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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

ADAM BRYANT PEÑA BECERRA, Petitioner, v. KELLY SPARKS, Davis County Sheriff; EVAN TJADEN, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO); KRISTI NOEM, Secretary, United States Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** Case No. _____ Agency Case No. [redacted]

Petitioner Adam Peña is a national of Venezuela who came to the United States seeking asylum. He was detained near the U.S. border and was granted humanitarian parole and released on his own recognizance. On March 5, 2026, he was arrested on a traffic violation, and when he bailed out, immigration officials took him into custody. He remains in ICE custody without the opportunity to seek release, even on bond. This mandatory detention violates the Constitution and laws of the United States of America. For this reason, Mr. Peña asks the court pursuant to 28

U.S.C. § 2241 to grant immediate release from custody. He further asks the court to order Respondents not to transfer him out of this district or deport him while this case is pending.[1]

FACTS APPLICABLE TO ALL CLAIMS

Seeking Asylum in the United States

1. Adam Peña was born in Venezuela on [redacted] ("Asylum Application," Ex. 1 at 1.)

2. [redacted]

3.

4.

[1] "[T]transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings." *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, ECF No. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee). And this court has "inherent power to preserve its ability to hear the case." *Alves v. U.S. Dep't of Just.*, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). Courts around the country, including within this district, have entered emergency orders preventing the transfer and removal of ICE detainees pending the resolution of their § 2241 petition. *See, e.g., Ahlat v. Bondi*, 1:25-cv-00199, ECF No. 8 (D. Utah Dec. 19, 2025); *Velasquez Montillo v. Brooksby*, 4:26-cv-18, ECF No. 7 (D. Utah Feb. 17, 2026); *M.M. v. Wamsley*, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025); *Bustos v. Raycraft*, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed); *Lopez Pop v. Noem*, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, 800 F.Supp.3d 1147, 1149 (D. Colo. Sept. 17, 2025).

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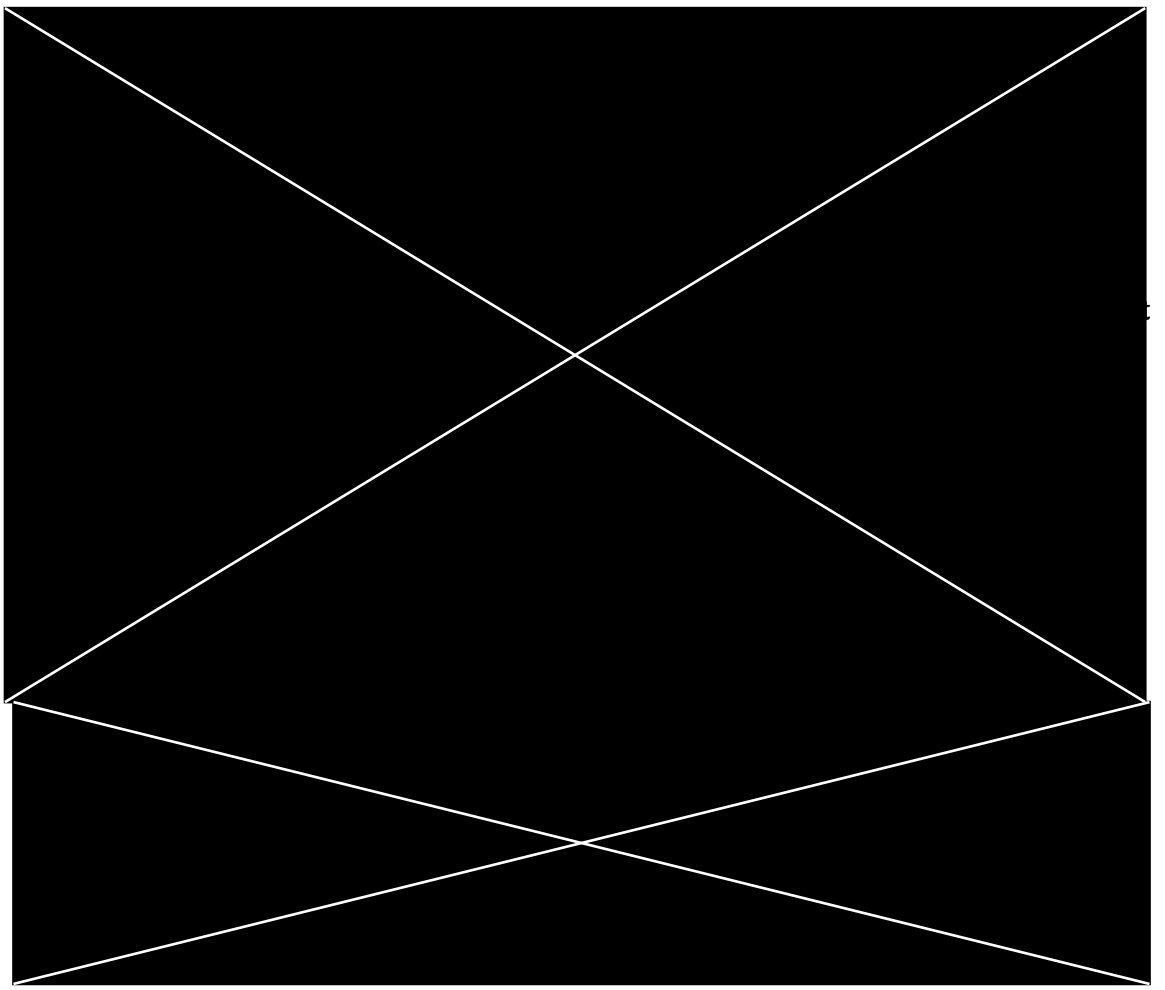

10. For this reason, he decided in 2023, while still a teenager, to come to the United States.

11. He sincerely believes that if he were ever forced to return to Venezuela, he "would be hunted and killed and thrown in the forest to never be found." (*Id.*)

12. On or about August 2, 2023, he entered the United States near Eagle Pass, Texas. ("Notice to Appear," Ex. 2 at 1.)

13. Immigration records show that he "was encountered by Border Patrol Agents in the brush" then "placed under arrest, transported to a Border, Patrol Station for further processing, and advised of [his] rights." (Form I-213, Ex. 3 at 2.)

14. He told officers that he was afraid of being returned to Venezuela. (*Id.*)

15. He was served with a Notice to Appear, which began standard removal proceedings in immigration court under 8 U.S.C. § 1229a, and then he was "transferred to the custody of ICE/ERO pending release." (*Id.* at 3; Ex. 2.[2])

16. He was held in custody for about ten days while DHS officials processed his case and then decided to release him on his own recognizance under 8 U.S.C. § 1226. ("Notice of Custody Determination," Ex. 4; "Order to Release on Own Recognizance," Ex. 5.[3])

17. He eventually made his way to Arizona, where he filed his application for asylum. (Ex. 1.)

18. Unfortunately, his asylum was denied at a hearing in immigration court on October 3, 2025. ("BIA Case Information" (Mar. 12, 2026), Ex. 6.)

19. But he filed a timely appeal to the BIA, and that appeal remains pending. (*Id.*)

20. He recently moved to Utah, and he was living here at the time of his arrest.

2026 Rearrest

21. Mr. Peña has no known criminal convictions.

22. On March 5, 2026, he was pulled over for a traffic violation, and when marijuana was found in the car, he was arrested and booked into the Davis County Jail.

23. His mother posted bail the next day, but he was not released because ICE had lodged a detainer that kept him in custody.

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[2] The Notice to Appear states that it relates to "removal proceedings under Section 240 of the Immigration and Nationality Act." (Ex. 2 at 1.) Section 240 is codified at 8 U.S.C. § 1229a. USCIS, "Immigration and Nationality Act" (Jul. 10, 2019), *available at* https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act (last accessed Mar. 12, 2026).

[3] These documents state that custody was being determined under INA § 236, which is codified at 8 U.S.C. § 1226. USCIS, "Immigration and Nationality Act."

24. On Sunday, March 8, 2026, ICE officers got him from the Davis County jail around 5:00 a.m. and took him to their office.

25. He reports that they wanted him to sign papers for self-deportation, which he refused to do because he wanted to fight the case.

26. He was confused by what they told him about the possibility of release; he thought they were telling him that if the state judge released him, he would be released from custody.

27. But that didn't make sense because he had already bailed out.

28. In any case, he appeared in state court the following day, and the state judge ordered his immediate release. ("Order of Release," Ex. 7.)

29. Once again, Mr. Peña was not released, and he remains in ICE custody at the Davis County Jail.

Detention Rationale

30. At this time, Mr. Peña is unclear why he remains in ICE custody.

31. On information and belief, he asserts that immigration officials were following a decision issued by the Bureau of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

32. Under this decision, foreign nationals who are discovered in the United States after entering "without inspection," even years earlier, are treated as "arriving aliens" who are subject to "expedited removal" and mandatory detention under 8 U.S.C. § 1225.

33. However, federal courts around the country and in this district have held that this interpretation of the Immigration and Nationality Act (INA) is invalid. *See, e.g., Bautista v. Santacruz*, -- F. Supp. 3d --, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026); *Tanchez v. Noem*, 2026 WL 125184 (D. Utah Jan. 16, 2026); *Carbajal v. Wimmer*, 2:26-cv-00093-TC, ECF No.

20 (D. Utah Feb. 9, 2026); *but see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Cisneros v. Noem*, -- F. Supp. 3d --, 2026 WL 396300, at *1 (D. Utah Feb. 12, 2026).

34. On December 18, 2025, the California Central District Court certified a national class of noncitizens that is "entitled to initial custody determination and custody redetermination hearings." *Bautista v. Santacruz*, 5:25-cv-01873, ECF No. 93 at 46 n.23 (C.D. Ca. Dec. 18, 2025).

35. That class is defined as: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Id.* at 51.

36. To the extent Respondents are holding him under *Yajure-Hurtado*, this detention is unlawful, because Respondents have misconstrued and misapplied the applicable laws and regulations, and *Yajure-Hurtado* is wrong as a matter of law.

37. However, Mr. Peña does not appear to be part of the class of noncitizens impacted by these rulings because he was "apprehended upon arrival" and then granted humanitarian parole and released on ORR.

38. Petitioner has never been convicted of a crime that would support revoking his ORR or disqualifying him from seeking a bond redetermination in immigration court.

39. This forum is Mr. Peña's only avenue for judicial review of DHS's decision to take him into custody.

40. Immigration detention should not be used as a punishment and should be used only when, under an individualized determination, a noncitizen is a flight risk because they are unlikely

to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. Accordingly, Mr. Peña seeks a writ of habeas corpus requiring that he be released again pursuant to the prior ORR or given a bond hearing before an immigration judge.

DECISION BEING CHALLENGED

42. Mr. Peña challenges Respondents' decision to take him into custody after he was released on his state criminal case.

43. This is the first petition filed to challenge this detention.

JURISDICTION

44. Mr. Peña is in the physical custody of Respondents in the state of Utah.

45. This court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); and 28 U.S.C. § 1651 (All Writs Act).

46. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

47. The court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the court's inherent equitable powers.

48. Even if the government were to argue that the court lacks jurisdiction, this court has jurisdiction to determine its jurisdiction. *Belbacha v. Bush*, 520 F.3d 452, 455-56 (D.C. Cir. 2008) (citing *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947)).

49. This jurisdiction includes the authority to grant "interim relief" and enjoin a transfer to another district to preserve its ability to review its own jurisdiction. *Id.* (discussing All Writs Act, 28 U.S.C. § 1651).

50. Mr. Peña is seeking relief related only to his custody status, which is not inconsistent with an order of removal, so exhaustion of administrative remedies, if any, is not required.

VENUE

51. Venue lies in the District of Utah because this is the judicial district in which Mr. Peña is currently detained. *Rumsfeld v. Padilla*, 542 U.S. 426, 442-42 (2004); *Braden v. 30th Judicial Circuit Court of KY.*, 410 U.S. 484, 493-500 (1973).

52. Venue is also proper in this judicial district under 28 U.S.C. § 1391(e) because respondents are officers or employees of the United States; Mr. Peña is being held in this district; and a substantial part of the events or omissions giving rise to the Petition occurred in this judicial district.

REQUIREMENTS OF 28 U.S.C. § 2243

53. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless it is clear the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

54. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

55. ADAM PEÑA is a citizen of Venezuela. He is in ICE custody in Utah.

56. Respondent KELLY SPARKS is the Davis County Sheriff. He is the physical custodian of Mr. Peña. He is named in his official capacity.

57. Respondent EVAN TJADEN is the Acting Field Office Director of the Salt Lake City Enforcement and Removal Operations and U.S. Immigration and Customs Enforcement (ICE/ERO). He is the legal custodian of Mr. Peña. He is named in his official capacity.

58. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is the legal custodian of Mr. Peña. She is named in her official capacity.

59. Respondent PAMELA BONDI is the Attorney General of the United States. In this capacity, Ms. Bondi is the legal custodian of Mr. Peña. Respondent Bondi is sued in her official capacity.

LEGAL FRAMEWORK

I. The Right to be Free—Even for Noncitizens

60. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

61. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

62. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212

(1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

63. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

64. The Supreme Court "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

II. Civil Detention Provisions of the INA

65. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

66. These three provisions relate to the type of removal proceedings a noncitizen is subjected to and are codified in 8 U.S.C. §§ 1225, 1226, and 1231.

67. First, 8 U.S.C. § 1225 describes a type of removal identified as "expedited removal" and requires detention without bond of noncitizens who are subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens, as defined at 8 C.F.R. §§ 1.2 and 1001.1(q).

68. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a.

69. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-(b).

70. This case concerns the detention provisions § 1225 and § 1226.

71. In cases of noncitizens apprehended near the border, DHS has discretion at initial processing to choose between expedited removal under § 1225 and removal proceedings under § 1229a. *See, e.g., Innovation Law Lab v. McAleenan,* 924 F.3d 503, 508 (9th Cir. 2019); *Thuraissigiam v. Department of Homeland Security*, 917 F.3d 1097, 1102 (9th Cir. 2018 (emphasis added), *rev'd on other grounds*, 591 U.S. 103 (2020); *Matter of E-R-M- & L-R-M*, 25 I. & N. Dec. 520, 523 (B.I.A. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 748 (B.I.A. 2023) ("DHS has authority to determine whether to initiate expedited removal proceedings under section 235(b)(1)(A)(i) of the INA, 8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a.").

72. This choice is critical because it will dictate whether a detention is governed by § 1225 or § 1226.

73. Mr. Peña asserts that this case necessarily involves the detention provision at § 1226(a) because that is only legal basis by which he could have been released after his arrest near the border.

74. Indeed, the evidence shows that he was released under § 1226(a).

75. In 1996, Congress amended and recodified § 1226 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

76. In the decades after IIRIRA, most people who entered the United States without inspection (like Mr. Peña) were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.

77. That practice was consistent with many more decades of prior practice, in which noncitizens who were not seeking admission at the U.S. border were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

78. In *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018) the U.S. Supreme Court held that detention under § 1226(a) is discretionary and permits release.

79. Although DHS retains discretion over which statute it uses in enforcement actions, that choice then dictates which statute governs detention.

80. Once a noncitizen has been released into the United States and placed into § 1229a proceedings, detention authority arises, if at all, under § 1226(a). *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 948–51 (9th Cir. 2008); *Hechavarria v. Sessions*, 891 F.3d 49, 54–56 (2d Cir. 2018); *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 508-9 (9th Cir. 2019).

81. In this instance, Mr. Peña was placed directly into removal proceedings under § 1229a and given an NTA upon entry. (Ex. 2.)

82. DHS chose to give Mr. Peña an ORR (Own Recognizance Release) more than three years ago. (Ex. 4, 5.)

83. To be sure, DHS possesses revocation authority under 8 U.S.C. § 1226(b) (INA § 236(b)).

84. However, once DHS decides to begin removal proceedings under § 1229a and to release under § 1226(a), the statute provides no mechanism to reverse that decision in the absence of changed circumstances: "[W]here a previous bond determination has been made by an immigration judge, no change should be made . . . absent a change of circumstance." *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (quoting *Matter of Sugay*, 17 I. & N.637, 640 (B.I.A. 1981)).

85. Indeed, the government has previously asserted that "DHS complies with *Sugay* by conducting a 'changed circumstances' bond hearing before an immigration judge within seven to fourteen days of an arrest." *Id.*

86. Accordingly, where DHS rearrests a noncitizen after a prolonged period of full compliance with an ORR and without any intervening change in facts, as it did here, such re-detention is arbitrary and capricious and procedurally unlawful.

87. Challenges to detention are properly brought through habeas corpus. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004).

88. In this case, Mr. Peña has relied in good faith on the prior actions taken by DHS to place him in removal proceedings under 8 U.S.C. § 1229a.

89. She complied fully with the ORR by filing his I-589 Application and reporting to ICE as directed.

CLAIMS FOR RELIEF

Federal law authorizes this court to issue a writ of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). "[A]n order barring their transfer to or from a place of incarceration" is "a proper claim for habeas relief." *Kiyemba v. Obama*, 561 F.3d 509, 513 (D.C. Cir. 2009). The

government's plan to keep Mr. Peña in custody while his asylum appeal is pending has several constitutional and legal problems.

I. CLAIM 1: Violation of the INA

The allegations in the above paragraphs are realleged and incorporated herein.

When DHS arrested Mr. Peña near the border three years ago, it had discretion whether to proceed under 8 U.S.C. § 1225 or 8 U.S.C. § 1229a. But once it decided to proceed under § 1229a, and it released him under § 1226, it could not reverse that choice ex post facto, *absent a material change in circumstances. Velasquez-Montillo v. Brooksby*, 4:26-cv-18 DN, ECF No. 23 at 8-17 (D. Utah Mar. 3, 2026); *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (quoting *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981)). Once that choice was made, DHS had to abide by that choice and cannot revoke detention without first showing a material change in *the individual's* circumstances prior to redetaining any previously processed person. A government policy change does not constitute a material change in the individual's circumstances.

Mr. Peña acknowledges that he has been accused of criminal conduct, but he has not been convicted and is presumed innocent. Except for a small category off offenses, which do not apply here, mandatory detention under § 1226(c) requires a conviction. 8 U.S.C. § 1226(c)(1)(E)(ii).

The Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). To do so would add "new legal consequences to events completed [prior to the expansion]." *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 269-70 (1994); *see also INS v. St. Cyr*, 533 U.S. 289, 315-16 (2001).

In the absence of any material change in circumstances, Respondents lacked authority under the INA to rearrest Mr. Peña after releasing him on ORR. His arrest was therefore unlawful, and he is entitled to immediate release.

II. CLAIM 2: Violation of Fifth Amendment right to Procedural Due Process.

The allegations in the above paragraphs are realleged and incorporated herein.

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural due process rights, a petitioner must establish (1) a protected property or liberty interest, and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).

To the first point, Mr. Peña's interest in not being detained is "the most elemental of liberty interests[.]" *E.A. T.-B. v. Wamsley*, 795 F. 3d 1316, 1321 (W.D. Wash. Aug. 19, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); granting petition and ordering immediate release with no re-detention absent "an immigration court hearing . . . held (with adequate notice) to determine whether detention is appropriate."). *See also, e.g., Ledesma Gonzalez v. Bostock*, — F.Supp.3d —, 2025 WL 2841574, *8 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

Given that the liberty interest here is "the most elemental," numerous courts have found that this first factor weighs heavily in a petitioner's favor. *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *7 (this factor "must be accorded significant weight"). Mr. Peña's status as a noncitizen does not negate that interest. "While the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process[.]" *E.A.T.-*

B., 795 F. Supp. 3d at 1321 (W.D. Wash. Aug. 19, 2025) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

In fact, as an individual who was released by ICE, Mr. Peña has a higher liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging that he had previously been released by ICE and was about to be re-detained, "Petitioner has asserted liberty interests that differ from the liberty interests of a detained person"). Similarly, in *Carballo v. Andrews*, 2025 WL 2381464, *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been released has had—in contrast to a detainee with no period of release—"an opportunity 'to form the [ ] enduring attachments of normal life'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which led the Supreme Court in *Morrisey* to impose due process requirements on parolees where the state seeks to revoke parole.

The second factor, risk of an erroneous deprivation of liberty, also weighs in Mr. Peña's favor. A detainee's release to the community on ORR reflected ICE's determination that the individual was neither a flight risk nor a danger to the community. *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner, "it did so after determining—as required by regulation—that 'such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.'. . . By issuing the OR[R], ICE necessarily found that [Petitioner] was neither a flight risk nor a danger to the community.") (quoting 8 C.F.R. § 236.1(c)(8)); *Barrenechea v. Albarran*, 2025 WL 2717279, at *1 (N.D. Cal. Sept. 22, 2025) ("ICE's release of Barrenechea on his own recognizance in 2020 can only be understood as reflecting a determination that he did not pose a flight risk or danger to the community.").

The government has no legitimate interest in detaining a petitioner without providing a pre-deprivation hearing. "[T]he government's interest in detaining petitioner without a hearing is low." *Carballo*, 2025 WL 2381464, *8 (cleaned up). "In immigration court, custody hearings are routine and impose a minimal cost." *Id.* (cleaned up). As stated in *E.A. T.-B.*, "although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on ATD violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." 795 F. Supp. At 1324.

Many courts have concluded that a released detainee cannot be rearrested without a pre-deprivation hearing. *See, e.g., Jimenez v. Bondi*, 2025 WL 3466925, at *2-*3 (W.D. Wash. Dec. 3, 2025) (granting petition, ordering immediate release, and barring re-detention "without providing adequate notice of the reasons for his re-detention and a meaningful opportunity to respond."); *Perez v. Mordant*, No. 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to due process before he was detained a second time, even though his detention was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).

Under *Mathews*, Mr. Peña has a high interest in not being re-detained. The risk of any erroneous deprivation is also high because ICE's previous decision to release her necessarily reflected a conclusion that she was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*, "ICE revoked that release without any reassessment of those factors." 2025 WL 2841574, at *8.

Respondents have long experience applying the material change in circumstances substantive and procedural standard to redetention decisions. Respondents failed to apply that experience in this case. Respondents have provided Mr. Peña with no procedure whatsoever. The decision to arrest Mr. Peña a second time, without providing notice of why he was being detained and a chance to respond, violated his due process rights and was, therefore, unlawful.

III. CLAIM 3: Violation of the APA

The allegations in the above paragraphs are realleged and incorporated herein.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

For a challenged agency action to be upheld, the agency "must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

ICE's decision to arrest Mr. Peña must be vacated under the APA because it was arbitrary, capricious, and an abuse of discretion. At this point, Mr. Peña must guess as to Respondents' reasons for taking him back into custody. To the extent they took this action because he has been *charged* with a crime, this act is arbitrary and capricious. He is presumed innocent, so a criminal charge is not a materially changed circumstance. The decision to revoke

ORR violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Mr. Peña had been granted ORR, and nothing had materially changed since that original decision. And nothing suggests that there was a "rational" reason for this choice, given that Mr. Peña had filed an asylum application and otherwise complied with all the conditions of ORR.

Additionally, DHS failed to consider Mr. Peña's reliance interests. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020). He has kept all the rules and has participated in the asylum process as we would expect him to do. He never received any written notification that ORR could be revoked or why. He has no other forum in which to seek judicial review of the constitutional and legal issues raised by his arbitrary re-detention without process, in violation of the law.

PRAYER FOR RELIEF

For these reasons, Mr. Peña asks the court to order the following relief:

1. Enter an emergency order that Respondents not (a) transfer him out of this district or (b) deport him while this petition is pending;
2. Allow Mr. Peña to conduct discovery;
3. Order Respondents to show cause why this petition should not be granted;
4. Order Respondents to immediately release Mr. Peña from custody;
5. Order Respondents not to take him into custody again without first holding a hearing before a neutral decisionmaker, at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released; and
6. Order all other relief that the Court deems just and proper.

* * *

Counsel verifies that Petitioner has authorized this petition. It does not personally bear Petitioner's signature because he is in custody. It is based on information provided to Counsel by Petitioner. Counsel knows the facts asserted above to be true, or alleges them on information and belief, based on information obtained from Petitioner.

DATED this 12th day of March 2026.

/s/ Benjamin C. McMurray
BENJAMIN C. McMURRAY
Assistant Federal Public Defender