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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

SHOKHRUKH KHASANOV,

PETITIONER,

Case No. 1:26-CV-126

v.

**PETITION FOR A WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §
2241, BY A PERSON SUBJECT TO
UNLAWFUL DETENTION**

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; TODD LYONS,
Acting Director of ICE; PAMELA BONDI,
U.S. Attorney General; ROBERT HAGAN,
Field Office Director of Enforcement and
Removal Operations, Denver Field Office,
Immigration and Customs Enforcement;
Warden of the Denver Contract Detention
Facility (Aurora),

RESPONDENTS.

PETITION FOR WRIT OF HABEAS CORPUS

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen
Attorney for Petitioner
Texas State Bar No. 24075434
18208 Preston Rd., Ste. D9-284
Dallas, TX 75252
972-256-8641
Dan@GividenLaw.com

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TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

INTRODUCTION 5

JURISDICTION AND VENUE..... 8

PARTIES 9

HABEAS CORPUS PURPOSE AND REQUIREMENTS 10

STATEMENT OF FACTS 12

LEGAL FRAMEWORK..... 14

Overview of Relevant Constitutional Principles..... 14

CAUSES OF ACTION 18

COUNT I: VIOLATION OF DUE PROCESS CLAUSE UNDER THE 5TH AMENDMENT 18

COUNT II: ICE VIOLATED THEIR OWN REGULATIONS AND PROCEDURES 21

PRAYER FOR RELIEF..... 25

TABLE OF AUTHORITIES

46

47 **Cases**

48 *Black v. Dir. Thomas Decker*, 103 F. 4th 133 (2d Cir. 2024)..... 20

49 *Bonitto v. Bureau of Immigr. & Customs Enft*, 547 F. Supp. 2d 747 (S.D. Tex. 2008)..... 23

50 *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025)..... 24

51 *Duong v. Charles*, No. 1:25-cv-01375 (E.D. Cal. Nov. 14, 2025).....8

52 *Goldberg v. Kelly*, 397 U.S. 254 (1970)..... 16

53 *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).....10, 20

54 *Hamidi v. Bondi*, Case No. CIV-25-1205-G, 2025 WL 3452454 (W.D. Okla. Dec. 1, 2025)..8, 25

55 *Gov't of Canal Zone v. Brooks*, 427 F. 2d 346 (5th Cir. 1970)..... 23

56 *Jacinto v. Trump*, No. 4:25-cv-3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025).....21

57 *Madrazo Rodriguez v. Noem*, 5:25-cv-01657, 2025 WL 3654332 (W.D. Tex. Dec. 2025)...8

58 *Mathews v. Eldridge*, 424 U.S. 319 (1976)..... 19

59 *Morrissey v. Brewer*, 408 U.S. 471 (1972)..... 16

60 *Nguyen v. Hyde*, 788 F.Supp. 3d 144 (D. Mass. 2025)..... 25

61 *Phong Phan v. Moises Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735 (E.D. Cal.

62 July 16, 2025).....17, 18

63 *Preiser v. Rodriguez*, 411 U.S. 475 (1973).....11

64 *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025).....8, 25

65 *Rombot v. Souza*, 296 F.Supp. 3d 383 (D. Mass. 2017)..... 24

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67 25, 2025)..... 22, 24

68 *Sarail A. v. Bondi*, File No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673 (D. Minn. Sept. 3,

69 2025).....8, 25

70 *Trump v. J.G.G.*, 604 U.S. 670 (2025)..... 15

71 *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17,

72 2025)..... 11

73 *Villanueva Herrera v. Tate*, No. CV H-25-03364, 2025 WL 2774610 (S.D. Tex. Sept. 26,
74 2025).....8, 23, 24
75 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).....6, 13
76 *Zadvydas v. Davis*, 533 U.S. 678 (2001).....15, 16, 17, 19, 25
77 *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26,
78 2025)..... 23, 24

79 **Acts**
80 INA § 212(d)(5)(A).....5, 12

81 **Regulations**
82 8 C.F.R. § 241.4.....21, 22

83 **Statutes**
84 28 U.S.C. § 1331 8
85 28 U.S.C. § 1346 8
86 28 U.S.C. § 1391(e)(1) 8
87 28 U.S.C. § 1651.....8
88 28 U.S.C. § 2201..... 8
89 28 U.S.C. § 2241 8, 11
90 28 U.S.C. § 2243 11
91 5 U.S.C. § 500-596 8
92 5 U.S.C. § 701-706 8
93 8 U.S.C. § 1101(a)(4) 8
94 U.S. Const. art. I, § 9, cl. 2 8
95 U.S. Const. amend. V..... 14, 19
96
97
98

INTRODUCTION

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1. This case challenges Respondents' unlawful re-detention of Petitioner, Shokhrukh Khasanov. He is currently in the physical custody of Respondents at the Denver Contract Detention Facility (Aurora) in Aurora, Colorado.

2. Petitioner is a citizen of Uzbekistan who entered the United States without inspection on October 7, 2021 near Florence, Arizona.

3. On that same date, he was encountered by Border Patrol (BP) and taken into the custody of Immigration and Customs Enforcement (ICE).

4. ICE released Petitioner from custody on October 23, 2021 pursuant to an Interim Notice Authorizing Parole and Notice of Custody Redetermination. ICE paroled Petitioner into the United States via section 212(d)(5)(A) of the Immigration and Naturalization Act (INA) and then released him on his own recognizance, finding that he did not pose a danger or flight risk.

5. No Notice to Appear (NTA) was issued to Petitioner.

6. Petitioner filed a Form I-589, application for asylum, withholding of removal, and protection under the Convention Against Torture, with U.S. Citizenship and Immigration Services (USCIS) on February 3, 2022. His application remains pending.

7. Since his release from ICE custody on October 23, 2021, Petitioner has established a life for himself in Pennsylvania. He has a stable residence, ties to the community, and stable employment. He has been working pursuant to valid work

120 authorization, and paying his taxes as required. Petitioner has a United States Citizen
121 girlfriend whom he intends on marrying. He also has a United States Citizen three-month-
122 old daughter. Petitioner has no criminal history and does not pose a danger to the
123 community, or flight risk.

124 8. On December 28, 2025, Petitioner was driving. His truck had a mechanical
125 issue and he pulled over on the highway. This led to an encounter whereby he was taken
126 back into ICE custody.

127 9. Petitioner's parole was revoked and he was re-detained at the Denver
128 Contract Detention Facility (Aurora) in Aurora, Colorado. Petitioner was not provided
129 with notice as to why his parole was revoked and he was being re-detained, nor was he
130 provided with a fair hearing before a neutral arbiter *prior* to being re-detained.

131 10. On January 6, 2025, a bond hearing was held in Petitioner's case before an
132 Immigration Judge. The Immigration Judge denied Petitioner's bond redetermination
133 request purely on jurisdictional grounds, citing *Matter of Yajure Hurtado*.¹ The
134 Immigration Judge found that she did not have authority to hear Petitioner's bond request
135 merely because he is present in the United States without inspection. She did not make
136 any findings as to changed circumstances, danger, or flight risk. Thus, Petitioner was
137 denied his due process right to a fair hearing before a neutral arbiter as to why his prior
138 parole and release were being revoked, and he was prevented from challenging same.

¹ *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

139 11. Petitioner has been in ICE custody since December 28, 2025, and remains
140 detained at the Denver Contract Detention Facility (Aurora).

141 12. *Prior* to his re-detention, Petitioner was not provided with any sort of
142 notice as to why his release on parole was being revoked. And even though he was afforded
143 a bond hearing before an Immigration Judge *after* he was re-detained, the limited scope of
144 the hearing and denial solely on jurisdictional grounds meant that he was not afforded a re-
145 detention hearing where the Department of Homeland Security (DHS) would have to prove
146 he was a flight risk or danger to the community, and he was likewise not afforded the
147 opportunity to challenge any allegations of same *prior* to his re-detention in violation of
148 the Due Process Clause.

149 13. Petitioner has always complied with his conditions of release, has no
150 criminal history, and there have been no changes in circumstances that would lead to any
151 lawful revocation of his prior release on parole.

152 14. Due process requires that a hearing be held *prior* to the government's
153 decision to terminate a person's liberty. By failing to provide such a hearing, Respondents
154 have violated Petitioner's constitutional right to due process.

155 15. Therefore, this Court should grant the instant petition for a writ of habeas
156 corpus and order Petitioner's immediate release.

157 16. Petitioner’s positions are supported by reasoned, persuasive, and detailed
158 analysis from Article III courts across the country who have granted similar habeas
159 petitions.²

160 JURISDICTION AND VENUE

161
162 17. This case arises under the Constitution of the United States, the Immigration
163 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures
164 Act (“APA”), 5 U.S.C. §§ 500-596, 701-706.

165 18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
166 (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal
167 question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All
168 Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5
169 U.S.C. §§ 702, 706.

170 19. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
171 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act,
172 28 U.S.C. § 1651; and the Court’s inherent equitable powers.

173 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because
174 Respondents are agencies or officers of agencies of the United States, Respondents and

² See *e.g.*, *Villanueva Herrera v. Tate*, 5:25-cv-03364, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025); *Madrazo Rodriguez v. Noem*, 5:25-cv-01657, 2025 WL 3654332 (W.D. Tex. Dec. 2025); *Sarail A. v. Bondi*, File No. 25-cv-2144 (ECT/JFD), 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Duong v. Charles*, No. 1:25-cv-01375 (E.D. Cal. Nov. 14, 2025); *Hamidi v. Bondi*, Case No. CIV-25-1205-G, 2025 WL 3452454 (W.D. Okla. Dec. 1, 2025).

175 Petitioner reside in this District, Petitioner is detained in this District at the Denver Contract
176 Detention Facility (Aurora) in Aurora, Colorado and a substantial part of the events or
177 omissions giving rise to Petitioner's claims occurred in this District.

178 **PARTIES**

179
180 21. Petitioner, Shokhrukh Khasanov, is a citizen of Uzbekistan who entered the
181 United States without inspection on October 7, 2021. He was taken into ICE custody, and
182 then paroled into the United States and released on his own recognizance on October 23,
183 2021. His parole was revoked, and he was abruptly re-detained by ICE and DHS on
184 December 28, 2025, without proper notice or access to a re-detention hearing *prior* to his
185 re-detention. Petitioner remains detained at the Denver Contract Detention Facility
186 (Aurora) in Aurora, Colorado.

187 22. Respondent Kristi Noem is the Secretary of the Department of Homeland
188 Security. She is responsible for the implementation and enforcement of the Immigration
189 and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's
190 detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her
191 official capacity.

192 23. Respondent Department of Homeland Security (DHS) is the federal agency
193 responsible for implementing and enforcing the INA, including the detention and removal
194 of noncitizens.

195 24. Respondent Pamela Bondi is the Attorney General of the United States. She
196 is responsible for the Department of Justice, of which the Executive Office for Immigration
197 Review and the immigration court system it operates is a component agency. She is sued
198 in her official capacity.

199 25. Respondent Todd Lyons is Acting Director and Senior Official Performing
200 the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies,
201 practices, and procedures, including those relating to removal procedures and the detention
202 of immigrants during their removal procedures. Respondent Lyons is a legal custodian of
203 Petitioner. Respondent Lyons is sued in his official capacity.

204 26. Respondent Robert Hagan is the Director of the Denver Field Office of ICE's
205 Enforcement and Removal Operations division. As such, Robert Hagan is Petitioner's
206 immediate custodian and is responsible for Petitioner's detention and removal. He is named
207 in his official capacity.

208 27. Respondent Warden of the Denver Contract Detention Facility (Aurora), is
209 who has immediate physical custody of Petitioner. Warden is sued in their official capacity.

210 **HABEAS CORPUS PURPOSE AND REQUIREMENTS**

211 28. The writ of habeas corpus is "available to every individual detained within
212 the United States."³ "The essence of habeas corpus is an attack by a person in custody upon
213

³ *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2).

214 the legality of that custody, and ... the traditional function of the writ is to secure release
215 from illegal custody.”⁴ “Historically, ‘the writ of habeas corpus has served as a means of
216 reviewing the legality of Executive detention, and it is in that context that its
217 protections have been strongest.’”⁵ “A district court’s habeas jurisdiction,” therefore,
218 “includes challenges to immigration-related detention.”⁶

219 29. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas
220 corpus or issue an order to show cause (“OSC”) to the respondents “forthwith.”⁷ If an order
221 to show cause is issued, respondents should generally be required to file a return “within
222 *three* days unless for good cause additional time . . . is allowed.”⁸

223 30. This Motion is predicated on a petition for a Writ of Habeas Corpus under 28
224 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift
225 judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response
226 precisely because the petition’s central claim is an ongoing, unlawful deprivation of liberty.
227 It is axiomatic that the loss of liberty, even for a single day, constitutes profound and
228 irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days

⁴ *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

⁵ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

⁶ *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) and *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

⁷ 28 U.S.C. § 2243.

⁸ *Id.* (emphasis added).

229 is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts
230 the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy
231 of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

232 **STATEMENT OF FACTS**

233
234 31. Petitioner is a citizen of Uzbekistan who entered the United States without
235 inspection on October 7, 2021 near Florence, Arizona.

236 32. On that same date, he was encountered by BP and taken into the custody of
237 ICE.

238 33. ICE released Petitioner from custody on October 23, 2021 pursuant to an
239 Interim Notice Authorizing Parole and Notice of Custody Redetermination. ICE paroled
240 Petitioner into the United States via INA § 212(d)(5)(A), and then released him on his own
241 recognizance, finding that he did not pose a danger or flight risk.

242 34. No NTA was issued to Petitioner.

243 35. Petitioner filed a Form I-589, application for asylum, withholding of
244 removal, and protection under the Convention Against Torture, with USCIS on February
245 3, 2022. His application remains pending.

246 36. Since his release from ICE custody on October 23, 2021, Petitioner has
247 established a life for himself in Pennsylvania. He has a stable residence, ties to the
248 community, and stable employment. He has been working pursuant to valid work
249 authorization, and paying his taxes as required. Petitioner has a United States Citizen

250 girlfriend whom he intends on marrying. He also has a United States Citizen three-month-
251 old daughter. Petitioner has no criminal history and does not pose a danger to the
252 community, or flight risk.

253 37. On December 28, 2025, Petitioner was driving. His truck had a mechanical
254 issue, and he pulled over on the highway. This led to an encounter whereby he was taken
255 back into ICE custody.

256 38. Petitioner's parole was revoked and he was re-detained at the Denver
257 Contract Detention Facility (Aurora) in Aurora, Colorado. Petitioner was not provided
258 with notice as to why his parole was revoked and he was being re-detained, nor was he
259 provided with a fair hearing before a neutral arbiter *prior* to his re-detention.

260 39. On January 6, 2025, a bond hearing was held in Petitioner's case before an
261 Immigration Judge. The Immigration Judge denied Petitioner's bond redetermination
262 request purely on jurisdictional grounds, citing *Matter of Yajure Hurtado*.⁹ The
263 Immigration Judge found that she did not have authority to hear Petitioner's bond request
264 merely because he is present in the United States without inspection. She did not make
265 any findings as to changed circumstances, danger, or flight risk. Additionally, it was not
266 the Respondents' burden at the bond hearing to prove by clear and convincing evidence
267 that Petitioner's circumstances have changed, and that he poses a danger or flight risk.
268 Thus, Petitioner was denied his due process right to a fair hearing before a neutral arbiter

⁹ *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

269 as to why his prior parole and release were being revoked *prior* to his re-detention, and he
270 was prevented from challenging same.

271 40. Petitioner has been in ICE custody since December 28, 2025, and remains
272 detained at the Denver Contract Detention Facility (Aurora).

273 41. *Prior* to his re-detention, Petitioner was not provided with any sort of
274 notice as to why his release on parole was being revoked. And even though he was afforded
275 a bond hearing before an Immigration Judge *after* he was re-detained, the limited scope of
276 the hearing and denial solely on jurisdictional grounds meant that he was not afforded a re-
277 detention hearing that comports with the requirements of due process.

278 42. Petitioner remains in ICE custody at the Denver Contract Detention Facility
279 (Aurora). To date, ICE has not alleged, nor provided notice of, any change of
280 circumstances that would cause Petitioner's prior parole and conditions of release to be
281 revoked, any basis on which to argue he is a flight risk or danger to the community, nor
282 have they provided Petitioner with the opportunity to appear at a re-detention hearing
283 before a neutral decisionmaker allowing him to challenge same.

284 LEGAL FRAMEWORK

285 Overview of Relevant Constitutional Principles.

286 43. The Due Process Clause of the Fifth Amendment guarantees that no person
287 in the United States shall be deprived of liberty without due process.¹⁰ These substantive

¹⁰ U.S. Const. amend. V.

288 and procedural due process protections apply to all people, including noncitizens,
289 regardless of their immigration status.¹¹ The Due Process Clause provides heightened
290 protection against government interference with certain fundamental rights—and freedom
291 from detention lies at the heart of the Due Process Clause’s protections. For persons in the
292 United States (even unlawfully), courts have found that noncitizens who have established
293 a life here—albeit without authorization—possess a strong liberty interest in their freedom
294 from detention.

295 44. The Supreme Court has explained the critical distinction between those
296 outside the U.S. and those within it when it comes to the due process required before they
297 may be deprived of their liberty:

298 The distinction between an alien who has effected an entry into the United
299 States and one who has never entered runs throughout immigration law. It is
300 well established that certain constitutional protections available to persons
301 inside the United States are unavailable to aliens outside of our geographic
302 borders. But once an alien enters the country, the legal circumstance changes,
303 for the Due Process Clause applies to all “persons” within the United States,
304 including aliens, whether their presence here is lawful, unlawful, temporary, or
305 permanent. Indeed, this Court has held that the Due Process Clause protects an
306 alien subject to a final order of deportation, though the nature of that protection
307 may vary depending upon status and circumstance.¹²

308
309 45. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention,
310 including in the immigration context, requires a sufficient justification— namely

¹¹ *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993))).

¹² *Zadvydas v. Davis*, 533 U.S. at 693–94 (2001)

311 preventing flight or danger to the community.¹³ Where no such justification exists
312 detention without due process is unconstitutional.¹⁴

313 46. Similarly, individuals released on parole or other forms of conditional release
314 have a liberty interest in their “continued liberty.”¹⁵ This “continued liberty” is protected
315 by the Fifth Amendment because “it includes many of the core values of unqualified
316 liberty.... And its termination inflicts a ‘grievous loss’ on the [released individual] and
317 often on others.”¹⁶

318 47. In order to protect individuals against arbitrary re-detention, due process
319 requires procedures that will ensure that that the justification for confinement “outweighs
320 the individual’s constitutionally protected interest in avoiding physical restraint.”¹⁷

321 48. Such procedures must include notice of the reasons for re-detention and a
322 hearing before a neutral decisionmaker to determine danger and/or flight risk *prior* to the
323 revocation of a noncitizen’s release.¹⁸

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

¹⁶ *Id.*

¹⁷ *Zadvydas*, 533 U.S. at 690 (citation modified).

¹⁸ *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity to be heard... at a meaningful time in a meaningful manner.” (citation modified)); *see also*, e.g., *Morrissey*, 408 U.S. at 485 (requiring a “preliminary hearing to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed.... a violation of parole conditions” and that such determination be made “by someone not directly involved in the case” (citation modified)).

324 49. These principles likewise apply to non-citizens who are arbitrarily re-
325 detained by DHS after having been released years prior.

326 50. Based upon same, Petitioner must be granted immediate release from his re-
327 detention or face irreparable harm.

328 51. Continued unlawful detention is, by its very nature, an irreparable injury.¹⁹
329 The Supreme Court has affirmed that “[f]reedom from imprisonment...lies at the heart of
330 the liberty” protected by the Due Process Clause.²⁰ “Where, as here, the ‘alleged
331 deprivation of a constitutional right is involved, most courts hold that no further showing
332 of irreparable injury is necessary’.”²¹

333 52. Everyday Petitioner remains re-detained in ICE custody in direct
334 contravention of the U.S. Constitution; he suffers irreparable harm. The complete and
335 sudden loss of one’s freedom and liberty take a significant toll on anyone in Petitioner’s
336 circumstances.

337 53. Many aliens in ICE custody have suffered the ultimate irreparable harm of
338 death while in ICE custody. On May 14, 2025, in an oversight hearing before the House

¹⁹ *Phong Phan v. Moises Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025)(“Further, ‘[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

²⁰ *Zadvydas*, 533 U.S. at 690 (2001).

²¹ *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

339 Appropriations Committee, Todd Lyons, acting director of Immigration and Customs
340 Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.²² A
341 month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE
342 custody.²³ Reports of overcrowding, individuals being detained at facilities that are meant
343 for processing and not set up for detention beyond a few hours are increasing, and other
344 inhumane detention practices continue to rise. The risk of death, emotional trauma, and/or
345 other irreparable harm coming to Petitioner is, tragically, all too real a possibility.

346 54. Meanwhile, there will be ZERO harm to Respondents if Petitioner is
347 immediately released from ICE custody.

348 55. There are no administrative remedies to exhaust that would not be futile.

349 56. Based upon same, the law compels that Petitioner be immediately released.

350 **CAUSES OF ACTION**

351 **COUNT I: Violation of Due Process Clause under the 5th Amendment**

352 57. Petitioner repeats, re-alleges, and incorporates by reference each and every
353 allegation in the preceding paragraphs as if fully set forth herein.

354 58. The government may not deprive a person of life, liberty, or property without
355 due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from
356

²² This testimony can be found at the following link: <https://www.youtube.com/watch?v=QvoURiaxBmA>.

²³ The ICE press release on this death can be found at the following link:
<https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away>

357 government custody, detention, or other forms of physical restraint—lies at the heart of the
358 liberty that the Clause protects.”²⁴

359 59. Petitioner has a fundamental interest in liberty and being free from official
360 restraint.

361 60. The government’s re-detention of Petitioner without a hearing before a
362 neutral decisionmaker, in which the DHS has the burden to prove that Petitioner is a flight
363 risk or danger, *prior* to his re-detention violates his right to due process. Accordingly, it is
364 unlawful.

365 61. To determine whether government conduct violates procedural due process,
366 the Court weighs three factors: (1) the private interest affected by the government action;
367 (2) the risk that current procedures will cause an erroneous deprivation of the private
368 interest, and the extent to which that risk could be reduced by additional safeguards; and
369 (3) the government’s interest in maintaining the current procedures.²⁵

370 62. Petitioner’s private interest is the right to be free from government
371 detention. Being free from physical detention by the government is at the core of due

²⁴ *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

²⁵ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

372 process protection, and “is the most elemental of liberty interests.”²⁶ In our country,
373 “liberty is the norm, and detention without trial “is the carefully limited exception.”²⁷

374 63. The private interest here is fundamental: freedom from detention. It weighs
375 heavily in the consideration of the *Mathews* factors.

376 64. The second factor—the risk of erroneous deprivation of Petitioner's liberty—
377 is likewise substantial. The government’s sudden and arbitrary re-detention of Petitioner is
378 woefully unfair. Petitioner was not provided with any sort of notice as to why he was being
379 re-detained, was not given the opportunity to contest any such reasons before a neutral
380 arbiter, and was re-detained solely because of the policy changes put forth by the new
381 administration. This is tantamount to a complete lack of procedural protections for
382 Petitioner, and other noncitizens who find themselves arbitrarily re-detained. When
383 procedural protections are almost non-existent, it markedly increases the risk of erroneous
384 deprivation of Petitioner’s liberty interests.²⁸

385 65. The government has no valid interest in re-detaining Petitioner. The
386 government’s interest is supposed to be in upholding the Constitution and laws, both of
387 which are plainly violated by its recent actions and continued unlawful re-detention of
388 Petitioner. Depriving anyone of their liberty is a serious thing that should only be done

²⁶ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

²⁷ *Id.*

²⁸ *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 152 (2d Cir. 2024).

389 when necessary to prevent flight or danger to the community. In Petitioner’s case, neither
390 of those have been argued or proven by DHS.

391 66. To balance liberty interests against interests in assuring appearance and
392 safety, the regulations explicitly provide procedures for when and how a noncitizen can be
393 re-detained after a prior release from DHS.²⁹ The government, however, wants to detain
394 everyone without any regard to whether they are a danger or a flight risk.³⁰ On balance, the
395 private interests affected and the risk of erroneous deprivation under the current procedures
396 greatly outweigh the government’s interest in detaining anyone they want regardless of
397 whether it is necessary or lawful. Petitioner's arbitrary detention thus violates Petitioner's
398 due process rights as guaranteed by the Fifth Amendment.

399 **COUNT II: ICE Violated Their Own Regulations and Procedures**

400
401 67. Petitioner re-alleges and incorporates by reference all the foregoing
402 paragraphs above.

403 68. ICE violated the Due Process Clause when ICE revoked Petitioner’s prior
404 order of release and detained him without following its own procedures and regulations.

²⁹ See 8 C.F.R. §§ 241.4(1)(1), (1)(2)(ii), (1)(2)(iii), (1)(2)(iv).

³⁰ *Jacinto v. Trump*, 2025 WL 2402271, at *4 (“The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.”).

405 69. Petitioner was paroled and released from DHS custody on his own
406 recognizance on October 23, 2021, after CBP officers determined the Petitioner was not a
407 flight risk or danger to the community. *See* 8 C.F.R. §§ 241.4(d)(1), (e).

408 70. Pursuant to regulation, an order of release may be revoked if a noncitizen
409 violates the conditions of his release, when it is required to enforce a removal order, or
410 when a change in circumstances indicates that the noncitizen's release is no longer
411 appropriate. 8 C.F.R. §§ 241.4(1)(1), (1)(2)(ii), (1)(2)(iii), (1)(2)(iv). Only the Executive
412 Associate Commissioner of ICE has the authority to revoke a noncitizen's release, unless
413 impracticable, then the authority may be delegated to the district director of ICE. 8 C.F.R.
414 § 241.4(1)(2).

415 71. Regulations require that the noncitizen be provided with notice of the reason
416 for the revocation of his release and with an opportunity to challenge those reasons. 8
417 C.F.R. § 241.4(1)(1).

418 72. In Petitioner's case, ICE failed to follow these regulations, thereby resulting
419 in the loss of his personal liberty which is subject to due process protections.³¹

420 73. To date, Petitioner has not been provided with a reason for the revocation of
421 his prior release. For over four years, he was fully compliant with all conditions of his

³¹ *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025).

422 release, he has no criminal history, and has otherwise been compliant with any/all
423 applicable laws.

424 74. Additionally, Petitioner has not been issued an NTA placing him in removal
425 proceedings, and he is actively pursuing asylum, withholding of removal, and protection
426 under the Convention Against Torture before USCIS. Thus, the likelihood of him being
427 subject to an order of removal is low, and there is insufficient basis to revoke his prior
428 release on that basis as well.

429 75. Because ICE has failed to follow the required procedures in presenting any
430 sort of justification for the revocation of Petitioner's release, and denying him the
431 opportunity to challenge same, they have failed to afford Petitioner with due process.³²

432 76. "Under deeply rooted principles of administrative law, not to mention
433 common sense, government agencies are generally required to follow their own
434 regulations."³³

435 77. Other district courts addressing similar petitions have held that a failure to
436 adhere to these regulations violates due process.³⁴

³² See *Villanueva*, No. CV H-25-3364, 2025 WL 2774610, at *6 (reaching the same conclusion).

³³ *Villanueva*, No. CV H-25-3364, 2025 WL 2774610, at *7 (quoting *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2nd Cir. 2020); see also *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it.").

³⁴ See, e.g., *Bonitto v. Bureau of Immigr. & Customs Enf't*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) ("DHS cannot constitutionally continue to detain [petitioner] without complying with the procedures laid out in the regulations."); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *9 (S.D.N.Y.

437 78. Here, ICE violated its own regulations by failing to have the appropriate
438 authorized official make the revocation decision, failing to provide Petitioner with notice
439 of the reasons for the revocation, and failing to allow Petitioner the opportunity to challenge
440 those reasons *prior* to his re-detention. Thus, Petitioner’s re-detention must be deemed
441 unlawful. And for this reason, the Petitioner must be granted immediate release and
442 reinstatement of his prior order for release on his own recognizance, pursuant to the same
443 conditions of release. Further, Petitioner requests a preliminary injunction preventing his
444 future re-detention by ICE unless the above sated procedures are properly followed by ICE.

445 79. Immediate release is required on the above articulated basis alone. Thus,
446 while Petitioner argues that his re-detention also violated the *Zadvydas* standard, because
447 his removal is not reasonably foreseeable, the fact that ICE failed to follow their procedures
448 is sufficient basis for this court to grant immediate release.³⁵

Aug. 26, 2025) (“ICE’s failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner’s procedural due process rights.”); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (“In sum, because ICE did not follow its own regulations in deciding to re-detain [petitioner], his due process rights were violated, and he is entitled to release.”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (“The Supreme Court has... never given ICE a carte blanche to re-incarcerate someone without basic due process protection”); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *7 (“The government’s position that it can choose, based on a change in administration, not to comply with its own regulations is unprecedented.”)

³⁵ See, e.g., *Santamaria Orellana*, No. 25-cr-01788, 2025 WL 2444087, at *8 (granting habeas relief where supervision was revoked in violation of ICE’s regulations and due process and therefore not reaching question of whether re-detention was otherwise unlawful under *Sadvydas*); *Zhu*, 2025 WL 2452352, at *9 (same).

449 80. Petitioner’s continued re-detention by Respondents is unlawful as ICE and
450 DHS have failed to adhere to the law and mandatory process. As here, ““where an
451 immigration regulation is promulgated to protect a fundamental right derived from the
452 Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is
453 invalid.””³⁶ Petitioner’s re-detention is thus unlawful, and his immediate release is
454 appropriate.³⁷

455 **PRAYER FOR RELIEF**

456
457 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 458 a. Assume jurisdiction over this matter;
459
460 b. Issue an Order to Show Cause ordering Respondents to show cause within
461 three days why this Petition should not be granted;
462
463 c. Issue a writ of habeas corpus requiring that Respondents release Petitioner
464 immediately and permanently enjoining his re-detention absent written
465 notice and a hearing *prior to* re-detention at which Respondents must prove
466 by clear and convincing evidence changed circumstances, and that

³⁶ *Nguyen v. Hyde*, 2025 WL 1725791, at *5 (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); see also *Zadvydas*, 533 U.S. at 690 (“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e]’ any “person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.”).

³⁷ See, e.g., *Sarail A.*, 2025 WL 2533673, at *2 (“Under 28 U.S.C. § 2241, federal courts have jurisdiction to order the release of a prisoner who ‘is in custody in violation of the Constitution or laws or treaties of the United States.’ This authority includes the release of detained noncitizens when ICE fails to follow its own regulations.” (citation modified)); *Hamidi*, 2025 WL 3452454, at *4 (W.D. Okla. Dec. 1, 2025) (“Because Petitioner has shown that he is in custody in violation of the laws of the United States, he is entitled to habeas relief.” (citation modified)); *Roble*, 2025 WL 2443453, at *5 (“The Court will thus follow the approach of other courts facing similar cases and order Roble’s release from custody as a remedy for ICE’s illegal re-detention of Roble.”); *Nguyen*, 788 F. Supp. 3d at 152 (“[W]here an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and ICE fails to adhere to it, the challenged [action] is invalid.” (citation modified)).

- 467 Petitioner poses a danger to the community or flight risk, and that no
468 alternatives to detention would mitigate those risks;
469
470 d. Order that Petitioner be immediately released, and his counsel be given
471 notice of the date, time, and location of his release;
472
473 e. Declare that re-detention of Petitioner, without first providing an
474 individualized determination before a neutral decisionmaker violates the
475 Due Process Clause of the Fifth Amendment;
476
477 f. Award Petitioner attorney's fees and costs under the Equal Access to
478 Justice Act ("EAJA"), and on any other basis justified under law; and
479
480 g. Grant any other and further relief that this Court deems just and proper.
481

482 RESPECTFULLY SUBMITTED,

483 /s/ Dan Gividen

484 Dan Gividen

485 Texas State Bar No. 24075434

486 18208 Preston Rd., Ste. D9-284

487 Dallas, TX 75252

488 972-256-8641

489 Dan@GividenLaw.com
490
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