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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Sandeep SANDEEP and Sachin CHAHAL,

Petitioners-Plaintiffs,

v.

Fred FIGUEROA, *in his official capacity as Warden, Eloy Detention Center*;
John CANTU, *Acting Field Office Director, 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, Secretary, U.S. Department of Homeland Security;
Pam BONDI, Attorney General of the United States;

Respondents-Defendants.

Case No.:

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

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

Agency File Nos.:
[redacted] (Sandeep SANDEEP)
(Sachin CHAHAL)

Petitioners SANDEEP SANDEEP and SACHIN CHAHAL petition this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioners, SANDEEP SANDEEP ("Mr. Sandeep") and SACHIN CHAHAL ("Mr. Chahal"), are Indian asylum seekers detained at the Eloy Detention Center in Eloy, Arizona. Petitioners, by and through their undersigned counsel, hereby file this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel their immediate release from immigration detention where they has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on December 12. 2025, without first being provided a due process hearing to determine whether their incarcerations are justified. Petitioner, Mr. Sadeep was previously released on May 13, 2024, by DHS on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to the community. Petitioner, Mr. Chahal was previously released on December 12, 2022, by DHS on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to the community.

2. Petitioners further submit this habeas petition under 28 U.S.C. § 2241 for a judicial check on Respondents' administrative decisions to detain him under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioners are not applicants for admission nor are they seeking admission. And because the government purports to hold Petitioners under § 1225(b)(2), it has not provided them with an

individualized bond hearing to challenge their detention under 8 U.S.C. § 1226(a), INA § 236(a), contravening their rights under the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

3. Petitioners seek declaratory and injunctive relief to compel their immediate release from the immigration jail where they have been held by the U.S. Department of Homeland Security (DHS) since being unlawfully re-detained on December 12. 2025, without first being provided a due process hearing to determine whether their incarcerations are justified.

4. Absent review in this Court, no other neutral adjudicator will examine Petitioners' plight: Respondents will continue to detain them in violation of the law essentially indefinitely. Petitioners thus urge this Court to review the lawfulness of their detention; declare that their detention under 8 U.S.C. § 1225(b)(2) is unlawful; order either their immediate release or that, at a minimum, Respondents provide them a bond hearing complying with the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

5. Petitioners must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, material changed circumstances (including that they are a flight risk and/or a danger to the community) that would justify cancelling Petitioner, Mr. Sandeep's release from ICE custody on May 13, 2024, and Petitioner, Mr. Chahal's release from ICE custody on December 12, 2022, on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that neither was a flight risk nor a danger to the community.

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

STATEMENT OF FACTS

7. Petitioner, Mr. Sandeep is an Indian man born in Narwana, Haryana, India. He hails from a farming family. He fled India due to being persecuted and tortured on account of his political opinion. Mr. Sandeep fled India on February 16, 2024 due to persecution by [redacted]

9. Mr. Sandeep arrived in the United States on or about May 13, 2024, and entered the United States at or near Tecate, California, without inspection and without valid entry documents or a visa. Upon arrival, he walked up to border officials and informed them he had a fear to return to India.

10. Mr. Sandeep was detained for a few hours by border patrol officials and he was then released on about May 13, 2024 on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to

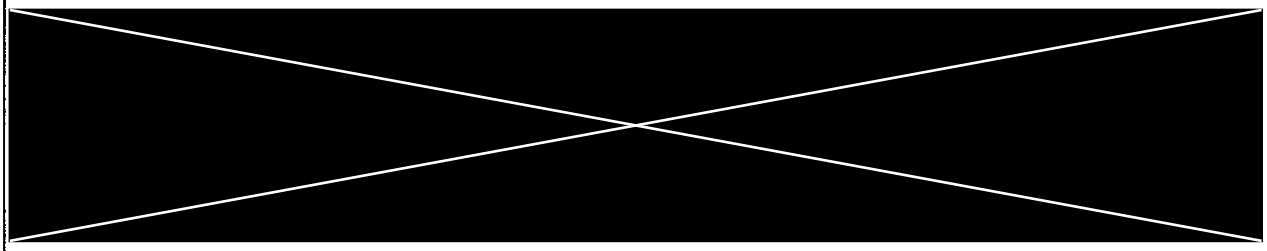
the community that he could not be released on his own recognizance. On the same date, Mr. Sandeep was issued a Notice to Appear (NTA) ordering him to appear before the Los Angeles Immigration Court.

11. The Form I-286, Notice of Custody Determination states in pertinent part as follows: "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, ***pending a final administrative determination in your case***, you will be: … Released … on your own recognizance." (conditional parole pursuant to INA section 236 (8 U.S.C. § 1226)).

12. The NTA issued to Mr. Sandeep stated that he is an "alien present in the United States who has not been admitted or paroled" under Section 212(a)(6)(A)(i). After his release, Mr. Sandeep's removal proceedings were assigned to the Los Angeles Immigration Court.

13. Mr. Sandeep not only complied with all conditions of his release on conditional parole, but he also attended all his court hearings, timely filed his application for asylum, attended his biometrics appointment, and otherwise obeyed all laws of the United States. He was issued a work permit as well as a U.S. Social Security Card and a California driver's license.

14. Petitioner, Mr. Chahal, is also an Indian man born Kurlan, Kamal, Haryana, India. He is also seeking asylum in the US due to [redacted]



experiences left Mr. Chahal with deep sense of fear and insecurity and which led him to flee India and seek asylum in the United States.

15. Mr. Chahal arrived in the United States on or about December 11, 2022, and entered the United States at or near Lukeville, Arizona , without inspection and without valid entry documents or a visa. Upon arrival, he walked up to border officials and informed them he had a fear to return to India.

16. Mr. Chahal was detained for a dat by border patrol officials and he was then released on about December 12, 2022 on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a danger to the community that he could not be released on his own recognizance. On the same date, Mr. Chahal was issued a Notice to Appear (NTA) ordering him to appear before the Sacramento Immigration Court.

17. The Form I-286, Notice of Custody Determination states in pertinent part as follows: "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, ***pending a final administrative determination in your case***, you will be: … Released … on your own recognizance." (conditional parole pursuant to INA section 236 (8 U.S.C. § 1226)).

18. The NTA issued to Mr. Chahal stated that he is an "alien present in the United States who has not been admitted or paroled" under Section 212(a)(6)(A)(i). After his release, Mr. Chahal's removal proceedings were assigned to the Sacramento Immigration Court.

19. Mr. Chahal not only complied with all conditions of his release on conditional parole, but he also attended all his court hearings, timely filed his application for asylum, attended his biometrics appointment, and otherwise obeyed all laws of the United States. He was issued a work permit as well as a U.S. Social Security Card and a California driver's license.

20. On December 12. 2025, Mr. Sandeep and Mr. Chahal were working together as truck drivers and as part of their job, were driving across Arizona when they were stopped by the Department of Homeland Security officials. The officers inquired about their immigration status, and when they informed the officers that they were asylum applicants and showed them their employment authorization cards and driver's licenses, the officers arrested them. Petitioners were arrested despite following all traffic and other laws and despite having valid work permits and driver's licenses.

21. Petitioners were re-detained by ICE officers without any notice or opportunity to be heard, or any showing of any changed circumstances. They were then transferred to the Eloy Detention Center where they have been held ever since.

22. At the time they were re-detained, Petitioners' immigration court proceedings were pending before the Sacramento Immigration Court and they were awaiting their court hearings. They had timely filed their asylum applications.

23.Since their releases from ICE custody on conditional pursuant to INA section 236 (8 U.S.C. § 1226), Petitioners have no criminal record and there have been no other changed circumstances from the time that they were initially apprehended and released justifying their apprehension. As stated above, Petitioners attended all their ICE check-ins and court hearings.

24.Mr. Sandeep has lived in the United States for nearly two years, and Mr. Chahal for over three years, during which they not only timely filed their asylum applications and obtained their work permits, but they have also been working to support themselves and their family. They have also developed community ties here in the United States, have obeyed all laws of the United States and have no criminal record.

25. In short, nothing has changed – let alone materially changed – since they were released on their own recognizance such that their current detentions are justified..

CUSTODY

26.Petitioners are currently in Respondents' legal and physical custody. They are detaining them at the at the Eloy Detention Center in Eloy, Arizona. CoreCivic, Inc., a Maryland corporation, operates that facility. They are under Respondents' and their agents' direct control. Prior to their arrest and re-detention Petitioners were not provided with constitutionally and statutorily compliant bond hearings.

JURISDICTION

27.This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'

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

28. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioners' re-detention without being provided an individualized bail hearing prior to their re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioners' challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

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

REQUIREMENTS OF 28 U.S.C. § 2243

30. 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).

31. 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).

32. 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

33. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim

occur in Arizona in the District of Arizona where Petitioners str currently detained, and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

34. The decision to re-arrest and re-detain Petitioners was made by the Phoenix field office of ICE, and until they were unlawfully re-detained by ICE, their cases were pending before the Sacramento Immigration Court. They were then transferred to Eloy Detention Center in Eloy, Arizona and the venues for their proceedings have been changed to the Eloy Immigration Court .

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

36. Pursuant to the Board's recent precedential decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an immigration judge would not take jurisdiction over any custody redetermination hearing.

Per those decisions, contravening decades of law and practice by Respondents, Petitioners are erroneously deemed applicants for admission ineligible for a bond hearing before an immigration judge (IJ).

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

38.Exhausting administrative remedies here is futile because Respondents contend Petitioners are subject to mandatory detention. As such, no parole request to release Petitioners from custody would be considered by ICE. Moreover, in contravention to the INA and long-standing precedent and practice, the Board of Immigration Appeals and Attorney General have deemed no noncitizen eligible for bond before an immigration judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust administrative remedies would be entirely futile.

39.More importantly, every day that Petitioners remain detained causes them harm that cannot be repaired. Their continued detention puts their physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. The Court must consider this in its irreparable harm analysis of the effects on Petitioners as their detentions continue. *See De Paz Sales v.*

Barr, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

40. Health concerns are one factor the Court should consider in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

PARTIES

41. Petitioner SANDEEP SANDEEP is an Indian asylum seeker. He fled India due to [redacted]. He is presently seeking asylum in the United States before the Immigration Court.

42. Petitioner is currently in Respondents' legal and physical custody at the Eloy Detention Center in Eloy, Arizona. CoreCivic, Inc., a Maryland corporation, operates that facility.

43. 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 DHS that is responsible for

detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

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

45. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. She is sued in her official capacity.

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

47. 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.

48. Respondent Fred FIGUEROA is the Warden of the Eloy Detention Center where Petitioner is being held. Respondent Fred FIGUEROA oversees the day-to-day operations of the Eloy Detention Center and acts at the Direction of Respondents Cantu, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in their official capacity.

LEGAL FRAMEWORK AND ANALYSIS

Statutory Framework Regarding Re-Detention

49. The Due Process clause of the Constitution, Congress's statutes and implementing regulations as well as precedential decisions narrow DHS's authority to unilaterally revoke any noncitizen's immigration bond or conditional parole and re-arrest the noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

50. ICE can release a noncitizen from custody after the noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." § 1236.1(c)(8).3 "Release [therefore] reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

51. Petitioners were released from ICE custody on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that neither was a flight risk or a danger to the community.

52. Respondents now purport to hold Petitioners under 8 U.S.C. § 1225(b)(2) since December 12. 2025, despite lacking authority to hold them under § 1225(b)(2), and without giving them individualized bail hearings before a neutral adjudicator under § 1226(a). That violates Petitioners' rights under the INA, the APA and the Fifth Amendment's Due Process Clause.

53. Petitioners were arrested and are detained despite the fact that Respondents failed to provide them notice and a pre-deprivation hearing before a neutral arbiter demonstrating materially changed circumstances justifying their re-detention, and despite the fact that they are not applicants for admission seeking admission to the United States as required by Section 1225(b)(2). Instead, Petitioners have been residing in the U.S. for years and as such are subject to Section 1226(a).

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

54. The Board of Immigration Appeals has clearly identified limits to DHS's authority to re-detain noncitizens: "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance," a position adopted by the Ninth Circuit. *Matter of Sugay*,17 I. & N. Dec.

637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021)("Thus, absent changed circumstances … ICE cannot re-detain Panosyan.").

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

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

57. Guidance from *Matter of Sugay* and DHS practice alone —that ICE should not re-arrest a noncitizen absent changed circumstances— are insufficient to protect Petitioners' weighty interest in their freedom from detention. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole require a pre-deprivation hearing for noncitizens on bond, like Petitioners, before ICE re-detains them, to comport with the Due Process clause of the Constitution. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021)

58. Just in the last few months, many federal courts have agreed that immigration re-detention after being released in the community warrants a pre-deprivation hearing. *See Sikeo v. Cantu, et al., No. CV-25-03191-PHX-SHD, 2025 WL 2937065 (D. of Ariz. Sept. 24, 2025); Diaz v. Kaiser,* No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Pinchi v. Noem*, —— F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F. Semaia et al., No. CV 25-6900 JGB (JCX), 2025 WL 2684181* (C.D. Cal. Aug. 14, 2025).

59. It follows that prior to re-detaining Petitioners who had previously been released pursuant to 8 U.S.C. § 1226(b), DHS should have provided them with pre-detention hearings and notice of such hearings at which DHS had the burden of proving that Petitioners' conditional parole should be canceled.

60. Instead, Respondents unlawfully re-arrested Petitioners without having an immigration judge or a neutral adjudicator assess whether circumstances have materially changed since their release years ago on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that they were neither a flight risk nor a danger to the community..

Petitioners' due process rights

61. The government cannot deprive any person of "life, liberty, or property, without due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons'

within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

A. Petitioners' Liberty Interest is protected

62. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

63. A continued liberty interest also exists where an individual was detained and is subsequently released, even if conditionally released and even when an initial decision to detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972). "[S]ubject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The parolee relies "on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82

(1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

64. 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).

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

970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

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

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

68. A noncitizen released from custody pending removal proceedings therefore has a protected liberty interest in remaining out of custody. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6,2022); *see also Ramirez Clavijo v. Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

69. Petitioners have a substantial liberty interest in not being detained. They have been living in the United States for multiple years, have been working and supporting themselves and jave developed extensive community ties.

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

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

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

72. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) ("Due process always requires, at a minimum, notice and an opportunity to respond."). Post-deprivation remedies may satisfy the requirements of due process only in a "special case" where they are "the only remedies the State could be expected to provide" and where "one of the variables in the *Mathews* equation—the value of post deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing post deprivation process." *Zinermon*, 494 U.S. at 985.

1. Petitioners have a substantial liberty interest in staying out of detention

73. An individual's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This liberty interest also exists where ICE decides to unilaterally nullify its own prior parole decision and take away his physical freedom, *i.e.*, his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). Courts have routinely agreed that "a Petitioners' interest in remaining out of custody as 'substantial.'" *Rodriguez-Flores v. Semaia*, No. 2:25-CV-06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025

WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

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

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

75. Where the petitioner "has not received any bond or custody … hearing, the risk of an erroneous deprivation [of liberty] is high because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi v. Noem*, —— F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing significantly decreases that risk because the government has to prove to a neutral adjudicator by clear and convincing evidence that circumstances have materially changed

to justify re-detention, and a hearing is likelier to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side").

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

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

immigration court and this is not a "special case" that warrants post-deprivation remedies because other remedies are impractical the way it was in *Zinermon*.

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

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

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

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

81. ICE's new policy to make a minimum number of arrests each day under the new administration[1] does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory

[1] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (December 12. 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Even if the government "ultimately demonstrates to a neutral decisionmaker by clear and convincing evidence that her detention is necessary to prevent danger to the community or flight," then the only potential injury the government faces is a short delay in detaining" Petitioners. *Pinchi*, 2025 WL 2084921, at *12. "Faced with … a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff['s] favor." (internal citations omitted). *Id.*

82. Consequently the government's interest in keeping Petitioners in detention without a due process hearing is outweighed by Petitioners' significant private interest in their liberty. The scale tips sharply in favor of releasing Petitioners from custody unless and until the government demonstrates by clear and convincing evidence that they are a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioners when the Court considers that the process Petitioners sees—release from custody pending notice and a hearing regarding whether his conditional parole should be revoked and, if so, whether a new bond amount should be set—is a standard course of action for the government. In the alternative, providing Petitioners with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioners are a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to detained individuals like Petitioners.

Statutory Framework Regarding Detention – Section 1225 and Section 1226

83. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

84. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

85. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

86. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

87. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

88. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

89. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

90. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

91. On May 15, 2025, the Board issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025) stating that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under 8 U.S.C. § 1226(a).

92. On September 5, 2025, the Board of Immigration Appeals issued a precedent decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that noncitizens who entered the United States without inspection were ineligible for bond

redetermination hearings because they were seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

93. This legal theory espoused by the BIA's decisions in *Matter of Q Li* and *Matter of Yajure Hurtado* that noncitizens who entered the United States without admission or parole are ineligible for bond hearings has been universally rejected by the district courts. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz,* 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) *Rodriguez v. Bostock,* 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

94. The Board's interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioners.

95. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

96. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

97. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

98. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that "the phrase 'at the time of application for admission'…refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." 976 F.3d at 924. The Ninth Circuit held that "inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only

makes an application for admission when they seek permission to physically enter the United States. *Id.* at 924.

99. In short, *Torres* clarified there is a temporal limitation to a classification of applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (stating that "Torres merely rejected the view that an alien remains in a perpetual state of applying for admission").

100. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioners who are alleged to have entered the United States without admission or parole.

FIRST CLAIM FOR RELIEF
Due Process
U.S. Const. amend. V

101. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

102. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court, the provisions of the Fourteenth Amendment "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality" Id. (emphasis added).

103. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz.*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

104. Petitioners' continued detention without any bond hearing violates their right to due process under the Fifth Amendment.

105. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

106. Petitioners have a vested liberty interest in their conditional release. Due Process does not permit the government to strip them of that liberty without a hearing before this Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

107. Petitioners' re-arrest without a hearing violated the Constitution both substantively, because Respondents have no valid interest in detaining them since circumstances have not changed, and procedurally, because they were not provided with a pre-detention hearing.