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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Elmin Adalid PEREZ GARCIA,

Petitioner-Plaintiff,

v.

Christopher J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California;
Daniel A. BRIGHTMAN, Acting Field Office Director, San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement;
Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department of Homeland Security;
Pam BONDI, Attorney General of the United States;

Respondents-Defendants.

Case No.: '25CV3750 JLS DEB

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

Agency File No.: [redacted]

Petitioner ELMIN ADALID PEREZ GARCIA petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner, ELMIN ADALID PEREZ GARCIA ("Mr. Perez Garcia" or "Petitioner"), is Honduran asylum seeker detained at the Otay Mesa Detention Center in San Diego, California. Petitioner, by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from immigration detention where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on September 12, 2025, without first being provided a due process hearing to determine whether his incarceration is justified and that his removal from the United States is reasonably foreseeable before the revocation of his Order of Supervision ("OSUP"). Petitioner was previously released on March 17, 2017 on OSUP after a determination that he was neither a flight risk nor a danger to the community that he could not be released on an order of supervision, that there was no substantial likelihood that he could be removed in the reasonably foreseeable future, and requiring him to make periodic ICE check-ins and set other conditions, such as to not violate any laws.

2. Petitioner seeks declaratory and injunctive relief to compel his immediate release from the Otay Mesa Detention Center, the immigration jail where he was ultimately transferred to after by the U.S. Department of Homeland Security (DHS) unlawfully re-

detained him on September 12, 2025 at the Salt Lake City Airport when Petitioner was returning home to Las Vegas, Nevada.

3. Petitioner's arrest would have only been permissible if Respondents could demonstrate that removal could occur "in the reasonably foreseeable future" or if he had violated release conditions—neither of which occurred here. See Zadvydas v. Davis, 533 U.S. 678 (2001); 8 C.F.R. § 241.13(h)(4).

4. Moreover, even assuming Respondents possessed theoretical authority to revoke Petitioner's release, the agency failed to meet mandatory procedural requirements, including the obligation to establish "a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future" under 8 C.F.R. §241.13(i)(2) and to provide him with notice of the specific reasons for revocation as 8 C.F.R. § 241.13(i)(3) requires. Respondents' actions were all the more egregious because they occurred well beyond the ninety-day removal period established by law (see 8 U.S.C. § 1231(a)(1)(A)), and after Petitioner had continued to live lawfully in his community for over twelve (12) years.

5. The Due Process clause of the Fifth Amendment, as well as statutory and regulatory authorities, require the government to provide noncitizens with notice and a hearing prior to re-detention. Here Petitioner's rights were violated and continue to be each day he is detained.

6. Due to these due process and regulatory violations of the law, Petitioner seeks declaratory and injunctive relief to compel his immediate release from the immigration

jail where he is being held by Respondents without being provided any notice or opportunity to be heard regarding whether his incarceration is justified.

7. Absent review in this Court, no other neutral adjudicator will examine Petitioner's plight: Respondents will continue—unchecked—to detain him essentially indefinitely. He thus urges this Court to review the lawfulness of his detention; declare that his detention is unlawful and order his immediate release, or at a minimum that Respondents provide him a bond hearing complying with the procedural requirements in Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011).

STATEMENT OF FACTS

8. Mr. Perez Garcia is Honduran man born in Francisco Morazan, Honduras. He fled India due to political opinion and membership in a particular social group.

9. Mr. Perez Garcia suffered threats, harm and mistreatment in Honduras by opposition party members and candidates because he was a political candidate for Mayor in Morazán Yoro, Honduras in 2012, and during his campaign he publicly exposed acts of corruption by the opposing party candidates, mentioning specific names including police officers. He received constant death threats via phone calls and messages warning that he and both his sons would be killed if he did not stop exposing the corruption. Their vehicle was ambushed by armed men on a motorcycle, spraying the vehicle with gunshot, specifically targeting where Mr. Perez Garcia and his son were seated.

10. When Mr. Perez Garcia reported this assassination attempt to the police, they took the complaint but did nothing because the police were controlled by the government

party. The threats forced Mr. Perez Garcia to withdraw his candidacy and flee to another city.

11. In 2016, Mr. Perez Garcia returned to politics as a candidate for Councilman, and the threats resumed, this time using the [redacted] gang to threaten him and his family with death. In January 2017, when Mr. Perez Garcia filed another complaint, a police officer told him to flee the country because his life was in greater danger for having reported the threats, and that they could not protect him.

12. Mr. Perez Garcia, along with his minor son, arrived in the United States on or about March 16, 2017, and entered the at or near McAllen, Texas, without inspection and without valid entry documents or a visa. Upon arrival, he walked up to border officials and informed them he had a fear to return to India.

13. Mr. Perez Garcia and his son were detained for approximately one day by border patrol officials and they were then released on about March 17, 2017. Since Mr. Perez Garcia had previously attempted to enter the United States in 2006 and was expeditiously removed when he was apprehended at the border, he was not issued a Notice to Appear in Immigration Court, and he was not referred to an Asylum Office for a Reasonable Fear Interview (despite the fact that he was entitled to one despite the prior expedited removal order). Instead, Mr. Perez Garcia was issued an Order of Supervision after a determination that he was neither a flight risk nor a danger to the community that he could not be released on an order of supervision, that there was no substantial likelihood that he could be removed in the reasonably foreseeable future, and requiring him to make

periodic ICE check-ins and set other conditions, such as to not violate any laws, by which Mr. Perez Garcia had religiously abided until he was reincarcerated on September 12, 2025. Mr. Perez Garcia's son was released on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to the community that he could not be released on their own recognizance. On the same date, Mr. Perez Garcia's son were issued a Notice to Appear (NTA) ordering them to appear before the Immigration Court, but not Mr. Perez Garcia.

14. On September 12, 2025, when Mr. Perez Garcia was at the Salt Lake City airport attempting to board a flight home to Las Vagas, he was detained by ICE and his release on order of supervision was revoked without any notice, interview or opportunity to be heard.

15. Before his re-detention, Mr. Perez Garcia was working full time to support his family, was living an exemplary life and has built extensive ties in the community. Mr. Perez Garcia's recent detention and sudden separation from his son has caused them considerable emotional and psychological distress as well as financial hardship.

CUSTODY

16. Petitioner is currently in Respondents' legal and physical custody. They are detaining him at the at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents' and their agents' direct control. Prior to his arrest and re-detention Petitioner was not provided with a constitutionally and statutorily compliant bond hearing.

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the United States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), 2241 (habeas corpus).

2. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's detention and decision to revoke Petitioner's release and whether the agency met mandatory procedural requirements, including the obligation to establish "a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future" under 8 C.F.R. §241.13(i)(2) and to provide him with notice of the specific reasons for revocation as 8 C.F.R. § 241.13(i)(3) requires, and when the detention occurred well beyond the ninety-day removal period established by law (see 8 U.S.C. § 1231(a)(1)(A)).

3. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because

Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See INS v. St. Cyr, 533 U.S. 289, 301 (2001); see also Lopez-Marroquin v. Barr, 955 F.3d 759, 759 (9th Cir. 2020) (citing Singh, 638 F.3d at 1211-12)). And no court has ruled on the legality of Petitioner's detention.

REQUIREMENTS OF 28 U.S.C. § 2243

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

5. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

6. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" Yong v. INS, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating

the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." Id.

VENUE

7. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occur in Otay Mesa in the Southern District of California, where Petitioner is currently detained, and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

8. The decision to re-arrest and re-detain Petitioner was made by the Salt Lake office of ICE-ERO, and until he was unlawfully re-detained by ICE, his OSUP was pending before that office. He was then transferred to Otay Mesa Detention Center in San Diego, California and ultimately to the San Luis Regional Detention Center.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Id. (quoting Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because

administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

10. Exhausting administrative remedies here is futile – this action is only necessary because ICE refuses to release Petitioner and an IJ does not have jurisdiction to redetermine his custody.

11. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); In re Indefinite Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

12. More importantly, every day that Petitioner remains detained causes him harm that cannot be repaired. His continued detention puts his physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues into the fourth month (as of the time of filing of this action). See De Paz Sales v. Barr, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

PARTIES

13. Mr. Hau Bao Tran (Petitioner) is a 50-year-old Honduran citizen who has been residing in the United States since March 2017. He fled India due to political opinion and membership in a particular social group. Mr. Perez Garcia was released on March 17 and issued an Order of Supervision after a determination that he was neither a flight risk nor a danger to the community that he could not be released on an order of supervision, that there was no substantial likelihood that he could be removed in the reasonably foreseeable future.

14. Petitioner is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

15. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

16. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

17. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of

Immigration Appeals, including bond hearings. Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. She is sued in her official capacity.

18. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

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 the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

20. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in their official capacity.

LEGAL FRAMEWORK AND ANALYSIS

21. The Due Process clause of the Constitution, Congress's statutes and implementing regulations as well as precedential decisions narrow DHS's authority to unilaterally revoke any noncitizen's release on order of supervision and re-arrest the noncitizen at any time. "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." Id. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Id. at 693.

22. Section 1231(a) of Title 8 governs the detention of individuals whom immigration courts have ordered removed. The statute commands ICE to detain these individuals for ninety days while it executes the removal order. See 8 U.S.C. § 1231(a)(2). The ninety-day removal period starts the moment the removal order becomes final. Absent an applicable exception, ICE must release the person under supervision if it cannot complete removal within ninety days. See 8 U.S.C. § 1231(a)(3).

23. Subsection 1231(a)(6) authorizes ICE to extend detention beyond the ninety-day period, yet it bars indefinite custody. See Zadvydas v. Davis, 533 U.S. 678, 689 (2001) (limiting ICE's authority to a period "reasonably necessary" to carry out removal and prohibiting detention when removal is not "reasonably foreseeable").

24. Regulations allow ICE to release a non-citizen after the ninety-day removal period if the agency determines that the non-citizen "would not pose a danger to the public or a

risk of flight, without regard to the likelihood of the [non-citizen's] removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(b)(1).

25. ICE may withdraw release approval if it can effectuate removal "in the reasonably foreseeable future" or if the non-citizen violates the release conditions. 8 C.F.R. § 241.13(h)(4). ICE may revoke release only when "there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future." Id. § 241.13(i)(2). Upon revocation, ICE must notify the non-citizen of the reasons for the revocation. Id. § 241.13(i)(3).

26. Moreover, under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); Dep't of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

27. Furthermore, immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. Zadvydas, 533 U.S. at 690.

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Materially Changed Circumstances – Right to a Hearing Prior to Re-incarceration.

28. The Board of Immigration Appeals has clearly identified limits to DHS's authority to re-detain noncitizens: "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance," a position adopted by the Ninth Circuit. Matter of Sugay, 17 I. & N. Dec. 637, 640 (BIA 1981); see also Panosyan v. Mayorkas, 854 F. App'x 787, 788 (9th Cir. 2021)("Thus, absent changed circumstances … ICE cannot re-detain Panosyan.").

29. The government has further clarified in litigation that the showing of changed circumstances applies "both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." Saravia v. Barr, 280 F. Supp. 3d at 1197 (emphasis added).

30. Further, DHS has in practice limited its authority and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances," not just any changed circumstances. Id. (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added).

31. Guidance from Matter of Sugay and DHS practice alone —that ICE should not re-arrest a noncitizen absent changed circumstances— are insufficient to protect Petitioner's weighty interest in his freedom from detention. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's conditional release before ICE re-detains him, to

comport with the Due Process clause of the Constitution. See, e.g., Meza v. Bonnar, 2018 WL 2554572 (N.D. Cal. June 4, 2018); Ortega v. Bonnar, 415 F. Supp. 3d 963 (N.D. Cal. 2019); Vargas v. Jennings, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); Jorge M. F. v. Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021)

32. Just in the last few months, several federal courts in California have agreed that immigration re-detention after being released in the community warrants a hearing. See Diaz v. Kaiser, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); Singh v. Andrews, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025); Pinchi v. Noem, —— F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); Victor Amado Rodriguez-Flores v. F. Semaia et al., *No. CV 25-6900 JGB (JCX), 2025 WL 2684181* (C.D. Cal. Aug. 14, 2025).

33. It follows that prior to re-detaining Petitioner who had previously been released on an order of supervision, DHS should have shown it can effectuate removal "in the reasonably foreseeable future" or if the Petitioner had violated the release conditions pursuant to 8 C.F.R. § 241.13(h)(4). ICE revoked Petitioner's release without any showing that "there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future." Id. § 241.13(i)(2). Moreover, ICE failed to notify Petition of the reasons for the revocation upon revocation of his OSUP. Id. § 241.13(i)(3).

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Petitioner's due process rights

34. The government cannot deprive any person of "life, liberty, or property, without due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

A. Petitioner's Liberty Interest is protected

35. "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.

36. A continued liberty interest also exists where an individual was detained and is subsequently released, even if conditionally released and even when an initial decision to detain or release the individual is discretionary. Morrissey v. Brewer, 408 U.S. 471, 481-82 (1972). "[S]ubject 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 parolee relies "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 parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." Id. In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." Morrissey, 408 U.S. at 482; see also Young v. Harper, 520 U.S. 143, 152 (1997) (holding that individuals placed

in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

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

38. The protectable liberty interest created by conditional parole also applies to immigration detention. "[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." Hernandez v. Sessions, 872 F.3d 976, 981 (9th Cir. 2017). "Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond."). Ortega v. Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019). Even where "a decision-making process involves discretion

does not prevent an individual from having a protectable liberty interest." Id. at 970 (N.D. Cal. 2019); Romero v. Kaiser, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

39. The protected liberty interest is even more substantial when balancing the nonpunitive purpose of immigration detention against the "irreparable harms imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." Hernandez v. Sessions, 872 F.3d 976, 995 (9th Cir. 2017).

40. "[R]elease from ICE custody constitute[s] an 'implied promise' that [the noncitizen's] liberty would not be revoked unless she 'fail[s] to live up to the conditions of her release.' The regulatory framework makes clear that those conditions [a]re that [the noncitizen] remain[s] neither a danger to the community nor a flight risk. Pinchi v. Noem, — F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citing Morrissey, 408 U.S. at 482).

41. Petitioner has a substantial liberty interest in not being detained. He has been living in the United States for almost 30 years, has been working and supporting himself and his family, and has developed extensive community ties.

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B. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Parole

42. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." Haygood v. Younger, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing Morrissey, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. Id. at 1357.

43. The three-factor Mathews test (adopted by the Court of Appeals for the Ninth Circuit, see Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps the Court assess adequate safeguards: "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

44. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. Zinermon v. Burch, 494 U.S. 113, 127 (1990) (see also United States v. Raya-Vaca, 771 F.3d 1195, 1204 (9th Cir. 2014) ("Due

process always requires, at a minimum, notice and an opportunity to respond."). Post-deprivation remedies may satisfy the requirements of due process only in a "special case" where they are "the only remedies the State could be expected to provide" and where "one of the variables in the Mathews equation—the value of post deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing post deprivation process." Zinermon, 494 U.S. at 985.

1. Petitioner has a substantial liberty interest in staying out of detention

45. An individual's interest in not being detained is "the most elemental of liberty interests[.]" Hamdi v. Rumsfeld, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." Foucha v. Louisiana, 504 U.S. 71, 80 (1992). This liberty interest also exists where ICE decides to unilaterally nullify its own prior parole decision and take away his physical freedom, *i.e.*, his "constitutionally protected interest in avoiding physical restraint." Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). Courts have routinely agreed that "a petitioner's interest in remaining out of custody as 'substantial.'" Rodriguez-Flores v. Semaia, *No. CV 25-6900 JGB (JCX), 2025 WL 2684181* (C.D. Cal. Aug. 14, 2025). (citing Diaz v. Kaiser, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the more important his liberty interest grows. Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

2. There is a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against.

46. Even if the Government believes "it has a valid reason" to re-detain noncitizens, it "does not eliminate its obligation to effectuate the detention in a manner that comports with due process." Guillermo M.R. v. Kaiser, —— F. Supp. 3d ——, ——, No. 25-cv-05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding "undeniably stark" risk of erroneous deprivation where the Government contends that "notwithstanding a neutral arbiter's determination that Petitioner should be released, ICE is entitled to unilaterally terminate the IJ's order by re-detaining Petitioner without a hearing for at least six months, based on ICE's own determination in its sole discretion that additional conditions of release unilaterally set by ICE had been violated"); see also Singh v. Andrews, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

47. Where 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 [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention." Pinchi v. Noem, —— F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing significantly decreases that risk because the government has to prove to a neutral adjudicator by clear and convincing evidence that circumstances have materially changed to justify re-detention, and a hearing is likelier to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed

circumstance." See Chalkboard, Inc. v. Brandt, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side").

48. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. Diouf v. Napolitano ("Diouf II"), 634 F.3d 1081, 1091-92 (9th Cir. 2011); see also Castro-Cortez v. INS, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process protections.")

49. Any argument that noncitizens can request a custody determination hearing once re-detained goes against the due process safeguards envisioned in the Constitution, because such hearing happens after the fact and cannot prevent an erroneous deprivation of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner-Plaintiff received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion: that is, his potentially erroneous detention."). Further, custody determination hearings are routinely conducted in immigration court and this is not a "special case" that warrants post-deprivation remedies because other remedies are impractical the way it was in Zinermon.

50. Consequently ICE was required to provide Petitioner with notice and a hearing *prior* to any re-incarceration and revocation of his conditional parole. See Morrissey, 408 U.S. at 481-82; Haygood, 769 F.2d at 1355-56; Jones, 393 F.3d at 932; Zinermon, 494 U.S. at 985; see also Youngberg v. Romeo, 457 U.S. 307, 321-24 (1982); Lynch v. Baxley, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under Mathews, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

51. Further, immigration detention is civil (as opposed to criminal), and its primary purpose is to ensure a noncitizen's appearance during removal proceedings and protect against danger to the community; it cannot be punitive. Zadvydas v. Davis, 533 U.S. 678, 690, 697 (2001). Due process thus also requires consideration of alternatives to detention at any custody redetermination hearing that may occur, and where alternatives to detention that could mitigate risk of flight exist, detention is not warranted. See Bell v. Wolfish, 441 U.S. 520, 538 (1979).

3. The government's interest in detaining Petitioner is minimal, and in fact the procedural requirements of a hearing would promote judicial and administrative efficiency given the government's limited resources

52. The efficient allocation of the government's limited fiscal resources further supports holding a hearing prior to re-detaining noncitizens. The "fiscal and administrative burdens" as a result of the due process safeguard are nonexistent. See

Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long recognized that "[t]he costs to the public of immigration detention are 'staggering,'" Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017); Diaz, 2025 WL 1676854, at *3. In 2017 – with inflation numbers are likely higher today– immigration detention cost "$158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. On the other hand, "[i]n immigration court, custody hearings are routine and impose a minimal cost." Pinchi v. Noem, —— F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing Singh v. Andrews, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)). The cost of re-detaining an immigrant who was previously released "pending any bond hearing would significantly exceed the cost of providing [the immigrant] with a pre-detention hearing." Pinchi, 2025 WL 2084921, at *10.

53. ICE's new policy to make a minimum number of arrests each day under the new administration[1] does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Even if the government "ultimately demonstrates to a neutral decisionmaker by clear and convincing evidence that her detention is necessary to prevent danger to the

[1] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

community or flight," then the only potential injury the government faces is a short delay in detaining" Petitioner. Pinchi, 2025 WL 2084921, at *12. "Faced with … a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff['s] favor." (internal citations omitted). Id.

54. Consequently the government's interest in keeping Petitioner in detention without a due process hearing is outweighed by Petitioner's significant private interest in his liberty. The scale tips sharply in favor of releasing Petitioner from custody 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 Petitioner when the Court considers that the process Petitioner seeks—release from custody pending notice and a hearing (or interview) regarding whether his OSUP should be revoked —is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner 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 detained individuals like Petitioner.

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FIRST CAUSE OF ACTION
Violation of Due Process
U.S. Constitution Amendment V

55. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

56. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. at 693.

57. Here, Petitioner was not advised by Respondents that they sought to detain him. Moreover, Petitioner was detained despite there being no evidence that Respondents can effectuate his removal "in the reasonably foreseeable future" or that Petitioner violated the release conditions, or if he is a danger to the community or a flight risk. No conditions had changed since his release in 2017 – in fact, Petitioner has only developed more ties to the U.S. and has significant medical conditions that make him even less of a flight risk now. He has chronic knee pain for which he takes medication. Yet Petitioner was detained without any opportunity to even be heard on these issues.

58. Detention violates 8 U.S.C. § 1231 and the Due Process Clause of the United States Constitution unless it is reasonably related to the government's purpose of preventing flight and protecting the community. Zadvydas, 533 U.S. at 690-91.

59. Before being re-detained, Petitioner lived in the community for over nine years in compliance with the law. And he has received no process to determine whether his re-detention is warranted.

60. Petitioner is entitled to an individualized determination by impartial adjudicators as to whether detention is justified based on danger or flight. See Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011); see also Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

SECOND CAUSE OF ACTION
Violation of Due Process Clause of the U.S. Constitution
Unlawful Detention – Removal Not Reasonably Foreseeable

61. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

62. Post-removal order detention violates 8 U.S.C. § 1231(a)(6) where removal is not significantly likely to occur in the reasonably foreseeable future. See Zadvydas, 533 U.S. at 701.

63. Detention where removal is not reasonably foreseeable also violates due process.

64. The ninety-day removal period had already ended. An ICE officer determined it could not effectuate Petitioner's removal and released him. Given that the government was not able—and in the intervening nine years has not since been able— to remove the Petitioner, Petitioner has made an initial showing that his removal is not significantly likely. Zadvydas, 533 U.S. at 701.

65. Respondents cannot rebut this showing, as they have already held Petitioner for over three months. Petitioner's re-detention under these circumstances violates 8 U.S.C. § 1231 and the Due Process Clause under the United States Constitution. Petitioner is entitled to immediate release.

THIRD CAUSE OF ACTION
Violation of 5 U.S.C. § 706(a)(2)(A) and 8 C.F.R. § 241.13(i)(2)
Unlawful Revocation of Release

66. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

67. Petitioner was previously detained by ICE and released in 2017 because his removal could not occur. As he has complied with all laws of the U.S. since his release, Respondents have the authority to revoke his release only if there is a significant likelihood that they can remove him in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2).

68. Respondents revoked Petitioner's release without evidence that he can be removed from the United States. Petitioner has been detained over three months as of the filing of the instant action, further demonstrating there is no likelihood of him being removed in the reasonably foreseeable future.

69. Moreover, the governing regulations require Respondents to notify Petitioner of the reason for his re-detention. 8 C.F.R. § 241.13(i)(3). Respondents have not complied with this obligation, nor did they provide him with an initial interview at which he could respond to the purported reasons for revocation.

70. Respondents' actions in failing to abide by their own regulations are arbitrary, capricious, an abuse of discretion, and contrary to the Administrative Procedures Act. 5 U.S.C. § 706(a)(2)(A). As such, Petitioner is entitled to immediate release.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);
3. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
5. In the alternative, order a constitutionally adequate bond hearing complying with the procedural requirements in Singh where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the neutral adjudicator takes into consideration alternatives to detention and Petitioner's ability to pay a bond;
6. In the alternative, conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear and

convincing evidence and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

7. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

8. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

9. Grant any further relief this Court deems just and proper.

Dated: December 23, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
Bashir Ghazialam
Attorneys 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 and reviewed Petitioner's immigration file. Based on said review and 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 this December 23, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner