

1 Natalia Vieira Santanna
2 CA Bar No. 337502
3 MI Bar No. P76443
4 SANTANNA LAW OFFICES
5 PO Box 7528, Oakland, CA 94601
6 (510) 922-0154 (Telephone)
7 natalia@santannalaw.com (Email)
8 Attorney for Petitioner

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 D.L.C.,

13 Petitioner,

14 v.

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

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

24 Todd M. LYONS, Acting Director,
25 Immigration and Customs Enforcement,
26 U.S. Department of Homeland Security;

27 Kristi NOEM, Secretary, U.S.
28 Department of Homeland Security; and

Pam BONDI, Attorney General of the
United States.

Respondents.

No.

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

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

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INTRODUCTION

1. Petitioner, D.L.C., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since September 17, 2025, after having complied with the conditions of his release from the custody of the Department of Homeland Security (DHS) since he was granted parole on May 12, 2022. For years, D.L.C. has appeared at appointments, taken photographs, and answered supervision calls from the Intensive Supervision Appearance Program (ISAP), while diligently pursuing asylum before the Executive Office of Immigration Review (EOIR).

2. D.L.C.’s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or danger to the community, or if his removal is imminent. D.L.C. is not a flight risk or danger. Thus, D.L.C.’s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

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

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

CUSTODY

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

JURISDICTION

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

VENUE

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

REQUIREMENTS OF 28 USC § 2243

8. 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).

9. 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).

10. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to ensure 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.*

EXHAUSTION

11. For 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

1 prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious,
2 pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the
3 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
4 (9th Cir. 2004) (citation and quotation marks omitted)). D.L.C. asserts that exhaustion should be
5 waived because administrative remedies are (1) futile and (2) his continued detention results in
6 irreparable harm.

7 12. It would be futile for D.L.C. to seek a bond hearing from an Immigration Judge.
8 His request would be summarily denied based on the current interpretation of the BIA’s recent
9 decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of Yajure Hurtado*, 29
10 I&N Dec. 216 (BIA 2025).

11 13. Further, no statutory exhaustion requirements apply to D.L.C.’s claim of unlawful
12 custody in violation of his due process rights, and there are no administrative remedies that he
13 needs to exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142
14 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not have
15 jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,
16 1099 (C.D. Cal. 2000) (same).

17 PARTIES

18 14. D.L.C. is a 36-year-old male citizen of Peru who entered the U.S. on May 12,
19 2022, and has remained in the country since. *See* Affidavit of D.L.C. (“D.L.C. Aff.”). DHS
20 detained D.L.C. upon entry and shortly released him on parole pursuant to 8 C.F.R. § 212.5. *Id.*
21 D.L.C. established a life in Bakersfield, California. D.L.C. Aff. ¶ 6. He is gainfully employed and
22 provides for his partner and her daughter, whom he treats as his own. ¶ 6. *Id.*

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

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

6 17. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
7 official capacity. Among other things, ICE is responsible for the administration and enforcement
8 of the immigration laws, including the removal of noncitizens. In his official capacity as head of
9 ICE, he is the legal custodian of D.L.C.

10 18. Respondent Kristi NOEM is the Secretary of DHS and is named in her official
11 capacity. DHS is the federal agency that encompasses ICE, which is responsible for administering
12 and enforcing the INA and all other laws related to the immigration of noncitizens. In her
13 capacity as Secretary, Respondent Noem has responsibility for the administration and
14 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland
15 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
16 1103(a). Respondent Noem is the ultimate legal custodian of D.L.C.

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

22 **FACTUAL ALLEGATIONS**

23 20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
24 targeting people who are in regular removal proceedings in immigration court, many of whom
25 have pending applications for asylum or other relief. This "coordinated operation" is "aimed at
26 dramatically accelerating deportations" by arresting people at the courthouse or at the ICE office
27 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
28

1 *Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23,
2 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
3 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
4 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
5 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
6 administration implemented a policy to drastically increase immigration arrests to a target of at
7 least 3,000 per day. According to White House officials like Stephen Miller, this directive
8 prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct
9 mass round-ups in public spaces rather than targeted investigations.

10 21. As a result, arrests of non-citizens with no criminal record surged by over 800%,
11 and two-thirds of those deported had no criminal history. This focus on quantity over public
12 safety led to a new and aggressive tactic: systematically arresting immigrants at courthouses and
13 ICE appointments, regardless of the status of their legal cases. This has created a climate of fear,
14 discouraging people from attending their mandatory hearings or ICE appointments.

15 22. In addition, individuals are now held for extended periods, sometimes days, in
16 temporary holding cells that are not designed for overnight or prolonged detention, often under
17 inhumane conditions. Government officials have justified these harsh conditions not as a matter
18 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
19 detention.

20 23. Moreover, given recent BIA decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A.
21 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), all noncitizens apprehended
22 within the interior of the U.S. who allegedly entered without admission or inspection have been
23 denied bond hearings. While the U.S. District Court for the Central District of California recently
24 certified a nationwide class of noncitizens denied by DHS and denied bond hearings for having
25 entered without admission or inspection and granted declaratory relief declaring that members of
26 the class are entitled to bond hearings, practitioners across the nation are reporting that bonds are
27 still being denied regularly. *See Lazaro Maldonado Bautista v. Ernesto Santacruz, Jr.*, 5:25-cv-
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1 01873, (C.D. Cal.). See 5:25-cv-01873.

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

6 25. D.L.C. fled Peru in 2022 as a result of the persistent persecution he endured at the
7 hands of his fiancée's ex-husband. On or around May 12, 2022, D.L.C. tried crossing the border
8 in Texas when he was apprehended by immigration officials. D.L.C. Aff. ¶ 2. DHS admitted
9 D.L.C. into their custody for approximately one week before determining that he is not a danger
10 to the community nor a flight risk and releasing him pursuant to 8 C.F.R. § 212.5; *see also* D.L.C.
11 Aff. ¶ 3.

12 26. Upon his release, D.L.C. established a life in Bakersfield, California. ¶ 6 *Id.* DHS
13 granted him employment authorization, enabling him to provide for his partner and her daughter,
14 whom he treats as his own. ¶ 6 *Id.* Prior to detention, D.L.C. worked diligently to provide for his
15 family. ¶ 6 *Id.* D.L.C. has never committed any crimes, nor been arrested for any reason. ¶ 7 *Id.*

16 27. D.L.C. diligently complied with all requirements imposed by DHS through the
17 Intensive Supervision Appearance Program (ISAP). ¶ 4 *Id.* He initially attended in-person
18 appointments in Bakersfield to present documents and sign paperwork to enroll in the program. ¶
19 3 *Id.* He was transitioned to a different Intensive Supervision Appearance Program (ISAP), which
20 required the installation of a monitoring application on a cell phone for weekly reporting every
21 Wednesday by 12pm. ¶ 3 *Id.* The program required D.L.C. to take a photo every week, answer
22 phone calls from ISAP officers, and report periodically in-person at ISAP and ICE offices. ¶ 3 *Id.*
23 D.L.C. complied with the requirements of the ISAP program and his ICE's order of supervision. ¶
24 4 *Id.* D.L.C. was never informed of any violations or issues with his reporting. ¶ 4 *Id.*

25 28. On September 17, 2025, at 8 a.m., ICE officers appeared unannounced outside his
26 home in Bakersfield. ¶ 8 *Id.* There were two vehicles with officers waiting outside his home. ¶ 8
27 *Id.* The officers approached him, asked for his identification, and told him that he had to go with
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1 them to the ICE office in Bakersfield. ¶ 8 *Id.* When he asked why, he was not given an
2 explanation and was told that he would be released later that day. ¶ 8 *Id.* Out of fear, he complied.
3 ¶ 8 *Id.* ICE officers drove D.L.C. for approximately fifteen minutes to the ICE office in
4 Bakersfield. ¶ 8 *Id.* Upon arrival at the ICE office in Bakersfield, he was taken directly to the
5 basement, where officers informed him that he was under arrest. ¶ 9 *Id.* They placed him in
6 handcuffs and chains around his waist and ankles. ¶ 9 *Id.* When he asked why he was being
7 arrested, officers initially refused to explain. ¶ 9 *Id.* After repeatedly asking, another officer told
8 him that they had been outside D.L.C.'s home looking for someone else and had detained him
9 instead, stating that D.L.C. had been at the wrong place at the wrong time. ¶ 9 *Id.* D.L.C. was held
10 in a small holding cell until approximately 6:00 p.m., given minimal food, and was very cold. ¶ 9
11 *Id.* Later that day, he was moved to another cell inside the ICE office with two other people. ¶ 9
12 *Id.* At approximately 6:00 p.m., he was transported to the Mesa Verde Detention Facility,
13 approximately four minutes from the ICE office in Bakersfield. ¶ 10 *Id.* D.L.C. was placed in a
14 holding cell with three other people. ¶ 10 *Id.* Again, he was fed minimally. ¶ 10 *Id.* He was very
15 cold and unable to lay down. ¶ 10 *Id.* D.L.C. was finally released into the dormitories at
16 approximately 11:00 p.m. that night. ¶ 10 *Id.*

17 29. While detained at Mesa Verde, D.L.C., is unable to work and provide for his
18 partner and her daughter, whom he treats as his own. ¶ 6 *Id.* Since his detention, D.L.C. has
19 developed a cold from the unsanitary conditions inside the facility. ¶ 11 *Id.* He is also
20 experiencing extreme stress, anxiety and is constantly overthinking about what may happen if he
21 is returned to Peru. ¶ 11 *Id.*

22 30. On September 12, 2025, D.L.C. appeared for his Credible Fear Interview. ¶ 12 *Id.*
23 The same day, he received a Notice to Appear with a scheduled hearing date of December 10,
24 2025. ¶ 12 *Id.* Currently, his next hearing is scheduled for January 15, 2026. *See* Automatic Case
25 Information for D.L.C., attached as Exh. 3.
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LEGAL ARGUMENT

31. D.L.C.’s removal proceedings before the Adelanto Immigration Judge are governed by INA § 240 (“section 240 proceedings”). Section 240 proceedings provide important statutory protections, including hearings before an Immigration Judge. *See* 8 U.S.C. § 1229a(a)(1), (a)(4).

32. In D.L.C.’s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release from custody in May 2022, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

33. By statute and regulations, ICE has the ability to unilaterally revoke any noncitizen’s immigration bond determination or parole, and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens. There, the BIA held that “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.” *Id.* In practice, DHS “requires a showing of changed circumstances 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*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

34. ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change in circumstances.” *Saravia*, 280 F. Supp. 3d at 1197, *aff’d* sub nom. *Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second

1 Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE
 2 may re-arrest a noncitizen who had been previously released on bond only after a material change
 3 in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

4 35. ICE's power to re-arrest a noncitizen who is at liberty following a release from
 5 custody is also constrained by the demands of due process. *See Hernandez*, 872 F.3d at 981 ("the
 6 government's discretion to incarcerate non-citizens is always constrained by the requirements of
 7 due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-
 8 deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482
 9 (1972) (same, in parole context). Petitioner's release from custody in May 2022 and ties to his
 10 family and community provide him with a protected liberty interest. *See Ortega v. Bonnar*, 415
 11 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

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

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

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

4 38. Since May 2022, D.L.C. exercised that freedom under ICE’s order releasing him
5 from custody. As he was released from custody, he retains a weighty liberty interest under the
6 Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v.*
7 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-
8 483. Respondents created a reasonable expectation that D.L.C. would be permitted to live and
9 work in the United States without being subject to arbitrary arrest and removal.

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

19 40. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
20 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the
21 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and
22 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further
23 noted that “the parolee has relied on at least an implicit promise that parole will be revoked only
24 if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a
25 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
26 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever
27 name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.”
28

1 *Id* at 482.

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

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

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

4 **II. Petitioner’s Liberty Interest Mandates a Hearing Before Any Re-Arrest or**
5 **Revocation of Release from Custody**

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

12 45. “Adequate, or due, process depends upon the nature of the interest affected. The
13 more important the interest and the greater the effect of its impairment, the greater the procedural
14 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
15 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
16 “balance [D.L.C.’s] liberty interest against the [government’s] interest in the efficient
17 administration of” its immigration laws in order to determine what process he is owed to ensure
18 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
19 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
20 “first, the private interest that will be affected by the official action; second, the risk of an
21 erroneous deprivation of such interest through the procedures used, and the probative value, if
22 any, of additional or substitute procedural safeguards; and finally the government’s interest,
23 including the function involved and the fiscal and administrative burdens that the additional or
24 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
25 *Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the *Mathews* factors in
26 similar cases, and found that those in Petitioner’s position, noncitizens granted the liberty of
27 release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No.
28 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v.*

1 *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v.*
2 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez*
3 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

4 46. The Supreme Court “usually has held that the Constitution requires some kind of a
5 hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
6 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
7 are “the only remedies the State could be expected to provide” can post-deprivation process
8 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
9 of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible
10 in preventing the kind of deprivation at issue” such that “the State cannot be required
11 constitutionally to do the impossible by providing predeprivation process,” can the government
12 avoid providing pre-deprivation process. *Id.*

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

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

22 48. Under *Morrissey* and its progeny, individuals conditionally released from serving a
23 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
24 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
25 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
26 him to constitutional due process before he is re-incarcerated—apply with even greater force to
27 individuals like D.L.C., who have been released pending civil removal proceedings, rather than
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1 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
 2 conviction. Parolees and probationers have a diminished liberty interest given their underlying
 3 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
 4 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
 5 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
 6 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
 7 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, D.L.C. retains a truly weighty liberty interest
 8 even though he is under conditional release.

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

18 50. Thus, there is a clear profound private interest at stake in this case, which must be
 19 weighed heavily when determining what process he is owed under the Constitution. *See Mathews*,
 20 424 U.S. at 334-35.

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

24 51. The government’s interest in detaining D.L.C. without a due process hearing is
 25 low, and when weighed against D.L.C.’s significant private interest in his liberty, the scale tips
 26 sharply in favor of enjoining Respondents to release D.L.C. from his unlawful custody and refrain
 27 from re-arresting D.L.C. unless and until the government demonstrates by clear and convincing
 28 evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the

1 *Mathews* test favors D.L.C. when the Court considers that the process he seeks—notice and a
2 hearing regarding whether he has violated any conditions of his release, and, if so, providing
3 D.L.C. with a hearing before this Court (or a neutral decisionmaker) to determine whether there is
4 clear and convincing evidence that D.L.C. is a flight risk or danger to the community would
5 impose only a *de minimis* burden on the government, because the government routinely provides
6 this sort of hearing to individuals like D.L.C.

7 52. As immigration detention is civil, it can have no punitive purpose. The
8 government’s only interest in holding an individual in immigration detention can be to prevent
9 danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See*
10 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
11 lawful basis for detaining D.L.C. has lived at liberty complying with the conditions of his release
12 since May 2022.

13 53. ICE determined D.L.C. not to be a danger to the community or a flight risk in May
14 2022 and has done nothing to undermine that determination. To the contrary, he complied with
15 the terms of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater
16 importance to a person’s justifiable reliance in maintaining his conditional freedom so long as he
17 abides by the conditions on his release, than to his mere anticipation or hope of freedom”)
18 (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir.
19 1971)).

20 54. It is difficult to see how the government’s interest in ensuring his presence at the
21 moment of removal has materially changed since he was released in May 2022. The
22 government’s interest in detaining D.L.C. at this time is therefore low. That ICE has a new policy
23 to make a minimum number of arrests each day under the new administration does not constitute
24 a material change in circumstances or increase the government’s interest in detaining him.

25 55. Moreover, the “fiscal and administrative burdens” that his immediate release and a
26 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
27 334-35. D.L.C. does not seek a unique or expensive form of process, but rather a routine hearing
28

1 regarding whether his order of release should be revoked and whether he should be re-
2 incarcerated.

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

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

17 58. Releasing D.L.C. from unlawful custody and enjoining his re-arrest until ICE (1)
18 moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by
19 clear and convincing evidence that D.L.C. is a flight risk or danger to the community. *Hernandez*,
20 872 F.3d at 996.

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

24 59. Releasing D.L.C. from unlawful custody and providing D.L.C. a pre-deprivation
25 hearing would decrease the risk of D.L.C. being erroneously deprived of his liberty. Before
26 D.L.C. can be lawfully detained, he must be provided with a hearing before a neutral adjudicator
27 at which the government is held to show that there has been sufficiently changed circumstances
28 such that ICE’s May 2022 release from custody determination should be altered or revoked

1 because clear and convincing evidence exists to establish that D.L.C. is a danger to the
2 community or a flight risk.

3 60. On September 17, 2025, D.L.C. did not receive this protection. Instead, he was
4 detained by ICE, without notice, despite demonstrating compliance with ISAP reporting, and
5 there have been no material changes in his circumstances.

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

19 62. Due process also requires consideration of alternatives to detention at any custody
20 determination hearing that may occur. The primary purpose of immigration detention is to ensure
21 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
22 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
23 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
24 must be considered in determining whether D.L.C.’s reincarceration is warranted.

25 **CLAIMS FOR RELIEF**

26 **FIRST CLAIM FOR RELIEF**

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

1 63. D.L.C. re-alleges and incorporates herein by reference, as is set forth fully herein,
2 the allegations in all the preceding paragraphs.

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

5 65. D.L.C. has a vested liberty interest in his lawful conditional release. Due Process
6 does not permit the government to strip him of that liberty without a hearing before this Court.
7 *See Morrissey*, 408 U.S. at 487-488.

8 66. The Court must therefore order that ICE release D.L.C. from his current unlawful
9 custody.

10 67. Prior to any re-arrest, the government must provide him with a hearing before a
11 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether
12 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
13 that D.L.C. is a danger to the community or a flight risk, such that his reincarceration is
14 warranted. During any custody determination hearing that occurs, this Court or, alternatively, a
15 neutral adjudicator must consider alternatives to detention when determining whether D.L.C.’s re-
16 incarceration is warranted.

17 **SECOND CLAIM FOR RELIEF**

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

19 68. D.L.C. re-alleges and incorporates herein by reference, as is set forth fully herein,
20 the allegations in all the preceding paragraphs.

21 69. The Due Process Clause of the Fifth Amendment forbids the government from
22 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
23 amend. V.

24 70. D.L.C. has a vested liberty interest in his conditional release. Due Process does not
25 permit the government to strip him of that liberty without it being tethered to one of the two
26 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
27 community from danger. Since May 2022, D.L.C. has attended all his appointments. His
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1 continued participation thus demonstrates that he is neither a flight risk nor a danger. Re-arresting
2 him now would be punitive and violate his constitutional right to be free from the unjustified
3 deprivation of his liberty.

4 71. For these reasons, D.L.C.'s continued unlawful custody and any subsequent re-
5 arrest without first being provided a pre-deprivation hearing would violate the Constitution.

6 72. The Court must therefore order that he be released from custody.

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, D.L.C. prays that this Court grant the following relief:

- 16 (1) Assume jurisdiction over this matter;
- 17 (2) Declare that ICE's September 17, 2025, apprehension and detention of D.L.C. was
18 an unlawful exercise of authority because the ICE officer provided no reason that
19 he presents a danger to the community or is flight risk;
- 20 (3) Order ICE to immediately release D.L.C. from his unlawful detention;
- 21 (4) Enjoin re-arresting D.L.C. unless and until a hearing can be held before a neutral
22 adjudicator to determine whether his re-incarceration would be lawful because the
23 government has shown that he is a danger or a flight risk by clear and convincing
24 evidence;
- 25 (5) Declare that D.L.C. cannot be re-arrested unless and until he is afforded a hearing
26 on the question of whether his re-incarceration would be lawful—i.e., whether the
27 government has demonstrated to a neutral adjudicator that he is a danger or a flight
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1 risk by clear and convincing evidence;

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

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

4 Respectfully submitted this December 23, 2025.

5 By counsel,

6 /s/ Natalia Vieira Santanna

7 Natalia Vieira Santanna, Esq.

8 Attorney for Petitioner

9 Bar #P76443 (Michigan)/ Bar #337502 (California)

10 PO Box 7528

11 Phone: (510) 922-0154

12 Fax: (510) 903-4211

13 Email: natalia@santannalaw.com

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

15 I am submitting this verification on behalf of the Petitioner because I am one of
16 Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition.

17 Based on those discussions, I hereby verify that the factual statements made in the attached
18 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

19 Executed on December 23, 2025, in Oakland, CA.

20 /s/ Natalia Vieira Santanna

21 Natalia Vieira Santanna, Esq.

22 Attorney for Petitioner