hearing is substantial.").

95. Moreover, it is Respondents' view that Petitioners' detention is suddenly non-discretionary and without the recourse of an immigration judge's review, a position which this Court and courts across the country have already determined is incorrect. Therefore, the risk is patently enormous that Petitioners are detained even though neither the circumstances nor the law warrants it – which is by definition an erroneous deprivation.

96. Finally, the government can claim no interest in re-detention were there are no changed circumstances going to flight risk or danger that warrant re-detention. *See Pinchi*, 792 F. Supp 3d at 1035. Though "[t]he government indeed has a legitimate interest in the prompt execution of removal orders . . . which detention may facilitate . . . the government has little legitimate interest in suddenly detaining without a hearing noncitizens whom DHS already determined to

be neither a flight risk nor a danger to the community." *Bermeo Sicha*, 2025 WL 3158675, at *6.

97. Thus, Respondents' ongoing deprivation of Petitioners' profound personal liberty interest, without any procedural protections, and for no legitimate government purpose, violates their due process rights and should entitle them to immediate release.

COUNT THREE

Violation of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) and Implementing Regulations

98. The preceding paragraphs are incorporated by reference.

99. Respondents are currently detaining both Petitioners pursuant to 8 U.S.C. § 1225(b)(2)(A), its mandatory detention authority.

100. However, Petitioners were previously detained and released pursuant to 8 U.S.C. § 1226(a), the discretionary detention authority, and were recently re-detained in the interior of the country and thus are currently detained again under 8 U.S.C. § 1226(a).

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

102. Petitioners' prior release by DHS necessarily reflects a determination that neither is a flight risk nor a danger to the community. 8C.F.R. § 1236.1(c)(8) (outlining the requirements for release on recognizance).

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

104. The application of the § 1225(b)(2) mandatory detention scheme to Petitioners, and their re-detention where they were not afforded an individualized determination of a material change in circumstances related to flight risk or danger to justify re-detention, violate the INA.

COUNT FOUR

Violation of the Administrative Procedure Act,
5 U.S.C. § 706(2) (Unconstitutional, unlawful, arbitrary, and capricious actions)

105. The preceding paragraphs are incorporated by reference.

106. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5. U.S.C. § 706(2)(A)-(C).

107. An APA claim is clearly cognizable in the habeas context, especially to the extent that agency action factors into the justification – or lack thereof – for detention. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus").

108. An action is arbitrary and capricious and an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. 29, 43 (1983)).

109. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

110. Respondents' categorical detention of Petitioners without consideration of their individualized facts and circumstances, and categorically subjecting them to mandatory detention under § 1225(b)(2) despite previously detaining and releasing them under Section §1226(a) years ago, is without any basis in law and in violation of the APA.

111. Because ICE has failed to articulate a contemporaneous rational explanation for its decision to re-detain Petitioners –while reporting to an ICE check-in and driving to a doctor's appointment, respectively – without a pre-detention hearing, and because it cannot provide a post-hoc rationalization for those decisions, such actions are an abuse of discretion, arbitrary and capricious, and should be held unlawful and set aside.

PRAYER FOR RELIEF

Based on the foregoing, Petitioners request that this Court:

a. Assume jurisdiction over the matter;

b. Issue an order, under the All Writs Act, 28 U.S.C. § 1651, that Petitioners shall not be transferred outside the jurisdiction of the Eastern District of Virginia pending a final order in these proceedings;

c. Issue a writ of habeas corpus ordering Respondents to immediately release the Petitioners from custody;

d. In the alternative, order a post-deprivation bond hearing within seven days before a neutral decisionmaker pursuant to 8 U.S.C. § 1226(a) where the Government bears the burden of proving by clear and convincing evidence that changed circumstances render Petitioners a danger to the community or a flight risk;

e. Enjoin and restrain Respondents from re-detaining Petitioners without a pre-deprivation bond hearing before a neutral decisionmaker pursuant

to 8 U.S.C. § 1226(a) and its implementing regulations, with no less than seven days' notice to Petitioners prior to the hearing and where the Government bears the burden of proving by clear and convincing evidence that changed circumstances render Petitioners a danger to the community or a flight risk;

f. Order that if Petitioners are granted bond by an Immigration Judge, Respondents are enjoined from denying bond to Petitioner, or from invoking the automatic stay provision pursuant to 8 C.F.R. § 1003.19(i)(2);

g. Declare that Petitioners' re-arrest and detention violates the Due Process Clause of the Fifth Amendment, the INA, and the APA;

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

DATED this 23rd day of December, 2025.

Respectfully submitted,

/s/ Alex Kornya
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Attorneys for Petitioner

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

I am submitting this verification on behalf of the Petitioners because I am Petitioners' attorney and have discussed with the Petitioners the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. This verification is being made by counsel rather than by Petitioners themselves due to counsel's inability to meet with the Petitioners in person to review it in a timely fashion.

Dated: December 23, 2025
Richmond, Virginia

Respectfully submitted,

/s/ Emma Friedland

Emma Friedland (pro hac vice pending)
Counsel for Petitioners