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4 UNITED STATES DISTRICT COURT
5
6 FOR THE DISTRICT OF ARIZONA

7
8 Christian Komezi Tembo,
9 Petitioner-Plaintiff,

10 v.

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

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

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

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

20 Luis Rocha, Warden, Florence Correctional Center

21 Respondents-Defendants.
22

Case 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

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2 1. Petitioner, Christian Komezi Tembo, Agency number , by and through his
3 undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for
4 declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS),
5 U.S. Immigration and Customs Enforcement (ICE) from continuing to detain him in the Florence
6 Correctional Center unlawfully.

7 2. Mr. Tembo is a 35 year old national and citizen of the Democratic Republic of the Congo,
8 who came to the United States at around the age of 10 as a refugee, in 2000.

9 3. Immigration Judge Sean Keenan granted Mr. Tembo protection under the Convention
10 Against Torture on September 19, 2013 in Tucson, Arizona.

11 4. On July 11, 2025, ICE agents arrested Mr. Tembo. He has been detained since that time.
12 He is presently at the Florence Correctional Center. ICE has not demonstrated that he presents
13 either a danger to the community or a flight risk.

14 5. Petitioner seeks his immediate release from detention in the Florence Correctional Center
15 where ICE unlawfully re-detained and continues to imprison him.

16 6. Mr. Tembo has had numerous criminal arrests and convictions. Based on his recollection,
17 he has been convicted of possession of marijuana and robbery in 2009 in Phoenix, Arizona. He
18 has also been charged with two Driving while under the influence, one in 2019 and one in 2022
19 in Avondale, Arizona, which is still pending.

20 7. Mr. Tembo has a U.S. Citizen fiancé and has resided in the U.S. for 25 years.

21 8. Nevertheless, on July 11, 2025, ICE deprived Mr. Tembo of his liberty by taking him into
22 custody without providing advance notice or an opportunity to be heard. No court order
23 authorized his sudden arrest, and ICE has not demonstrated that it possessed legal authority to
24 disregard his long-settled probationary status.

25 9. On July 11, 2025, ICE agents arrested Mr. Tembo without prior notice. In recent months,
26 ICE has engaged in highly publicized arrests of individuals who present no flight risk or danger,
27 often without warning or explanation, and transferred them to remote detention facilities such as
28 Florence Correctional Center. Mr. Tembo's arrest followed this same troubling pattern.

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

5 11. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
6 has the authority to re-arrest a noncitizen or revoke their bond, only where there has been a change
7 in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter*
8 *of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation
9 that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197
10 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
11 (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is
12 well-established that individuals released from incarceration have a liberty interest in their
13 freedom. In turn, to protect that interest, on the particular facts of Amezcua-Penalosa's case, due
14 process requires notice and a hearing, *prior to any re-arrest*, at which he is afforded the
15 opportunity to advance his arguments as to why his release should not be revoked.

16 12. That basic principle—that individuals placed at liberty are entitled to process before the
17 government imprisons them—has particular meaning here. Therefore, at a minimum, in order to
18 lawfully re-arrest Mr. Tembo, the government must first establish, by clear and convincing
19 evidence and before a neutral decision maker, that he is a danger to the community or a flight
20 risk, such that his re-incarceration is necessary. ICE's re-arrest of Mr. Tembo on July 11, 2025,
21 violated these regulations, laws, and due process.

22 CUSTODY

23 13. Mr. Tembo is currently in the custody of ICE at the Florence Correctional Center,
24 Arizona. Mr. Tembo is therefore in "'custody' of [the DHS] within the meaning of the habeas
25 corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

26 JURISDICTION

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

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 15. The Court must grant the petition for writ of habeas corpus or issue an order to show
7 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
8 § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three*
9 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis
10 added).

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

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

22 **VENUE**

23 18. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
24 Respondents are employees or officers of the United States, acting in their official capacity;
25 because a substantial part of the events or omissions giving rise to the claim occurred in the
26 District of Arizona. Mr. Tembo is under the jurisdiction of the Florence Correctional Center,
27 where ICE unlawfully re-arrested him and he is being imprisoned in Arizona. There is no real
28 property involved in this action.

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 19. For habeas claims, exhaustion of administrative remedies is prudential, not
3 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion
4 requirement if “administrative remedies are inadequate or not efficacious, pursuit of
5 administrative remedies would be a futile gesture, irreparable injury will result, or the
6 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
7 (9th Cir. 2004) (citation and quotation marks omitted)). Mr. Tembo asserts that exhaustion should
8 be waived because administrative remedies are (1) futile and (2) his continued detention results
9 in irreparable harm.

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

16 21. Moreover, Petitioner has sought relief directly from ICE by challenging the legality of his
17 detention. ICE has not released him, nor is there any avenue within the immigration courts to
18 review his custody at this stage. Because no Immigration Judge has jurisdiction to consider a bond
19 for Mr. Tembo, he has exhausted all remedies available. Mr. Tembo attempted to obtain a bond
20 with an immigration judge, however that bond request was denied on jurisdictional grounds, and
21 alternatively because he was deemed a danger and flight risk. Mr. Tembo has a final order of
22 removal, so an immigration judge does not have jurisdiction over his bond.

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25 **PARTIES**

26 22. Petitioner, Christian Komezi Tembo, is a native and citizen of the Democratic Republic
27 of Congo. He entered the United States as a refugee on 2000 and has resided
28 continuously in in the U.S since that date, for 25 years.

1 23. Respondent John Cantu is the Field Office Director of ICE, in Phoenix, Arizona, and
2 is named in his official capacity. ICE is the component of the DHS that is responsible for detaining
3 and removing noncitizens according to immigration law and oversees custody determinations. In
4 his official capacity, he is the legal custodian of Mr. Tembo.

5 24. Respondent Todd M. Lyons is the Acting Director of ICE and is named in his official
6 capacity. Among other things, ICE is responsible for the administration and enforcement of the
7 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
8 he is the legal custodian of Mr. Tembo.

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

16 26. Respondent, Luis Rocha, is the warden of the Florence Correctional Center, where
17 Petitioner is being held. He is the custodian of Petitioner and is named in his official capacity.

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

23 **STATEMENT OF FACTS**

24 28. Petitioner is a long-term resident of the United States who has lived here since at least
25 2000, over 25 years. Immigration Judge Sean Keenan granted Mr. Tembo protection under the
26 Convention Against Torture on September 19, 2013 in Tucson, Arizona.

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1 29. Mr. Tembo has had numerous criminal arrests and convictions. Based on his recollection,
2 he has been convicted of possession of marijuana and robbery in 2009 in Phoenix, Arizona. He
3 has also been charged with two Driving while under the influence, one in 2019 and one in 2022
4 in Avondale, Arizona, which is still pending.

5 30. On July 11, 2025, ICE agents arrested Mr. Tembo without notice and detained him. He
6 has was eventually transferred to the Florence Correctional Center.

7 31. There is no written decision explaining the legal basis for his detention, any notice of post-
8 order custody review, or any record showing that ICE conducted the required custody-review
9 procedures. Petitioner has not been provided with any documentation indicating that ICE has
10 undertaken efforts to remove him, such as requests for travel documents or communication with
11 consular officials, or any evidence that a receiving country has agreed to accept him.

12 32. Respondents have indicated that the revocation of release is pursuant to 8 CFR
13 241.4(l)(2)(i)-(v), merely stating that it is in their “discretion” and in the “public interest.” Exhibit
14 A. ICE has not provided any documentation indicating whether it claims to detain Petitioner
15 under 8 U.S.C. § 1226 or 8 U.S.C. § 1231. The absence of any custody classification or supporting
16 records makes it impossible for Petitioner to ascertain the legal basis for his detention, and
17 independently demonstrates that continued detention lacks statutory, regulatory, and
18 constitutional foundation.

19 33. Mr. Tembo remains in custody solely on ICE’s unilateral action, with no showing that he
20 is a flight risk or danger to the community.

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

25 **LEGAL BACKGROUND**

26 **8 U.S.C. § 1231(a)(6) Does Not Justify Petitioner’s Custody Because ICE Cannot Produce**
27 **the Required Documentation or Show Removal is Foreseeable**

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1 38. 8 U.S.C. § 1231 governs detention following the entry of a final order of removal. Under
2 § 1231(a), DHS may detain a noncitizen during the 90-day “removal period,” and § 1231(a)(6)
3 permits continued detention in limited circumstances if removal remains reasonably foreseeable.

4 39. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a)(6)
5 does not authorize indefinite detention and construed the statute to allow detention only for a
6 period reasonably necessary to effectuate removal. *Id.* at 689–90. After six months, if a detainee
7 provides good reason to believe that removal is not significantly likely in the reasonably
8 foreseeable future, the government must rebut that showing with evidence. *Id.* at 701. ICE has
9 implemented procedural safeguards through 8 C.F.R. §§ 241.4 and 241.13, which govern post-
10 order custody reviews and determinations regarding the foreseeability of removal.

11 **Right to a Hearing Prior to Re-incarceration**

12 40. In Mr. Tembo’s particular circumstances, the Due Process Clause of the
13 Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-
14 deprivation hearing before a neutral decision maker to determine whether circumstances have
15 materially changed, such that detention would now be warranted on the basis that he is a danger
16 or a flight risk by clear and convincing evidence.

17 41. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s
18 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
19 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
20 revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at
21 640, the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.
22 There, the BIA held that “where a previous bond determination has been made by an immigration
23 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
24 DHS “requires a showing of changed circumstances both where the prior bond determination was
25 made by an immigration judge *and* where the previous release decision was made by a DHS
26 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed
27 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
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1 circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) (“Thus, absent
2 changed circumstances ... ICE cannot redetain Panosyan.”).

3 42. ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
4 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
5 Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second Supp.
6 Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may
7 re-arrest a noncitizen who had been previously released on bond only after a material change in
8 circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

9 43. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
10 also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981
11 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by
12 the requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that
13 ICE should not re-arrest a noncitizen absent changed circumstances—failed to protect Mr.
14 Tembo’s weighty interest in his freedom from any lawful detention.

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

26 45. Federal district courts in California have repeatedly recognized that the demands of due
27 process and the limitations on DHS’s authority to revoke a noncitizen’s release from custody set
28 out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a

1 noncitizen on bond, like Mr. Tembo *before* ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018
2 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
3 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
4 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
5 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
6 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing
7 before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
8 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's
9 ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No.
10 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the
11 Constitution requires a hearing before any re-arrest).

12 **Mr. Tembo's Protected Liberty Interest in His Conditional Release**

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

17 47. Since July 14, 2003, Mr. Tembo has lived in the community. As he was released from
18 custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth
19 Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-
20 47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S.
21 471, 482-483 (1972).

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

1 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
2 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
3 at 482.

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

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

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

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

10 52. "Adequate, or due, process depends upon the nature of the interest affected. The more
11 important the interest and the greater the effect of its impairment, the greater the procedural
12 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
13 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
14 balance Mr. Tembo liberty interest against the government's interest in the efficient
15 administration of' its immigration laws in order to determine what process he is owed to ensure
16 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
17 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
18 "first, the private interest that will be affected by the official action; second, the risk of an
19 erroneous deprivation of such interest through the procedures used, and the probative value, if
20 any, of additional or substitute procedural safeguards; and finally the government's interest,
21 including the function involved and the fiscal and administrative burdens that the additional or
22 substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
23 *Eldridge*, 424 U.S. 319, 335 (1976)).

24 53. The Supreme Court "usually has held that the Constitution requires some kind of a hearing
25 *before* the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127
26 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the
27 only remedies the State could be expected to provide" can post-deprivation process satisfy the
28 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where "one of the

1 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
2 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally
3 to do the impossible by providing predeprivation process,” can the government avoid providing
4 pre-deprivation process. *Id.*

5 54. Because, in this case, ICE is required to release Mr. Tembo from his unlawful
6 custody and provide Mr. Tembo with notice and a hearing *prior* to any re-incarceration and
7 revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*,
8 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24
9 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting
10 involuntary civil commitment proceedings may not constitutionally be held in jail pending the
11 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance
12 weighs heavily in favor of Mr. Tembo’s liberty” and requires a pre-deprivation hearing before a
13 neutral adjudicator.

14 **Mr. Tembo’s Private Interest in His Liberty is Profound**

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

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

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

14
15 **The Government’s Interest in Re-Incarcerating Mr. Tembo Without a Hearing is Low and**
16 **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

17 58. The government’s interest in detaining Mr. Tembo without a due
18 process hearing is low, and when weighed against Mr. Tembo’s significant private interest in his
19 liberty, the scale tips sharply in favor of enjoining Respondents to release Mr. Tembo from his
20 unlawful custody and refrain from re-arresting Mr. Tembo unless and until the government
21 demonstrates by clear and convincing evidence that he is a flight risk or danger to the community.
22 It becomes abundantly clear that the *Mathews* test favors Mr. Tembo when the Court considers
23 that the process he seeks—notice and a hearing regarding whether he has violated any conditions
24 of his release, and, if so, providing Mr. Tembo with a hearing before this Court (or a neutral
25 decisionmaker) to determine whether there is clear and convincing evidence that Mr. Tembo is a
26 flight risk or danger to the community would impose only a *de minimis* burden on the government,
27 because the government routinely provides this sort of hearing to individuals like Mr. Tembo.

1 59. As immigration detention is civil, it can have no punitive purpose. The government's only
2 interests in holding an individual in immigration detention can be to prevent danger to the
3 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
4 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
5 for detaining Mr. Tembo. Mr. Tembo has lived at liberty complying with the conditions of his
6 release.

7 60. Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful
8 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
9 Mr. Tembo does not seek a unique or expensive form of process, but rather a routine hearing
10 regarding whether his bond should be revoked and whether he should be re-incarcerated.

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

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

26 63. Releasing Mr. Tembo from unlawful custody re-arrest until ICE (1) moves for a bond re-
27 determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Tembo
28 is a flight risk or danger to the community is far *less* costly and burdensome for the government

1 than keeping him detained.

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

5 64. Releasing Mr. Tembo from unlawful custody and providing
6 Mr. Tembo a pre-deprivation hearing would decrease the risk of him being erroneously deprived
7 of his liberty. Before Mr. Tembo can be lawfully detained, he must be provided with a hearing
8 before a neutral adjudicator at which the government is held to show that there has been
9 sufficiently changed circumstances in which release from custody determination should be altered
10 or revoked because clear and convincing evidence exists to establish that Mr. Tembo is a danger
11 to the community or a flight risk.

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

25 66. Due process also requires consideration of alternatives to detention at any custody
26 redetermination hearing that may occur. The primary purpose of immigration detention is to
27 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
28 Detention is not reasonably related to this purpose if there are alternatives to detention that could

1 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
2 detention must be considered in determining whether Mr. Tembo's re-incarceration is warranted.

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

6 67. Even if Respondents' authority to detain Petitioner were construed as arising under 8
7 U.S.C. § 1231(a)(6), continued detention would still be unlawful. Section 1231(a) authorizes
8 detention only during the 90-day statutory "removal period," and after that period expires the
9 statute permits detention only in narrow circumstances and only so long as removal remains
reasonably foreseeable. 8 U.S.C. § 1231(a)(6).

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

16 *Zadvydas* and its progeny make clear that post-order detention is permissible only if the
17 government can demonstrate both (1) that removal is significantly likely in the reasonably
18 foreseeable future and (2) that it has complied with the procedural safeguards embedded in its
19 regulations. *See Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1091–92 (9th Cir. 2011).
20 ICE's regulations implement those requirements through 8 C.F.R. §§ 241.4 and 241.13. Section
21 241.4 requires periodic post-order custody reviews, written notice to the detainee that a review is
22 underway, an opportunity to submit evidence supporting release, and a written decision
23 explaining any determination to continue detention. Section 241.13 requires additional
24 safeguards where removal is delayed because no country will accept the individual, including a
25 special review to assess foreseeability of removal and a written decision. While Mr. Tembo has
26 not been detained for more than six months, the likelihood of his removal is minimal, and he is
fast approaching the six month mark.

27 69. ICE has not complied with any of these requirements. Petitioner has not received notice
28 of any custody review, and has not been invited to submit evidence.

1 70. The government bears the burden of maintaining and producing its own custody and
2 supervision records, and the absence of these records is legally significant. Without these
3 required materials, ICE cannot establish that Petitioner is detained pursuant to 8 U.S.C. §
4 1231(a)(6), nor can it demonstrate compliance with the procedures mandated by 8 C.F.R. §§
5 241.4 and 241.13. The lack of documentation confirms that Petitioner's current confinement is
6 not supported by any lawful authority under § 1231.

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

12 **Petitioner has a strong likelihood of success on the merits.**

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

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

25 74. Petitioner's constitutional claims are likewise substantial. He has a well-established
26 liberty interest in remaining at liberty after more than two decades in the community, and ICE re-
27 arrested him without notice and without a determination by a neutral decisionmaker that he poses
28 a danger or flight risk. The current record consists of ICE's failure to identify any lawful basis for

1 detention, combined with the absence of any procedural compliance demonstrates that Petitioner
2 is likely to prevail on the merits of both his statutory and due process claims.

3
4 **FIRST CAUSE OF ACTION**

5 **Procedural Due Process**

6 **U.S. Const. amend. V**

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

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

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

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

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

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

1 81. In *D.V.D. v. DHS* (District of Massachusetts, 2025), the U.S. District Court for the
2 District of Massachusetts enjoined DHS from carrying out such third-country removals without
3 first providing written notice and an opportunity to present fear-based claims under the
4 Convention Against Torture. The court recognized that such removals, carried out without
5 warning, deprive noncitizens of the most basic protections guaranteed by statute and the
6 Constitution. Although the Supreme Court has stayed the injunction pending appeal, the district
7 court's reasoning underscores the due process violation inherent in transferring a noncitizen to a
8 third country without notice or hearing.

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

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

17
18 **SECOND CAUSE OF ACTION**

19 **Substantive Due Process**

20 **U.S. Const. amend. V**

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

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

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

1 community from danger.

2 87. Since his release, Mr. Tembo has fully complied with the conditions of
3 His release, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him
4 now—while he is the sole caretaker for his family, and a responsible business owner—would be
5 punitive and violate his constitutional right to be free from the unjustified deprivation of his
6 liberty.

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

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

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

17 **PRAYER FOR RELIEF**

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

- 19 (1) Assume jurisdiction over this matter;
- 20 (2) Declare that ICE's July 11, 2025, apprehension and detention of Mr. Tembo
21 was an unlawful exercise of authority because the ICE officer provided no
22 reason that he presents a danger to the community or is flight risk;
- 23 (3) Order ICE to immediately release Mr. Tembo from his unlawful detention;
- 24 (4) Enjoin re-arresting Mr. Tembo unless and until a hearing can be held before a
25 neutral adjudicator to determine whether his re-incarceration would be lawful
26 because the government has shown that he is a danger or a flight risk by clear
27 and convincing evidence;

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- (5) Declare that Mr. Tembo 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 29, 2025

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner

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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 29, 2025 in Tucson, AZ.

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner