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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

Irshad Ahmad FAQERI,

Petitioner-Plaintiff,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center, Tacoma, Washington;
Cammilla WAMSLEY, Acting Seattle Field
Office Director, Enforcement and Removal
Operation, U.S. Immigrations and Customs
Enforcement;
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

1 Petitioner IRSHAD AHMAD FAQERI petitions this Court for a writ of habeas
2 corpus under 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully, and
3 states as follows:

4 **INTRODUCTION**

5
6 1. Petitioner, IRSHAD AHMAD FAQERI (“Mr. Faqeri” or “Petitioner”), is an
7 Afghan asylum seeker detained at the Northwest ICE Processing Center, Tacoma,
8 Washington. Petitioner, by and through his undersigned counsel, hereby files this petition
9 for writ of habeas corpus and complaint for declaratory and injunctive relief to compel
10 his immediate release from immigration detention where he has been held by the U.S.
11 Department of Homeland Security (DHS) since being unlawfully re-detained on
12 November 30, 2025, without first being provided a due process hearing to determine
13 whether his incarceration is justified. Petitioner was previously released on August 23,
14 2021, by DHS on humanitarian parole “for urgent humanitarian reasons or significant
15 public benefit” under 8 U.S.C. § 1182(d)(5)(A) after a determination that he was neither a
16 flight risk nor a danger to the community.

17
18 2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial
19 check on Respondents’ administrative decisions to detain him under 8 U.S.C.
20 § 1225(b)(2). Respondents do not have the authority to detain Petitioner under §
21 1225(b)(2) because he is not an applicant for admission nor is he seeking admission.
22 Even if the government had the authority to detain under § 1225(b)(2), it would be
23 required to provide Petitioner with an individualized bond hearing to challenge his
24

1 detention under 8 U.S.C. § 1226(a), but it has not done so, in contravention of his rights
2 under the Immigration and Nationality Act and the Fifth Amendment's Due Process
3 Clause.

4 3. Petitioner seeks declaratory and injunctive relief to compel his immediate release
5 from the immigration jail where he has been held by the U.S. Department of Homeland
6 Security (DHS) since being unlawfully re-detained on November 30, 2025, without first
7 being provided a due process hearing to determine whether his incarceration is justified.
8

9 4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's
10 plight: Respondents will continue to detain him in violation of the law essentially
11 indefinitely. Petitioner thus urges this Court to review the lawfulness of his detention;
12 declare that his detention under 8 U.S.C. § 1225(b)(2) is unlawful; order his immediate
13 release.

14 5. Petitioner must be released from custody and enjoin his re-detention until and
15 unless Respondents prove to a neutral adjudicator, by clear and convincing evidence,
16 material changed circumstances (including that he is a flight risk and/or a danger to the
17 community) that would justify cancelling Petitioner's previous release on August 23,
18 2021 on humanitarian parole "for urgent humanitarian reasons or significant public
19 benefit" under 8 U.S.C. § 1182(d)(5)(A) after a determination that he was neither a flight
20 risk nor a danger to the community.
21

22 6. The Due Process clause of the Fifth Amendment, as well as statutory and
23 regulatory authorities, require the government to provide noncitizens with notice and a
24

1 hearing prior to re-detention. Here, Petitioner's rights were violated and continue to be
2 each day he is detained.

3 **STATEMENT OF FACTS**

4 7. Mr. Faqeri is a 32-year-old married Afghan man born in Nangarhar, Afghanistan.
5 He fled Afghanistan on a U.S. military evacuation plane in August 2021 due to being
6 threatened on account of his political opinion and his work alongside U.S. forces with the
7 Afghan Ministry of Defense. He is presently seeking asylum in the United States before
8 the Immigration Court. His wife and children, from whom he was separated during the
9 evacuation, remain in Afghanistan.

10 8. In August 2021, the United States concluded its twenty-year war in Afghanistan
11 and with the Taliban, evacuating over 120,000 people from Kabul in over two weeks,
12 approximately 70,000 of whom were Afghans. As part of the withdrawal from
13 Afghanistan, DHS initiated "Operation Allies Welcome," under which the United States
14 government helped "vulnerable Afghans, including those who worked alongside [the
15 United States] in Afghanistan for the [previous] two decades, ... safely resettle in the
16 United States." Operation Allies Welcome, DEP'T OF HOMELAND SEC.,
17 <https://www.dhs.gov/archive/operation-allies-welcome> (last updated Jan. 22, 2025).¹
18 DHS coordinated a broad range of services, including initial processing and connecting
19 evacuees with non-governmental organizations for resettlement into communities.
20
21

22
23 ¹ "A court may take routine judicial notice of documents retrieved from official government
24 websites." *Vil! Green At Sayville, LLC v. Town of Islip*, 43 F.4th 287,299 n.7 (2d Cir. 2022)
(alternations adopted) (internal quotation marks and citations omitted). The court takes judicial
notice of this website as an official public record pursuant to Fed. R. Evid. 201.

1 9. Afghans who entered the United States pursuant to "Operation Allies Welcome"
2 were subjected to extensive security screening and vetting "to ensure that those seeking
3 entry do not pose a national security or public safety risk" and to conform with the
4 operation's "dual goals of protecting national security and providing protection for our
5 Afghan allies." *Id.* The initial processing involved "biometric and biographic screenings
6 conducted by [multiple] intelligence, law enforcement, and counterterrorism" agencies
7 and "reviewing fingerprints, photos, and other biometric and biographic data for every
8 single Afghan before they [were] cleared to travel to the United States." *Id.* Afghans
9 subsequently underwent a primary inspection upon arrival in the United States and, if
10 required, a secondary inspection.
11

12 10. "Certain Afghan individuals [were] granted humanitarian parole by [DHS], in
13 response to their need for rapid evacuation and relocation[.]" *Id.* "[P]arole [was] only
14 issued subsequent to required screening and vetting." *Id.* To facilitate the resettlement of
15 Afghans granted humanitarian parole, DHS waived filing fees and streamlined the
16 application process for work authorization, adjustment of status, and other services. As
17 articulated by then Secretary of Homeland Security Alejandro N. Mayorkas, "[t]hese
18 actions demonstrate[d] our ongoing commitment to Afghan nationals who provided
19 valuable assistance to the United States over the past two decades as well as other
20 Afghans at risk." DHS Announces Fee Exemptions, Streamlined Processing for Afghan
21 Nationals as They Resettle in the US., DEPT OF HOMELAND SEC., [https://](https://www.dhs.gov/archive/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle)
22 [www.dhs.gov/archive/news/2021/11/08/dhs-announces-fee-exemptions-](https://www.dhs.gov/archive/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle)
23 [streamlined-](https://www.dhs.gov/archive/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle)
24 [processing-afghan-nationals-they-resettle](https://www.dhs.gov/archive/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle) (Nov. 8, 2021).

11. Irshad Ahmad Faqeri is a citizen of Afghanistan who, pursuant to the military evacuation initiative known as Operation Allies Welcome (“OAW”), was admitted to enter the United States on August 23, 2021, under the Humanitarian Parole classification designated as 'OAR' (Operation Allies Refuge). He was initially paroled for two years and in connection with that parole, he was also issued work authorization for the duration of that parole period. In August 2023, his parole was “automatically” extended until August 22, 2025 pursuant to then OAW policy relating to certain Afghan evacuees, such as those who had an immigration benefit application pending, such as adjustment of status or application for asylum. <https://www.uscis.gov/humanitarian/information-for-afghan-nationals>.

12. Mr. Faqeri filed his Form I-589, Application for Asylum on December 19, 2022 with the assistance of counsel and was interviewed by an Asylum Officer on March 9, 2025. On April 1, 2024, Mr. Faqeri moved to a different address. The following day, on April 2, 2024, Mr. Faqeri went to the post office and reported his address change to the post office and requested forwarding of his mail to the new address. In addition, on April 5, 2024, Mr. Faqeri logged into his USCIS account and reported a change of address there as well. He also checked his application status which showed that it was still pending a decision.

13. On April 5, 2024, USCIS issued a Notice of Intent to Deny (NOID) requesting Mr. Faqeri to provide a response within 16 days of that notice. However, this notice was mailed to his old address and he never received it as it was not forwarded to his new address. Mr. Faqeri did not learn about this notice until after its due date by logging into

1 his USCIS account and finding it there. On April 26, 2024, USCIS issued its denial
2 decision on the ground that Mr. Faqeri had failed to respond to the Notice of Intent to
3 Deny. However, this notice was also sent to Mr. Faqeri's old address, which was three
4 weeks after he had reported his change of address.

5 14. After receiving actual notice, Mr. Faqeri acted diligently and immediately began
6 looking for a new lawyer to assist him with filing a motion to reopen and reconsider as
7 his prior counsel had withdrawn representation shortly after his interview.

8 15. On May 17, 2024, with the assistance of counsel, Mr. Faqeri filed his motion to
9 reopen and reconsider as well as his rebuttal to the NOID on the basis that the April 5,
10 2024 NOID as well as the April 26, 2024 Notice of Denial were served improperly to Mr.
11 Faqeri's old address despite the fact that Mr. Faqeri had reported a timely notice of
12 change of address to USCIS, as well as on the existence of good cause and his failure to
13 provide a timely rebuttal to the NOID was due to exceptional circumstances, reasonable
14 and beyond his control.

15 16. Although USCIS acknowledged receiving this motion on the same date it was
16 filed, it failed to adjudicate it until August 13, 2025 despite Mr. Faqeri, through counsel
17 making numerous inquiries, ultimately denying Mr. Faqeri's motion. However, Mr.
18 Faqeri's asylum application was not referred to an Immigration Judge, as that is where
19 Mr. Faqeri would be able to request a review of his asylum application.

20 17. On November 30, 2025, four days after the November 26, 2025 tragic and high-
21 profile shooting of two national guards officers in Washington, DC involving an Afghan
22 man and the subsequent immigration crackdowns announced by former President Donald
23
24

1 Trump, ICE officers showed up at Mr. Faqeri's home and arrested him as he was
2 returning from work. Mr. Faqeri was transported to the Northwest ICE Processing Center
3 in Tacoma, Washington, and was issued a Notice to Appear before an Immigration Judge
4 in Tacoma Immigration Court.

5 18. After living in the United States for four years, Mr. Faqeri was arrested without
6 any notice or opportunity to be heard, or any showing of any changed circumstances.

7 19. Since his release on humanitarian parole on August 23, 2021, Mr. Faqeri has not
8 been convicted of any crime and there have been no other showing of materially changed
9 circumstances during the over four years of residing in the United States. He attended all
10 his ICE check-ins and court hearings and more importantly, has reported all of his
11 changes of address.
12

13 20. Mr. Faqeri's continued detention without a tenable justification and without a
14 demonstration that removal is significantly likely in the reasonably foreseeable future
15 violates constitutional due process. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Kydyrali v.*
16 *Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

17 21. Mr. Faqeri's detention without a tenable justification violates his rights under the
18 Due Process Clause of the Fifth Amendment.
19

20 CUSTODY

21 22. Petitioner is currently in Respondents' legal and physical custody. They are
22 detaining him at the at the Northwest ICE Processing Center, Tacoma, Washington. GEO
23 Group, Inc., a Florida corporation, operates that facility. He is under Respondents' and
24

1 their agents' direct control. Prior to his arrest and re-detention Petitioner was not
2 provided with a constitutionally and statutorily compliant bond hearing.

3 JURISDICTION

4 23. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
5 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'
6 custody under the United States' color of authority, and such custody violates the United
7 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's
8 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,
9 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;
10 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),
11 2241 (habeas corpus).
12

13 24. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
14 Petitioner's re-detention without being provided an individualized bail hearing prior to
15 his re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner's
16 challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal
17 district courts possess broad authority to issue writs of habeas corpus when a person is
18 held "in custody in violation of the Constitution or laws or treaties of the United States"
19 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges
20 that survived the REAL ID Act's jurisdictional restrictions.
21
22

23 25. Because Petitioner seeks the traditional habeas remedy of release from allegedly
24 unlawful detention rather than additional administrative review of his underlying claims,

his 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 Petitioner’s detention.

REQUIREMENTS OF 28 U.S.C. § 2243

26. 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).

27. 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).

28. 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

29. 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 the Western District of Washington where Petitioner is currently detained, and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

30. The decision to re-arrest and re-detain Petitioner was made by the Seattle field office of ICE. He was ultimately transferred to the Northwest ICE Processing Center in Tacoma, Washington. He was issued a Notice to Appear before the Tacoma Immigration Court where proceedings are currently pending.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

31. 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.

1 32. Pursuant to the Board's recent precedential decisions in *Matter of Q. Li*, 29 I&N
2 Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an
3 immigration judge would not take jurisdiction over any custody redetermination hearing.
4 Per those decisions, contravening decades of law and practice by Respondents, Petitioner
5 is erroneously deemed an applicant for admission ineligible for a bond hearing before an
6 immigration judge (IJ).
7

8 33. No statutory exhaustion requirements apply to Petitioner's claim of unlawful
9 custody in violation of his due process rights, and there are no administrative remedies
10 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d
11 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency
12 does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*,
13 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
14

15 34. Exhausting administrative remedies here is futile because Respondents contend
16 Petitioner is subject to mandatory detention. As such, no parole request to release
17 Petitioner from custody would be considered by ICE. Moreover, in contravention to the
18 INA and long-standing precedent and practice, the Board of Immigration Appeals and
19 Attorney General have deemed no noncitizen eligible for bond before an immigration
20 judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any
21 attempts to exhaust administrative remedies would be entirely futile.
22

23 35. More importantly, every day that Petitioner remains detained causes him harm that
24 cannot be repaired. His continued detention puts his physical and mental health at greater

1 risk, further warranting a finding of irreparable harm and the waiver of the prudential
2 exhaustion requirement. The Court must consider this in its irreparable harm analysis of
3 the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
4 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
5 petitioner “continues to suffer significant psychological effects from his detention,
6 including anxiety caused by the threats of other inmates and two suicide attempts,” in
7 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
8 requirement).

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

18 37. During his detention, Mr. Faqeri’s already serious psychological conditions which
19 include [REDACTED] have
20 been aggravated and he has developed significant changes in his sleep and eating habits.

22 **PARTIES**

23 38. Petitioner Irshad Ahmad FAQERI is an Afghan asylum seeker. He fled
24 Afghanistan on a U.S. military evacuation plane in August 2021 due to being threatened

1 on account of his political opinion, religion and his work alongside U.S. forces with the
2 Afghan Ministry of Defense. He is presently seeking asylum in the United States before
3 the Immigration Court.

4 39. Petitioner is currently in Respondents' legal and physical custody at the Northwest
5 ICE Processing Center, Tacoma, Washington. GEO Group, Inc., a Florida corporation,
6 operates that facility.

7 40. Respondent Camilla WAMSLEY is the Acting Seattle Field Office Director,
8 Enforcement and Removal Operation, U.S. Immigrations and Customs Enforcement, and
9 is named in his official capacity. ICE is the component of DHS that is responsible for
10 detaining and removing noncitizens according to immigration law and oversees custody
11 determinations. In his official capacity, he is the legal custodian of Petitioner.
12

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

17 42. Respondent Kriti NOEM is the Secretary of the DHS and is named in her official
18 capacity. DHS is the federal agency encompassing ICE, which is responsible for the
19 administration and enforcement of the INA and all other laws relating to the immigration
20 of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the
21 administration and enforcement of the immigration and naturalization laws pursuant to
22 section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135
23
24

1 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal
2 custodian of Petitioner.

3 43. Respondent Pam BONDI is the Attorney General of the United States and the most
4 senior official in the U.S. Department of Justice (DOJ) and is named in her official
5 capacity. She has the authority to interpret the immigration laws and adjudicate removal
6 cases. The Attorney General delegates this responsibility to the Executive Office for
7 Immigration Review (EOIR), which administers the immigration courts and the BIA.

8 44. Respondent Bruce SCOTT is the Warden of the Northwest ICE Processing Center,
9 Tacoma, Washington, where Petitioner is being held. Respondent Bruce SCOTT oversees
10 the day-to-day operations of the Northwest ICE Processing Center and acts at the
11 Direction of Respondents Wamsley, Lyons and Noem. Respondent Bruce SCOTT is a
12 custodian of Petitioner and is named in their official capacity.
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LEGAL FRAMEWORK AND ANALYSIS

19 45. When an asylum seeker comes to the border to seek asylum in the U.S., the
20 Department of Homeland Security has the option of detaining them and placing them in
21 expedited removal proceedings or releasing them into the U.S. on parole.
22
23
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1 46.The INA provides that DHS “may . . . in [the Secretary’s] discretion parole” an
2 arriving asylum seeker into the United States on a “case-by-case basis for urgent
3 humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

4 47.If the Department exercises the option of paroling the noncitizen into the U.S.
5 under 8 U.S.C. § 1182(d)(5), said parole may only be terminated (prior to the expiration
6 of time for which the parole was authorized) “upon accomplishment of the purpose for
7 which parole was authorized or when...neither humanitarian reasons nor public benefit
8 warrants the continued presence of the alien in the United States....” 8 C.F.R. §
9 212.5(e)(2)(i).
10

11 48.Release on parole is an “express exception” to detention and is a “specific
12 provision authorizing release.” *Jennings v. Rodriguez*, 583 U.S. 231, 300 (2018). The
13 plain language of the statute establishes that parole must be both granted and revoked on
14 an individual, case-by-case basis: 8 U.S.C. § 1182(d)(5)(A) directs that parole may be
15 granted “only on a case-by-case basis” and may be terminated “when the purposes of
16 such parole shall . . . have been served.” *See also Doe v. Noem*, 2025 WL 1505688, at *1
17 (1st Cir. May 5, 2025) (observing that “[c]ommon sense suggests . . . that parole given
18 only on a case-by-case basis is to be terminated only on such a basis” and pointing to
19 individualized statutory language of § 1182(d)(5)).
20

21 49.Moreover, under the Administrative Procedures Act (“APA”), an agency must act
22 in a manner that is not arbitrary or capricious. *See* 5 U.S.C. § 706(2)(A) (directing courts
23 to “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of*
24 *Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a

1 “satisfactory explanation” for its action, “including a rational connection between the
2 facts found and the choice made”).

3 50. Furthermore, immigration detention should not be used as a punishment and
4 should only be used when, under an individualized determination, a noncitizen is a flight
5 risk because they are unlikely to appear for immigration court or a danger to the
6 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7 51. “Freedom from imprisonment—from government custody, detention, or other
8 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
9 protects.” *Zadvydas v. Davis*, 533 U.S. at 690. “[T]he Due Process Clause applies to all
10 ‘persons’ within the United States, including aliens, whether their presence here is lawful,
11 unlawful, temporary, or permanent.” *Id.* at 693.

12 52. Parolees in particular have a weighty liberty interest under the Due Process Clause.
13 The Supreme Court has noted that, “subject to the conditions of his parole, [a parolee]
14 can be gainfully employed and is free to be with family and friends and to form the other
15 enduring attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

16 53. “[T]he parolee has relied on at least an implicit promise that parole will be revoked
17 only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the
18 liberty of a parolee, although indeterminate, includes many of the core values of
19 unqualified liberty and its termination inflicts a grievous loss on the parolee and often
20 others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be seen within
21 the protection of the [Fifth] Amendment.” *Id.*
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1 54. “Adequate, or due, process depends upon the nature of the interest affected. The
 2 more important the interest and the greater the effect of its impairment, the greater the
 3 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
 4 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
 5 481-82).

6 55. On August 29, 2025, a district court in Washington D.C. issued *Make The Road*
 7 *New York v. Noem*, 1:25-cv-00190, (D.D.C.) affirming that parolees have a due process
 8 liberty interest and in the country’s interior, the Constitution requires the Government to
 9 “turn square corners.” See *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591
 10 U.S. 1, 24 (2020). The *Make the Road* Court enjoined the administration’s memos of
 11 earlier this year purporting to expand expedited removal to apply to parolees without
 12 affording them due process.

14 Legal Framework Regarding Re-Detention

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

19 57. ICE can release a noncitizen from custody after the noncitizen “demonstrate[s] to
 20 the satisfaction of the officer that such release would not pose a danger to property or
 21 persons” and that the noncitizen is “likely to appear for any future proceeding.” §
 22 1236.1(c)(8).3 “Release [therefore] reflects a determination by the government that the
 23
 24

1 noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F.
2 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
3 F.3d 1137 (9th Cir. 2018).

4 58. Petitioner was released from ICE custody on August 23, 2021, on humanitarian
5 parole after a determination that he was neither a flight risk nor a danger to the
6 community.

7 59. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since
8 November 30, 2025, despite lacking authority to hold him under § 1225(b)(2), and
9 without giving him an individualized bail hearing before a neutral adjudicator under §
10 1226(a). That violates Petitioner’s rights under the INA, the APA and the Fifth
11 Amendment’s Due Process Clause.

12 60. Petitioner was arrested and is detained despite the fact that Respondents failed to
13 provide him notice and a pre-deprivation hearing before a neutral arbiter demonstrating
14 materially changed circumstances justifying his re-detention, and despite the fact that he
15 is not an applicant for admission seeking admission to the United States as required by
16 Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for over four years
17 and as such is subject to Section 1226(a).

18 **Materially Changed Circumstances – Right to a Hearing Prior to Re-Detention.**

19 61. The Board of Immigration Appeals has clearly identified limits to DHS’s authority
20 to re-detain noncitizens: “where a previous bond determination has been made by an
21 immigration judge, no change should be made by [the DHS] absent a change of
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1 circumstance,” a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.
2 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
3 2021)(“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

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

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

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

3 65. In recent months, federal district courts in the Ninth Circuit have agreed that
4 immigration re-detention after being released in the community warrants a pre-
5 deprivation hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.
6 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.
7 Cal. July 11, 2025); *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-
8 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F.*
9 *Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

11 66. It follows that prior to re-detaining Petitioner who had previously been released
12 pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-detention
13 hearing and notice of such hearing at which DHS had the burden of proving that
14 Petitioner's conditional parole should be canceled.

16 67. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without
17 having an immigration judge or a neutral adjudicator assess whether circumstances have
18 materially changed since his release on August 23, 2021, on humanitarian parole after a
19 determination that he was neither a flight risk nor a danger to the community..

21 **Petitioner's Due Process Rights**

22 68. The government cannot deprive any person of "life, liberty, or property, without
23 due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons'
24

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

3 **A. Petitioner’s Liberty Interest is protected**

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

7
8 70. A continued liberty interest also exists where an individual was detained and is
9 subsequently released, even if conditionally released and even when an initial decision to
10 detain or release the individual is discretionary. *Morrissey*, 408 U.S. at 481-82. “[S]ubject
11 to the conditions of his parole, [a parolee] can be gainfully employed and is free to be
12 with family and friends and to form the other enduring attachments of normal life.” *Id.* at
13 482. The parolee relies “on at least an implicit promise that parole will be revoked only if
14 he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a
15 parolee, although indeterminate, includes many of the core values of unqualified liberty
16 and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
17 “[b]y whatever name, the liberty is valuable and must be seen within the protection of the
18 [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482; *see also Young v. Harper*, 520 U.S.
19 143, 152 (1997) (holding that individuals placed in a pre-parole program created to
20 reduce prison overcrowding have a protected liberty interest requiring pre-deprivation
21 process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals
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1 released on felony probation have a protected liberty interest requiring pre-deprivation
2 process).

3 71.As the First Circuit has explained, when analyzing the issue of whether a specific
4 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved
5 the issue by comparing the specific conditional release in the case before them with the
6 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,
7 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
8 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person
9 who is in fact free of physical confinement—even if that freedom is lawfully revocable—
10 has a liberty interest that entitles him to constitutional due process before he is re-
11 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
12 408 U.S. at 482).
13
14

15 72.The protectable liberty interest created by conditional parole also applies to
16 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is
17 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
18 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a
19 liberty interest, so too does [a noncitizen released from immigration detention] have a
20 liberty interest in remaining out of custody on bond.”). *Ortega v. Bonnar*, 415 F. Supp.
21 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves
22 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at
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24

1 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
2 (N.D. Cal. May 6, 2022).

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

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

17 75. A noncitizen released from custody pending removal proceedings therefore has a
18 protected liberty interest in remaining out of custody. *See Diaz v. Kaiser*, No. 3:25-CV-
19 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-
20 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *see also Ramirez Clavijo v.*
21 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).
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1 76. Petitioner has a substantial liberty interest in not being detained. He has been living
 2 in the United States for over four years, has been working and supporting himself and has
 3 developed extensive community ties.

4 **B. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and**
 5 **Revocation of Parole**

6 77. "Adequate, or due, process depends upon the nature of the interest affected. The
 7 more important the interest and the greater the effect of its impairment, the greater the
 8 procedural safeguards the [government] must provide to satisfy due process." *Haygood v.*
 9 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
 10 481-82). This Court must "balance [Petitioner's] liberty interest against the
 11 [government's] interest in the efficient administration of" its immigration laws in order to
 12 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
 13 him of his liberty. *Id.* at 1357.

14 78. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth
 15 Circuit, see *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps
 16 the Court assess adequate safeguards: "[F]irst, the private interest that will be affected by
 17 the official action; second, the risk of an erroneous deprivation of such interest through
 18 the procedures used, and the probative value, if any, of additional or substitute procedural
 19 safeguards; and finally the government's interest, including the function involved and the
 20 fiscal and administrative burdens that the additional or substitute procedural requirements
 21 would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
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 23
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1 79. The Due Process Clause typically requires a hearing of some sort before the
 2 government may deprive a person of liberty. *Zinerman v. Burch*, 494 U.S. 113, 127
 3 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due
 4 process always requires, at a minimum, notice and an opportunity to respond.”). Post-
 5 deprivation remedies may satisfy the requirements of due process only in a “special case”
 6 where they are “the only remedies the State could be expected to provide” and where
 7 “one of the variables in the *Mathews* equation—the value of post deprivation
 8 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the
 9 State cannot be required constitutionally to do the impossible by providing post
 10 deprivation process.” *Zinerman*, 494 U.S. at 985.
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 12
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 14

15 **1. Petitioner has a substantial liberty interest in staying out of detention**

16 80. An individual's interest in not being detained is “the most elemental of liberty
 17 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578
 18 (2004). “Freedom from bodily restraint has always been at the core of the liberty
 19 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This
 20 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole
 21 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest
 22 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
 23 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in
 24

1 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-
 2 06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
 3 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the
 4 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

5
 6 **2. There is a risk of erroneous deprivation that the additional procedural
 safeguard of a pre-detention hearing would help protect against.**

7 81. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it
 8 “does not eliminate its obligation to effectuate the detention in a manner that comports
 9 with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-
 10 05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding “undeniably
 11 stark” risk of erroneous deprivation where the Government contends that
 12 “notwithstanding a neutral arbiter’s determination that Petitioner should be released, ICE
 13 is entitled to unilaterally terminate the IJ’s order by re-detaining Petitioner without a
 14 hearing for at least six months, based on ICE’s own determination in its sole discretion
 15 that additional conditions of release unilaterally set by ICE had been violated”); *see also*
 16 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

17
 18 82. Where the petitioner “has not received any bond or custody ... hearing, the risk of
 19 an erroneous deprivation [of liberty] is high because neither the government nor
 20 [Petitioner] has had an opportunity to determine whether there is any valid basis for her
 21 detention.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025
 22 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing
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1 significantly decreases that risk because the government has to prove to a neutral
2 adjudicator by clear and convincing evidence that circumstances have materially changed
3 to justify re-detention, and a hearing is likelier to produce accurate determinations
4 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
5 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989)
6 (when “delicate judgments depending on credibility of witnesses and assessment of
7 conditions not subject to measurement” are at issue, the “risk of error is considerable
8 when just determinations are made after hearing only one side”).

9
10 83.Further, the risk of an erroneous deprivation of liberty under *Mathews* can be
11 decreased where a neutral decisionmaker, rather than ICE alone, makes custody
12 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
13 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
14 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge
15 is one of the most basic due process protections.”)

16
17 84.Any argument that noncitizens can request a custody determination hearing once
18 re-detained goes against the due process safeguards envisioned in the Constitution,
19 because such hearing happens after the fact and cannot prevent an erroneous deprivation
20 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D.
21 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond
22 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already
23 suffered the harm that is the subject of his motion: that is, his potentially erroneous
24

1 detention.”). Further, custody determination hearings are routinely conducted in
2 immigration court and this is not a “special case” that warrants post-deprivation remedies
3 because other remedies are impractical the way it was in *Zinerman*.

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

14 86. Further, immigration detention is civil (as opposed to criminal), and its primary
15 purpose is to ensure a noncitizen’s appearance during removal proceedings and protect
16 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,
17 690, 697 (2001). Due process thus also requires consideration of alternatives to detention
18 at any custody redetermination hearing that may occur, and where alternatives to
19 detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v.*
20 *Wolfish*, 441 U.S. 520, 538 (1979).
21
22

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

87. 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.

88. ICE’s new policy to make a minimum number of arrests each day under the new administration² 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

² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (November 30, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 first place. It is “arbitrary, capricious [and] an abuse of discretion” “in excess of statutory
2 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-
3 (C). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear
4 and convincing evidence that her detention is necessary to prevent danger to the
5 community or flight,” then the only potential injury the government faces is a short delay
6 in detaining” Petitioner. *Pinchi*, 2025 WL 2084921, at *12. “Faced with ... a conflict
7 between minimally costly procedures and preventable human suffering, [the Court has]
8 little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]
9 favor.” (internal citations omitted). *Id.*

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

3 **FIRST CLAIM FOR RELIEF**

4 **Due Process**

5 **U.S. Const. amend. V**

6 90. Petitioner incorporates by reference the allegations of fact set forth in the
 7 preceding paragraphs.

8 91. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments
 9 refer to all “persons,” not just “citizens.” Aliens, even inadmissible or removable aliens,
 10 must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369
 11 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection
 12 of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are
 13 universal in their application, to all persons within the territorial jurisdiction, without
 14 regard to any differences of race, of color, or of nationality” *Id.* (emphasis added).
 15

16 92. The Supreme Court has held that “even one whose presence in this country is
 17 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
 18 Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz*, 426 U.S.
 19 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status
 20 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
 21 term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the
 22 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
 23 property without due process of law.”).
 24

1 93. Petitioner's continued detention without any bond hearing violates his right to due
2 process under the Fifth Amendment.

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

7 95. Petitioner has a vested liberty interest in his conditional release. Due Process does
8 not permit the government to strip him of that liberty without a hearing before a court.
9
10 *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

11 96. Petitioner's re-arrest without a hearing violated the Constitution both substantively,
12 because Respondents have no valid interest in detaining him since circumstances have
13 not changed, and procedurally, because he was not provided with a pre-detention hearing.
14

15 97. Mr. Faqeri poses no risk of flight and no danger to the community. He has not
16 been convicted of any crimes, has demonstrated compliance with all prior immigration
17 requirements, and has community support in the United States.

18 98. Mr. Faqeri's continued detention without a tenable justification violates his Fifth
19 Amendment right to due process.

20 **SECOND CLAIM FOR RELIEF**

21 **Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**
22 **Unlawful Denial of Bond**

23 99. Petitioner repeats re-alleges and incorporate by reference each and every allegation
24 in the preceding paragraphs as if fully set forth herein.

1 100. Under the Administrative Procedures Act (“APA”), an agency must act in a
2 manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to
3 “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of*
4 *Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a
5 “satisfactory explanation” for its action, “including a rational connection between the
6 facts found and the choice made”).

8 101. A court must “hold unlawful and set aside agency action” that is “arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is
10 “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction,
11 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

12 102. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025)
13 the court explained the parole process in immigration cases and noted that before parole
14 may be revoked, the parolee must be given written notice of the impending revocation,
15 which must include a cogent description of the reasons therefore. Under the APA,
16 immigration parolees are entitled to determinations related to their parole revocations that
17 are not arbitrary, capricious or an abuse of discretion. *Id.* at *10.

19 103. By categorically revoking Petitioner’s parole without any description of the
20 reasons therefore and detaining the Petitioner without consideration of his individualized
21 facts and circumstances, Respondents have violated the APA.

23 104. Moreover, Respondents also acted arbitrarily and capriciously in detaining
24 the Petitioner.

1 105. Respondents have made no finding that Petitioner poses any danger to the
2 community.

3 106. Respondents have also made no finding that Petitioner is a flight risk
4 because, in fact, he has been diligently pursuing his asylum application and has been
5 working to support himself and his family.
6

7 107. By detaining the Petitioner categorically, Respondents have further abused
8 their discretion because there have been no changes to their facts or circumstances since
9 the agency made its initial determination to parole them into the United States that
10 support detention.

11 108. Respondents have already considered Petitioner's facts and circumstances
12 and determined that he is not a flight risk or danger to the community. There have been
13 no changes to the facts or any materially changed circumstances that justify this
14 revocation of their parole and/or being detained.
15

16 109. Furthermore, the mandatory detention provision at 8 U.S.C. § 1225(b)(2)
17 does not apply to noncitizens already residing in the United. Such noncitizens are
18 detained under § 1226(a), unless they are subject to another detention provision, such as
19 § 1225(b)(1), § 1226(c) or § 1231.
20

21 110. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
22 redetermination hearing before an immigration judge is arbitrary, capricious, and not in
23 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).
24

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);
- (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Western District of Washington pending the resolution of this case;
- (4) Issue a Writ of Habeas Corpus requiring Respondents to immediately release Petitioner on the conditions of his prior release;
- (5) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
- (6) Grant such further relief as the Court deems just and proper.

Dated: January 2, 2026

Respectfully submitted,

/s/ Jennifer Pasquarella
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/s/ Bashir Ghazialam

Bashir Ghazialam*

**Pro Hac Vice Forthcoming*

Attorneys 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 and reviewed Petitioner's immigration file. Based on said review and 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 January 2, 2026, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner