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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kerim Escobar-Diaz,

Petitioner-Plaintiff,

v.

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;

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

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

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, Kerim Escobar Diaz ("Petitioner"), 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 an immigration jail pending resolution of his removal case without first providing him a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear and convincing evidence.

2. Petitioner also seeks an order enjoining DHS from continuing to violate the undisturbed bond release order issued by an Immigration Judge on August 14, 2014.

3. Petitioner lastly seeks his immediate release from detention in Eloy Detention Center where ICE unlawfully re-detained and continues to imprison him without a hearing and without demonstrating that he is a flight risk or danger to the community, as required by the Due Process clause of the Fifth Amendment.

4. As background, Petitioner initially came into immigration custody due to his single criminal conviction: on March 14, 2014, he was convicted for Driving Under the Influence, A.R.S. 28-1382A1. He was sentenced to 6 days jail, additional rehabilitation classes, and fines. The Petitioner fulfilled the conditions of his sentence without issue.

5. After being taken into custody, ICE subsequently released the Petitioner on August 14, 2014, pursuant to an Immigration Judge's ("IJ") order granting his release on bond. The IJ's bond determination was based on a comprehensive review of the relevant factors under 8 C.F.R. §1236.1, including a determination that the Petitioner was not a flight risk nor a danger to the community. This valid bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body. *Exhibit A.*

6. On August 23, 2016, IJ Richardson, granted the Petitioner's Motion to Administratively Close Removal Proceedings, with DHS filing its non-opposition. *Exhibit B.*

7. On June 27, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings.

8. In October 2025, ICE no-notice arrested the Petitioner. In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[1]

9. The arresting ICE officers did not articulate a reason as to why the Petitioner was being re-detained, such as how he is now a flight risk, a danger to his community, or for any purported violations of the conditions associated with his bond release from 2014.

10. Indeed, there have been no changes in the Petitioner's circumstances. For the past eleven years that the Petitioner has lived in freedom, he has been a devoted partner and father to his son, who is only twelve years old.

11. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and 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

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[1] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

opportunity to advance his arguments as to why his release should not be revoked.

12. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular meaning here, where the Petitioner detention was ***already*** found to be unnecessary to serve its purpose. An Immigration Judge previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

13. Therefore, at a minimum, in order to lawfully re-arrest the Petitioner, 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 the Petitioner in October 2025, violated these regulations, laws, and due process.

CUSTODY

14. The Petitioner is currently in the custody of ICE at the Eloy Detention Center, Arizona. The Petitioner 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

15. 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

16. 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).

17. 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).

18. 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

19. 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. The Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE unlawfully re-arrested him in his Phoenix, Arizona neighborhood, just a block from his home, in violation of 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), and he is being imprisoned in Arizona. There is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. 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)).

21. No statutory exhaustion requirements apply to the Petitioner'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).

22. Nevertheless, the Petitioner requested a bond hearing on November 21, 2024. On December 1, 2025, the Respondent appeared before an IJ for his Bond Hearing. However, the IJ took no action. The IJ requested that the DHS file a custody determination form, I-286. The DHS forwarded the request to ICE. On December 4, 2025, undersigned counsel followed up with DHS via email on the I-286 form. The DHS replied that ICE cannot make an I-286 because he is considered an applicant for admission under INA § 235. Therefore, Petitioner has exhausted all remedies available. *Exhibit C.*

PARTIES

23. Petitioner is a citizen and national of Guatemala who entered the U.S. without admission or inspection in May of 2004. He has remained in the country ever since.

24. The Petitioner was deemed neither a danger to his community or a flight risk by an Immigration Judge and released on bond in August 2014.

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 the Petitioner.

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 the Petitioner.

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 the Petitioner.

28. 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

29. The Petitioner is citizen and national of Guatemala who entered the U.S. in 2004 and he has not left the U.S since.

30. In 2013, he was convicted for the offense of Driving Under the Influence. He was sentenced to four days of jail and satisfied the conditions of his sentence without issue. He also completed rehabilitation classes and paid the court imposed fine.

31. ICE then took Petitioner into custody. He sought release on bond. The IJ considered flight risk, danger to the community, and national security, and ultimately granted a bond.

32. In August 2014, ICE released the Petitioner following the IJ's release order. DHS did not appeal. The bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body.

33. On August 23, 2016, IJ Richardson, granted Petitioner's the Motion to Administratively Close Removal Proceedings.

34. On June 27, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings. The Motion was granted and the Petitioner had an individual hearing in Eloy Immigration Court on December 16, 2025. He was granted voluntary departure and has the right to appeal the denial of his cancellation of removal for certain non-permanent residents, EOIR-42B until January 15, 2025.

35. In October, 2025, ICE detained the Petitioner in his neighborhood. Upon his arrest, ICE officers did not articulate why the Petitioner was now a flight risk, a danger to his

community, or how he had violated any conditions of his 2014 bond release.

36. This is because ICE cannot make such a statement. Over the last eleven (11) years that the Petitioner has lived in freedom, he has been a devoted partner and father to his son. He has had no criminal history since the DUI from 2014.

37. Petitioner requested a new bond hearing which was held on December 1, 2025. The IJ took a no action at that hearing and requested the government file a custody determination form I-286. To which the government refused to do. Intervention from this Court is therefore required to ensure that the Petitioner is released from his current custody based on his unlawful arrest, returned to his home in Phoenix, Arizona, 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

Right to a Hearing Prior to Re-incarceration

38. In the Petitioner's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release from custody in August 2014, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

39. 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.").

40. 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.

41. 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 the Petitioner weighty interest in his freedom from any lawful detention.

42. 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 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.

43. 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 the Petitioner *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).

The Petitioner's Protected Liberty Interest in His Conditional Release

44. The Petitioner's 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).

45. Since August 2014, The Petitioner exercised that freedom under ICE's order releasing him from custody. 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).

46. 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.

47. 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).

48. 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).

49. Here, when this Court "'compar[es] the specific release in [the Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar.

See Gonzalez-Fuentes, 607 F.3d at 887. Just as in *Morrissey*, the Petitioner release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, care for his children, including his U.S. citizen son for whom he is the sole caretaker, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

50. The Petitioner is the financial provider and caretaker for his partner and son. He has no criminal history aside from his 2014 conviction for DUI. He is the sole caretaker for his son, as his mother has been out of his son's life since he was a toddler.

The Petitioner's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release from Custody

51. The Petitioner asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for eleven years, during which time he has complied with all conditions of release and served as the sole caretaker for his son; (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 [the Petitioner] 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 the Petitioner from his unlawful custody and provide the Petitioner 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 [the Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

The Petitioner'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 the Petitioner, 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, the Petitioner retains a truly weighty liberty interest even though he is under conditional release.

56. What is at stake in this case for the Petitioner 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 the Petitioner 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 the Petitioner without a due process hearing is low, and when weighed against the Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release the Petitioner from his unlawful custody and refrain from re-arresting the Petitioner 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 the Petitioner 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 the Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that the Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like the Petitioner.

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 the Petitioner. The Petitioner has lived at liberty complying with the conditions of his release since August 2014 while acting as the financial caretaker for his partner and son. His only criminal history pre-dates his 2014 release on bond.

60. The Petitioner was determined by an Immigration Judge not to be a danger to the community or a flight risk in August 2014 and has done nothing to undermine that determination. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

61. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in August 2014, when he has complied with all conditions of release. The government's interest in detaining the Petitioner at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[2]

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

62. Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful pred-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. The Petitioner 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.

63. 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.

64. In the alternative, providing the Petitioner 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 the Petitioner 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.

65. Releasing the Petitioner from unlawful custody and enjoining Mr. Amezcua-Penaloza's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that the Petitioner is a flight risk or danger to the community is far

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raids-trump-quota/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

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

66. Releasing the Petitioner from unlawful custody and providing Mr.Amezcua-Penaloza a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before the Petitioner 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 such that ICE's August 2014 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that the Petitioner is a danger to the community or a flight risk.

67. The Petitioner did not receive this protection. Instead, he was detained by ICE, without Notice. The Petitioner has complied with the conditions of his release since in 2014, whereby his case has been administratively closed since 2016, and there have been no material changes in his circumstances.

68. By contrast, the procedure the Petitioner 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).

69. 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 the Petitioner 's re-incarceration is warranted.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

70. The Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

71. 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.

72. The Petitioner 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.

73. The Court must therefore order that ICE release the Petitioner from his current unlawful custody.

74. 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 the Petitioner 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 the Petitioner is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

75. The Petitioner 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 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

77. The Petitioner 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.

78. Since August 2014, the Petitioner has fully complied with the conditions of release imposed on him by ICE, 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.

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

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

81. 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 the Petitioner 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 the Petitioner's re-incarceration is warranted.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's October, 2025, apprehension and detention of the Petitioner 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 the Petitioner from his unlawful detention;

(4) Enjoin re-arresting the Petitioner 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 the Petitioner 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) Award reasonable costs and attorney fees; and

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

Dated: December 29, 2025

Respectfully submitted,

/s/ Bianca L. Torres
Bianca L. Torres
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 29, 2025, in Phoenix, AZ.

/s/ Bianca L. Torres
Bianca L. Torres
Attorney for Petitioner

EXHIBIT A

< Back to Cases

A-Number: [redacted], ESCOBAR-DIAZ, KERIM A

Select a case to view details and file documents

Removal	Charging Doc. Date: **10/14/2025**	Case Completed
Removal	Charging Doc. Date: **06/11/2014**	Case Completed
Bond	Charging Doc. Date: **06/11/2014** Bond Request Date: **11/21/2025**	Case Completed
Bond	Charging Doc. Date: **06/11/2014** Bond Request Date: **07/26/2014**	Case Completed

End of list. Please file a Form EOIR-27 or EOIR-28 using "Appearances" link in the header to view additional cases.

Court Information

Case Type:	Bond		
Bond Request Date:	07/26/2014	☑ This case has a paper ROP. All filings must be made in paper.	
Alien Name:	ESCOBAR-DIAZ, KERIM A		
Hearing Location:	-- NA --	**Immigration Court:**	1705 E. HANNA RD. ELOY, AZ 85131
Next Bond Hearing:	-- NA --	**IJ Decision Date:**	08/14/2014
		Bond Decision:	The Immigration Judge entered a new bond amount.
Hearing Medium:	-- NA --		

Court Actions

ⓘ The documents for this case do not exist online.
For information on viewing or obtaining a copy of the official record, please consult the EOIR Policy Manual available at www.justice.gov/eoir.

EXHIBIT B

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
200 E. MITCHELL DR., SUITE 200
PHOENIX, AZ 85012

In the Matter of: ESCOBAR-DIAZ, KERIM A

Case No.: [redacted]

IN REMOVAL PROCEEDINGS

The Muniz Law Firm, PLLC
Muniz, Raul
3030 N. Central Ave
Suite 602
Phoenix, AZ 85012

KNAPP, CARA, DHS

ORDER OF THE IMMIGRATION JUDGE

It is HEREBY ORDERED that the case be administratively closed for the following reason:

( ) Upon joint request by both parties.

(X) Other: Judicial Economy

This case remains under the jurisdiction and docket control of the immigration court. If either party in this case desires further action on this matter, at any time hereafter, a written motion to recalendar the case (including a certificate of service on the opposing party) must be filed with the Office of the Immigration Court having administrative control over the Record of Proceeding in this case.

8/23/16

JOHN W. RICHARDSON
Immigration Judge
Date: Aug 23, 2016

Appeal: NO APPEAL (A/I/B)
Appeal Due By:

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] Alien's ATT/REP [X] DHS
DATE: 8/23/16 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 39 - 8T (Admin Close)

Exh. 4 -

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTIC
EXECUTIVE OFFICE FOR IMMIGRATION RE'
ELOY IMMIGRATION COURT

Respondent Name:
ESCOBAR-DIAZ, KERIM A

To:
Torres, Bianca L
3636 N. Central Avenue
Suite 1000
Phoenix,, AZ 85012-3328

A-Number:
[redacted]

Riders:
In Custody Redetermina

Date:
12/01/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § the evidence presented, the respondent's request for a change in custody sta

☐ Denied, because

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☑ Other:
NO ACTION