Siovhan Ayala
AYALA LAW OFFICE, PC
PO Box 18986
Tucson, AZ 85731
(520) 756-9947
Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Orestes Llanes Llanes,

Petitioner-Plaintiff,

v.

Kristi Noem, in her Official Capacity, Secretary, U.S. Department of Homeland Security;

John Cantu, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

Pam Bondi, in her Official Capacity, Attorney General of the United States; and

Warden, Florence Service Processing Center

Respondents-Defendants.

Case No.

[redacted]

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

INTRODUCTION

1. Petitioner, Orestes Llanes Llanes, Agency number [redacted], by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing to detain him in the Florence Service Processing Center unlawfully.

2. Mr. Llanes is a 64 year old Cuban national, who came to the United States at the age of 10, in 1971.

3. On November 26, 2025, ICE agents arrested Mr. Llanes during his yearly check-in for his order of supervision. He has been detained since that time, and has been moved to various detention centers around the country. He is presently at the Florence Service Processing Center. Mr. Llanes has been under an order of supervision with ICE since March 31, 1987. ICE has not demonstrated that he presents either a danger to the community or a flight risk.

4. Petitioner seeks his immediate release from detention in the Florence Service Processing Center where ICE unlawfully re-detained and continues to imprison him.

5. As background, Mr. Llanes came to the United States in about 1971, around the age of 10 years old from Cuba. He has only left the United States once, around 1978, for a brief trip abroad.

6. Mr. Llanes has had numerous criminal arrests and convictions from when he was significantly younger. Based on a review of his criminal documents, he appears to have a robbery conviction from 1980, and aggravated assault conviction from 1980, a disorderly conduct conviction from 1981, a grand theft and dealing in stolen property conviction from 1981, a possession of cocaine and drug paraphernalia from 1987, trafficking in cocaine in 1992, and conspiracy to possess marijuana in 1994. He spent six years in prison, and his supervision was terminated on May 27, 2005, more than 20 years ago. These convictions represent the sole criminal basis for ICE's enforcement action.

7. Following his release from supervision in May of 2005, Mr. Llanes has become a model citizen. He has three U.S. Citizen children, who are 23, 20 and 14 years of age. His oldest child

is in the U.S. National Guard. He is also married to a U.S. Citizen. He is a property and business owner, in the construction field.

8. Nevertheless, on November 26, 2025, ICE deprived Mr. Llanes of his liberty by taking him into custody without providing advance notice or an opportunity to be heard. No court order authorized his sudden arrest, and ICE has not demonstrated that it possessed legal authority to disregard his long-settled probationary status.

9. On November 26, 2025, ICE agents arrested Mr. Llanes without prior notice. In recent months, ICE has engaged in highly publicized arrests of individuals who present no flight risk or danger, often without warning or explanation, and transferred them to remote detention facilities such as Florence Service Processing Center. Mr. Llanes's arrest followed this same troubling pattern.

10. The arresting ICE officers did not articulate any reason why Mr. Llanes was being re-detained. No explanation was given as to how he suddenly posed a flight risk, constituted a danger to the community, or had committed any violations that would justify disregarding his probationary status.

11. Indeed, there have been no changes in Mr. Llanes's circumstances since his 2005 release from any sort of supervision. His criminal convictions are from decades ago. He has incurred no new convictions, and nothing in his record indicates that he poses a risk of flight or danger that would warrant renewed detention.

12. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen or revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Amezcua-Penaloza's case, due

process requires notice and a hearing, *prior to any re-arrest*, at which he is afforded the opportunity to advance his arguments as to why his release should not be revoked.

13. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular meaning here, where Mr. Llanes's detention was *already* found to be unnecessary to serve its purpose, given that he has been under an order of supervision since July 14, 2003.

14. Therefore, at a minimum, in order to lawfully re-arrest Mr. Llanes, the government must first establish, by clear and convincing evidence and before a neutral decision maker, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary. ICE's re-arrest of Mr. Llanes on November 26, 2025, violated these regulations, laws, and due process.

CUSTODY

15. Mr. Llanes is currently in the custody of ICE at the Florence Service Processing Center, Arizona. Mr. Llanes 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

16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

17. 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).

18. 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).

19. 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

20. 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 occurred in the District of Arizona. Mr. Llanes is under the jurisdiction of the Florence Service Processing Center, where ICE unlawfully re-arrested him and he is being imprisoned in Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

21. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. 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)). Mr. Llanes asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

22. No statutory exhaustion requirements apply to Mr. Llanes's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies

that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (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).

23. Moreover, Petitioner has sought relief directly from ICE by challenging the legality of his detention. ICE has not released him, nor is there any avenue within the immigration courts to review his custody at this stage. Because no Immigration Judge has jurisdiction to consider a bond for Mr. Llanes, he has exhausted all remedies available.

PARTIES

24. Mr. Llanes is a citizen and national of Cuba who entered the U.S. in 1971, and he has remained in the country since that time, 54 years.

25. Respondent John Cantu is the Field Office Director of ICE, in Phoenix, Arizona, and is named in his official capacity. ICE is the component of the 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 Mr. Llanes.

26. 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 Mr. Llanes.

27. Respondent Kristi Noem is the Secretary of 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 Mr. Llanes.

28. Respondent, Warden, is the warden of the Florence Service Processing Center, where Petitioner is being held. He is the custodian of Petitioner and is named in his official capacity.

29. 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.

STATEMENT OF FACTS

30. Petitioner is a long-term resident of the United States who has lived here since at least 1971.

31. Mr. Llanes has numerous criminal arrests and convictions from when he was significantly younger. Based on a review of his criminal documents, he appears to have a robbery conviction from 1980, and aggravated assault conviction from 1980, a disorderly conduct conviction from 1981, a grand theft and dealing in stolen property conviction from 1981, a possession of cocaine and drug paraphernalia from 1987, trafficking in cocaine in 1992, and conspiracy to possess marijuana in 1994. He spent six years in prison, and his supervision was terminated on May 27, 2005, more than 20 years ago. These convictions represent the sole criminal basis for ICE's enforcement action.

32. Following his release from jail in 2001, Mr. Llanes complied with probationary supervision, and for more than twenty years he has incurred no new criminal convictions..

33. On November 26, 2025, ICE agents arrested Mr. Llanes without notice and detained him. He has been transferred around various immigration detention centers since his arrest, and is currently being held at the Florence Service Processing Center.

34. Since taking Mr. Llanes back into custody, ICE has provided him with a Notice of Revocation of Release, only indicating that "[i]t is appropriate to enforce your removal order, which became administratively final on 8/2/1984." Exhibit A.

35. There is no written decision explaining the legal basis for his detention, any notice of post-order custody review, or any record showing that ICE conducted the required custody-review

procedures. Petitioner has not been provided with any documentation indicating that ICE has undertaken efforts to remove him, such as requests for travel documents or communication with consular officials, or any evidence that a receiving country has agreed to accept him.

36. Respondents have indicated that the revocation of release is pursuant to 8 CFR 241.4(l)(2)(i)-(v), merely stating that it is in their "discretion" and in the "public interest." Exhibit A. ICE has not provided any documentation indicating whether it claims to detain Petitioner under 8 U.S.C. § 1226 or 8 U.S.C. § 1231. The absence of any custody classification or supporting records makes it impossible for Petitioner to ascertain the legal basis for his detention, and independently demonstrates that continued detention lacks statutory, regulatory, and constitutional foundation.

37. Mr. Llanes remains in custody solely on ICE's unilateral action, with no showing that he is a flight risk or danger to the community.

38. Petitioner has asked ICE to release him. ICE has not done so. Intervention from this Court is therefore required to ensure that Mr. Llanes is released from his current custody based his unlawful arrest, returned to his home, where ICE can then provide him with a hearing before determining to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

LEGAL BACKGROUND

8 U.S.C. § 1231(a)(6) Does Not Justify Petitioner's Custody Because ICE Cannot Produce the Required Documentation or Show Removal is Foreseeable

38. 8 U.S.C. § 1231 governs detention following the entry of a final order of removal. Under § 1231(a), DHS may detain a noncitizen during the 90-day "removal period," and § 1231(a)(6) permits continued detention in limited circumstances if removal remains reasonably foreseeable.

39. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a)(6) does not authorize indefinite detention and construed the statute to allow detention only for a period reasonably necessary to effectuate removal. Id. at 689–90. After six months, if a detainee provides good reason to believe that removal is not significantly likely in the reasonably foreseeable future, the government must rebut that showing with evidence. Id. at 701. ICE has

implemented procedural safeguards through 8 C.F.R. §§ 241.4 and 241.13, which govern post-order custody reviews and determinations regarding the foreseeability of removal.

Right to a Hearing Prior to Re-incarceration

40. In Mr. Llanes'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 placement on an order of supervision on July 14, 2003, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

41. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond 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. at 640, 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.").

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

43. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—failed to protect Mr. Llanes's weighty interest in his freedom from any lawful detention.

44. The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of erroneous deprivation; and 3) the burden on the government – to assess whether the Petitioner was afforded "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista,* CV-18-00285-PHX-GMS at 4; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Id.* at 4.

45. 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 release from custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Mr. Llanes *before* ICE re-detains him. *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); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's

ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

Mr. Llanes's Protected Liberty Interest in His Conditional Release

46. Mr. Llanes liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

47. Since July 14, 2003, Mr. Llanes has lived in the community under an order of supervision. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

49. This basic principle that individuals have a liberty interest in their conditional release has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (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. at 781-82 (holding that individuals released

on felony probation have a protected liberty interest requiring pre-deprivation process). 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).

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

Mr. Llanes's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release from Custody

51. Mr. Llanes asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for more than twenty years, during which time he has complied with all conditions of release (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

52. "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 Mr. Llanes 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. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, 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." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

53. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation 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 predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

54. Because, in this case, ICE is required to release Mr. Llanes from his unlawful custody and provide Mr. Llanes with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *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 Mr. Llanes's liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

Mr. Llanes's Private Interest in His Liberty is Profound

55. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that 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—apply with even greater force to individuals like Mr. Llanes, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Llanes retains a truly weighty liberty interest even though he is under conditional release.

56. What is at stake in this case for Mr. Llanes is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing him from custody and to take away—without a lawful basis—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). "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). *See also Zadvydas*, 533 U.S. at 690 ("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."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

The Government's Interest in Re-Incarcerating Mr. Llanes Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

58. The government's interest in detaining Mr. Llanes without a due process hearing is low, and when weighed against Mr. Llanes's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release Mr. Llanes from his unlawful custody and refrain from re-arresting Mr. Llanes 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 Mr. Llanes when the Court considers that the process he seeks—notice and a hearing regarding whether he has violated any conditions of his release, and, if so, providing Mr. Llanes with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Llanes is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Mr. Llanes.

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

60. Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful

pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Llanes does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated.

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

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

63. Releasing Mr. Llanes from unlawful custody re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Llanes is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. g to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

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

64. Releasing Mr. Llanes from unlawful custody and providing Mr. Llanes a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Llanes can be lawfully detained, he must be provided with a hearing

before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances in which release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Llanes is a danger to the community or a flight risk.

65. By contrast, the procedure Mr. Llanes seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely 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"). "A neutral judge is one of the most basic due process protections." *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). The Ninth Circuit has noted that 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).

66. Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Llanes's re-incarceration is warranted.

Post-Order Detention Under 8 U.S.C. § 1231(a)(6) Does Not Justify Petitioner's Custody Because ICE Cannot Produce the Required Documentation or Show Removal is Foreseeable

67. Even if Respondents' authority to detain Petitioner were construed as arising under 8 U.S.C. § 1231(a)(6), continued detention would still be unlawful. Section 1231(a) authorizes

detention only during the 90-day statutory "removal period," and after that period expires the statute permits detention only in narrow circumstances and only so long as removal remains reasonably foreseeable. 8 U.S.C. § 1231(a)(6).

68. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a)(6) does not authorize indefinite civil detention. To avoid serious constitutional problems, the Court construed § 1231(a)(6) to permit detention only for a period reasonably necessary to secure removal. Id. at 689–90. After six months, if a detainee provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing with evidence. Id. at 701.

Zadvydas and its progeny make clear that post-order detention is permissible only if the government can demonstrate both (1) that removal is significantly likely in the reasonably foreseeable future and (2) that it has complied with the procedural safeguards embedded in its regulations. See *Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1091–92 (9th Cir. 2011). ICE's regulations implement those requirements through 8 C.F.R. §§ 241.4 and 241.13. Section 241.4 requires periodic post-order custody reviews, written notice to the detainee that a review is underway, an opportunity to submit evidence supporting release, and a written decision explaining any determination to continue detention. Section 241.13 requires additional safeguards where removal is delayed because no country will accept the individual, including a special review to assess foreseeability of removal and a written decision. While Mr. Llanes has not been detained for more than six months, the likelihood of his removal is minimal.

69. ICE has not complied with any of these requirements. Petitioner has not received notice of any custody review, and has not been invited to submit evidence. While he has received a "Notice of Revocation of Release" from ICE, it is merely a standard form with a box checked, indicating that "[i]t is appropriate to enforce your removal order, which became administratively final on 8/2/1984." Exhibit A. The order does not indicate any change in circumstances from his initial Order of Supervision from 7/14/2003, or a balancing of factors regarding danger and flight risk.

70. The government bears the burden of maintaining and producing its own custody and supervision records, and the absence of these records is legally significant. Without these required materials, ICE cannot establish that Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6), nor can it demonstrate compliance with the procedures mandated by 8 C.F.R. §§

241.4 and 241.13. The lack of documentation confirms that Petitioner's current confinement is not supported by any lawful authority under § 1231.

71. Because ICE cannot show that removal is significantly likely in the reasonably foreseeable future and cannot show regulatory compliance, it cannot meet its burden under *Zadvydas*. Continued detention is therefore unlawful. The result is exactly what the Supreme Court warned against: prolonged, effectively indefinite civil detention untethered to any concrete prospect of removal and unsupported by the procedural protections that due process requires.

Petitioner has a strong likelihood of success on the merits.

72. Petitioner's claims present a strong likelihood of success because ICE has not produced the required documentation establishing lawful authority to detain him. Since taking Petitioner back into custody, ICE has not provided adequate information about their decision revoking supervised release, any record of a post-order custody review, or any explanation for the continued detention decision, only indicating that it is in their "discretion" to re-detain. Exhibit A. ICE has likewise produced no evidence of removal efforts—no travel-document requests, no consular communications, and no indication that any country is willing to accept Petitioner.

73. The absence of these materials demonstrates that ICE has not satisfied the statutory and regulatory prerequisites to detention under either 8 U.S.C. § 1226(b) or § 1231(a)(6), including the procedures outlined in 8 C.F.R. §§ 241.4 and 241.13. Without evidence that removal is reasonably foreseeable, that a lawful basis for detention exists, or that required procedural safeguards were followed, continued confinement cannot be justified.

74. Petitioner's constitutional claims are likewise substantial. He has a well-established liberty interest in remaining at liberty after more than two decades in the community, and ICE re-arrested him without notice and without a determination by a neutral decisionmaker that he poses a danger or flight risk. The current record consists of ICE's failure to identify any lawful basis for detention, combined with the absence of any procedural compliance demonstrates that Petitioner is likely to prevail on the merits of both his statutory and due process claims.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

75. Mr. Llanes re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

77. Mr. Llanes has a vested liberty interest in his lawful conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

78. The Court must therefore order that ICE release Mr. Llanes from his current unlawful custody.

79. Prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Mr. Llanes is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Mr. Llanes's re-incarceration is warranted.

80. Petitioner seeks protection against deportation to a third country. ICE has provided no lawful basis or process by which it could transfer Mr. Llanes to a country other than his country of nationality. The Due Process Clause prohibits the government from removing a noncitizen to a third country without notice and an opportunity to be heard on the question of where removal may lawfully occur. *See* 8 U.S.C. § 1231(b)(2) (establishing procedures governing country of removal).

81. In *D.V.D. v. DHS* (District of Massachusetts, 2025), the U.S. District Court for the District of Massachusetts enjoined DHS from carrying out such third-country removals without

first providing written notice and an opportunity to present fear-based claims under the Convention Against Torture. The court recognized that such removals, carried out without warning, deprive noncitizens of the most basic protections guaranteed by statute and the Constitution. Although the Supreme Court has stayed the injunction pending appeal, the district court's reasoning underscores the due process violation inherent in transferring a noncitizen to a third country without notice or hearing.

82.The Immigration and Nationality Act provides procedures for designating a country of removal, see 8 U.S.C. § 1231(b)(2), and nothing in the statute permits ICE to unilaterally select and execute a third-country removal without affording the individual notice and an opportunity to contest. Deportation to an unexpected third country carries grave risks of persecution, torture, and statelessness, and thus triggers core due process protections.

83. Petitioner therefore requests that this Court refrain from removing him to any third country absent full compliance with statutory procedures and constitutional due process, including advance notice and a meaningful opportunity to be heard.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

84. Mr. Llanes re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

86. Mr. Llanes has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

87. Since his release, Mr. Llanes has fully complied with the conditions of

His release, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now—while he is the sole caretaker for his family, and a responsible business owner—would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

88. For these reasons, Mr. Llanes's continued unlawful custody and any subsequent re-arrest without first being provided a hearing would violate the Constitution.

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

90. The Court must order the government to not re-arrest him in any subsequent action without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention, that Mr. Llanes is a danger to the community or a flight risk, such that his re-incarceration is warranted. During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when determining whether Mr. Llanes's re-incarceration is warranted.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's November 26, 2025, apprehension and detention of Mr. Llanes was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Order ICE to immediately release Mr. Llanes from his unlawful detention;

(4) Enjoin re-arresting Mr. Llanes unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;

(5) Declare that Mr. Llanes cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e.,

whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;

(6) Refrain from deporting Petitioner to a third country.

(7) Award reasonable costs and attorney fees; and

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

Dated: December 26, 2025

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this December 26, 2025 in Tucson, AZ.

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner