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6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
9

10 Javier Molina-Perez,

11 Petitioner,

12 v.

13 Christopher McGregor, Acting Field Office
14 Director of Enforcement and Removal
Operations, Phoenix Field Office,
15 Immigration and Customs Enforcement;

16 Markwayne Mullin, Acting Secretary, U.S.
Department of Homeland Security;

17 Pamela Bondi, U.S. Attorney General;

18 Warden, Florence Service Processing
19 Center;

20 Todd Lyons, Acting Director, Immigration
21 and Customs Enforcement and Removal
Operations.

22 Respondents.
23
24

Case No. TBD

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Javier Molina Perez (Petitioner), is a Mexican national who has lived and worked in the United States for approximately 35 years. He first entered the United States in approximately 1991. Exhibit I. He was placed in removal proceedings in approximately 2013. Exhibit A. He was released on bond and his proceedings were administratively closed on August 15, 2015. Exhibit C. The bond was then cancelled and he was at liberty for over a twelve years before his case was re-docketed on March 23, 2026. Exhibit E.

2. On December 17, 2025, Petitioner was apprehended by DHS in Phoenix, Arizona near his home. Exhibit G. The Respondent has remained detained in Florence, Arizona for several months with no hearings. Exhibit I.

3. Mr. Molina, who was at liberty for over twelve years, has a protected liberty interest in his freedom. Absent a change in circumstances to justify the revocation of his release, Mr. Molina's re-detention in December 2025 was unlawful. To protect Mr. Molina's liberty interest, on the particular facts of his case, due process required notice and a hearing, *prior to revocation of his release*, at which Mr. Molina would have an opportunity to advance arguments as to why his release should not be revoked. Mr. Molina therefore must be released from custody until and unless DHS proves to a neutral decisionmaker, by clear and convincing evidence, that he is a flight risk or a danger to the community. During any custody redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk that DHS may establish.

JURISDICTION

4. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Florence Service Processing Center in Florence, Arizona.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7. The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States” to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of an order of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

8. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” The Supreme Court previously characterized § 1252(g) as a narrow provision, applying “only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or

1 execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
2 482 (1999) (emphasis in original). In doing so, the Supreme Court found it “implausible
3 that the mention of *three discrete events* along the road to deportation was a shorthand way
4 to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).
5 Petitioner’s challenge to his detention does not fall within these discrete actions.
6 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.
7 July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5; *see also Ibarra-*
8 *Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) (re-affirming narrow reading of
9 section 1252(g)).

10
11 9. Subsection 2 of 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of
12 Removal,” contains four subsections, which outline categories of claims that are not subject
13 to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial
14 review apply to this matter, as the specified statutory provisions do not cite § 1225(b) or §
15 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252
16 deprives this Court of jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-
17 cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining
18 Order, Dkt. 14 at 6. As such, the Court has jurisdiction over Petitioner’s challenge to his
19 detention.

20 VENUE

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22 10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484,
23 493- 500 (1973), venue lies in the United States District Court for Arizona, the judicial
24 district in which Petitioner currently is detained.

1 11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in the District
4 of Arizona.

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 12. The Court must grant the petition for writ of habeas corpus or order
7 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28
8 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return
9 “within three days unless for good cause additional time, not exceeding twenty days, is
10 allowed.” *Id.*

11 13. Habeas corpus is “perhaps the most important writ known to the
12 constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of
13 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).
14 “The application for the writ usurps the attention and displaces the calendar of the judge or
15 justice who entertains it and receives prompt action from him within the four corners of
16 the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

17 **EXHAUSTION AND FUTILITY**

18 14. Exhaustion of administrative remedies is required “[w]here Congress
19 specifically mandates.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as
20 here “Congress has not clearly required exhaustion, sound judicial discretion governs.” *Id.*
21 (citations omitted). Under these principles, prudential exhaustion is not required where a
22 request for relief before the agency would be futile because the agency has “predetermined
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1 the issue before it.” *Id.* at 148. Furthermore, “a court may waive the prudential exhaustion
2 requirement if ‘administrative remedies are inadequate or not efficacious, pursuit of
3 administrative remedies would be a futile gesture, irreparable injury will result, or the
4 administrative proceedings would be void.’” *Hernandez v. Sessions*, 872 F.3d 976, 988
5 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

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

12 16. Mr. Molina further asserts that exhaustion should be waived because
13 administrative remedies are (1) futile and (2) his continued detention results in irreparable
14 harm. “[C]onsidering [petitioner’s] due process challenge to [his] detention without the
15 opportunity for release on bond, this matter falls into the futility exception to the exhaustion
16 requirement ‘carved for constitutional challenges to ... [DHS] procedures.’” *Ramirez v.*
17 *Noem*, No. 25-2136, 2025 WL 3270137, *15 (D. Nev. Nov. 24, 2025) (quoting *Iraheta-*
18 *Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021)). Additionally, “a post-deprivation
19 hearing cannot serve as an adequate procedural safeguard because it is after the fact and
20 cannot prevent an erroneous deprivation of liberty,” and therefore waiver of exhaustion is
21 necessary to redress irreparable harm. *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, (W.D.
22 WA 2025).

PARTIES

17. Petitioner Javier Molina-Perez is a native and citizen of Mexico who was released from immigration custody on approximately May 13, 2013, pursuant to a grant of bond. Exhibit B. After his immigration proceedings were administratively closed, his bond was cancelled and he remained at liberty for over twelve years. Exhibit D. Petitioner is 50 years old, lives in Arizona, is married to a U.S. Citizen and has two adult U.S. citizen children, one of whom is in the military. Exhibit I. ICE re-detained Petitioner with no opportunity for a hearing, and with no showing that circumstances had changed in his case in December. *See* Exhibits G, I. Mr. Molina is presently detained at the Florence Service Processing Center in Florence, Arizona.

18. Respondent, Christopher McGregor, is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division, which oversees operations at the Eloy Detention Center. As such, Christopher McGregor is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. Respondent Markwayne Mullin is the Acting Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

20. Respondent Pamela Bondi is the United States Attorney General. She is responsible for the Executive Office for Immigration Review (EOIR), which is the component of the U.S. Department of Justice that is responsible for implementing and

1 enforcing the INA in removal proceedings, including for custody redetermination in bond
2 hearings.

3 21. Respondent Warden is the Warden of the Florence Service Processing Center,
4 where Petitioner is detained. They have immediate physical custody of Petitioner. They are
5 sued in their official capacity.

6 22. Respondent Todd Lyons is the Acting Director of ICE and is named in his
7 official capacity. Among other things, ICE is responsible for the administration and
8 enforcement of the immigration laws, including the removal of noncitizens. In his official
9 capacity as head of ICE, he is the legal custodian of Petitioner.
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11 STATEMENT OF FACTS

12 23. Petitioner, Javier Molina-Perez (Mr. Molina), is a Mexican national who has
13 lived and worked in the United States for nearly 30 years. Exhibit I. On May 2, 2013, the
14 Department of Homeland Security (DHS) placed Mr. Molina in removal proceedings by
15 filing a Notice to Appear (NTA). Exhibit A (Notice to Appear). His removal proceedings
16 were administratively closed on August 17, 2015. Exhibit C.

17 24. Although he was initially released on bond, the DHS cancelled the bond and
18 returned his money on August 19, 2015 after the administrative closure. Exhibit D. He
19 remained at liberty over twelve years. Exhibit G. His work permit remains valid through
20 2030. Exhibit F. He was employed full time in Phoenix, Arizona. Exhibit I. Then on
21 December 15, 2025, he was detained by ICE agents and placed in immigration custody in
22 Florence, Arizona. Exhibit G.
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1 No. 25-2299, 2025 U.S. Dist. LEXIS 257776 (W.D. WA Dec. 12, 2025); *Ruhai Shen v.*
2 *Larose*, No. 25-3235, 2025 U.S. Dist. LEXIS 256924 (S.D. Cal. Dec. 11, 2025); *N-E-M-*
3 *B- v. Wamsley*, No. 25-989, 2025 WL 3527111 (D. Or. Dec. 9, 2025); *Gomez v. Doe*, No.
4 25-3255, 2025 WL 3269886 (D. Ariz. Oct. 31, 2025). “In fact, the government’s initial
5 release of an individual from custody ‘creates an “implicit promise” that the individual’s
6 liberty will be revoked only if they fail to abide by the conditions of their release.’” *Ruhai*
7 *Shen*, 2025 U.S. Dist. LEXIS 256924 at *11 (quoting *Calderon v. Kaiser*, No. 25-6695,
8 2025 WL 2430609, *2 (N.D. Cal. Aug. 22, 2025)). “An initial release from ICE custody
9 further reflects ‘a determination by the government that [an individual is] neither a flight
10 risk nor a danger to the community.’” *Ruhai Shen*, 2025 U.S. Dist. LEXIS 256924 at *11
11 (quoting *Pinchi*, 792 F. Supp. 3d at 1034. “Thus, DHS may generally not re-arrest a
12 previously released noncitizen ‘absent a change in circumstances.’” *Id.* (quoting *Saucedo*
13 *Aceros v. Kaiser*, No. 25-6924, 2025 WL 2637503, *7 (N.D. Cal. Sept. 12, 2025)).

15 28. Where ICE revokes a noncitizen’s bond and detains the individual “without
16 any rational individualized fact-finding or consideration of the effects of altering their prior
17 decisions,” ICE “act[s] arbitrarily and capriciously in violation of the [Administrative
18 Procedures Act, 5 U.S.C. § 706.]” *Sanchez v. Larose*, No. 25-2396, 2025 WL 2770629
19 (S.D. Cal. Sep. 26, 2025); *see also N-E-M-B-*, 2025 WL 3527111, *19-*20 (same).

20 29. The demands of due process and the limitations on DHS’s authority to revoke
21 a noncitizen’s bond both require a pre-deprivation hearing for a noncitizen on bond, like
22 Mr. Molina, *before* ICE re-detains him. *See, e.g., Alberto R.C.*, 2025 U.S. Dist. LEXIS
23 260211, *16-*17 (ordering immediate release followed by a hearing at which the
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1 government will bear the burden of demonstrating by clear and convincing evidence that
2 Petitioner is a flight risk or danger to the community); *Ruhai Shan*, 2025 U.S. Dist. LEXIS
3 256924 at *11 (same); *N-E-M-B-*, 2025 WL 3527111 (same). The courts have reached this
4 conclusion by applying the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-35
5 (1976). *See id.* Under that test, courts consider: (1) “the private interest” at stake, (2) “the
6 risk of an erroneous deprivation” without additional procedures and “the probable value . . .
7 of additional or substitute procedural safeguards,” and (3) the “Government’s interest,
8 including the function involved and the fiscal and administrative burdens imposed by the
9 additional procedures.” *Id.* 424 F.3d at 335.

11 **Mr. Molina’s Protected Liberty Interest in His Conditional Release**

12 30. Mr. Molina’s liberty from immigration custody is protected by the Due
13 Process Clause: “Freedom from imprisonment—from government custody, detention, or
14 other forms of physical restraint—lies at the heart of the liberty that [the Due Process]
15 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

16 31. Since May 2013, Mr. Molina exercised that freedom under DHS’s grant of
17 bond and his ongoing release at liberty. Exhibits D, G. He has a weighty liberty interest
18 under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See*
19 *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-
20 82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

21 32. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
22 person on conditional release has in “his continued liberty.” 408 U.S. at 481-82. The Court
23 noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed
24

1 and is free to be with family and friends and to form the other enduring attachments of
2 normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at least an
3 implicit promise that parole will be revoked only if he fails to live up to the parole
4 conditions.” *Id.* The Court explained that “the liberty of a parolee, although indeterminate,
5 includes many of the core values of unqualified liberty and its termination inflicts a
6 grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty
7 is valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*,
8 408 U.S. at 482. *Alberto R.C.*, extended the principles established in *Morrissey* to those
9 noncitizens released on bond. 2025 U.S. Dist. LEXIS 260211, *16-*17.

11 33. This basic principle—that individuals have a liberty interest in their
12 conditional release—has been reinforced by both the Supreme Court and the circuit courts
13 on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that
14 individuals placed in a pre-parole program created to reduce prison overcrowding have a
15 protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S.
16 at 781-82 (holding that individuals released on felony probation have a protected liberty
17 interest requiring pre-deprivation process). As the First Circuit has explained, when
18 analyzing the issue of whether a specific conditional release rises to the level of a protected
19 liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional
20 release in the case before them with the liberty interest in parole as characterized by
21 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal
22 quotation marks and citation omitted); *see also, e.g., Hurd v. District of Columbia*, 864
23 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—
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1 even if that freedom is lawfully revocable—has a liberty interest that entitles him to
2 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
3 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

4 34. Here, when this Court compares Mr. Molina’s conditional release with the
5 liberty interest in bond as described in *Morrissey*, it is clear that they are strikingly similar.
6 See *Alberto R.C.*, 2025 U.S. Dist. LEXIS 260211, *11-*13. Just as in *Morrissey*, Mr.
7 Molina’s release “enables him to do a wide range of things open to persons” who have
8 never been in custody, including to live at home, work, care for his wife and children, and
9 “be with family and friends and to form the other enduring attachments of normal life.”
10 *Morrissey*, 408 U.S. at 482. Mr. Molina complied with all requirements in Immigration
11 Court such that his proceedings were administratively closed. Exhibit D. He worked, raised
12 a family, including a son who is serving in the United States military, and was a productive
13 member of the Phoenix community. His liberty interest is strong.

15 **Mr. Molina’s Liberty Interest Mandates His Immediate Release, Followed by Notice**
16 **and a Hearing Before any Re-Arrest.**

17 35. Mr. Molina asserts that, here, (1) where his detention is civil, (2) where he
18 has been at liberty for more than twelve years, (3) where his removal proceedings are
19 administratively closed, (4) where no change in circumstances exist that would justify his
20 detention, due process mandates that he be immediately released and that he receive notice
21 and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of bond.

22 36. “Adequate, or due, process depends upon the nature of the interest affected.
23 The more important the interest and the greater the effect of its impairment, the greater the
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1 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
2 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
3 481-82). This Court must “balance [Mr. Molina’s] liberty interest against the
4 [government’s] interest in the efficient administration of” its immigration laws in order to
5 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
6 him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court
7 must consider three factors in conducting its balancing test: “first, the private interest that
8 will be affected by the official action; second, the risk of an erroneous deprivation of such
9 interest through the procedures used, and the probative value, if any, of additional or
10 substitute procedural safeguards; and finally the government’s interest, including the
11 function involved and the fiscal and administrative burdens that the additional or substitute
12 procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
13 *Eldridge*, 424 U.S. 319, 335 (1976)).

15 37. The Supreme Court “usually has held that the Constitution requires some
16 kind of a hearing *before* the State deprives a person of liberty or property.” *Zinermon v.*
17 *Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where
18 post-deprivation remedies are “the only remedies the State could be expected to provide”
19 can a post-deprivation hearing satisfy the requirements of due process. *Zinermon*, 494 U.S.
20 at 985.

21 **Mr. Molina’s Private Interest in His Liberty is Profound**

22 38. Under *Morrissey* and its progeny, individuals conditionally released from
23 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S.
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1 at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in
2 fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty
3 interest that entitles him to constitutional due process before he is re-incarcerated—apply
4 with even greater force to individuals like Mr. Molina, who were released pending civil
5 removal proceedings, rather than parolees or probationers who are subject to incarceration
6 as part of a sentence for a criminal conviction. Parolees and probationers have a diminished
7 liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112,
8 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the
9 criminal parolee context, the courts have held that the parolee cannot be re-arrested without
10 a due process hearing in which they can raise any claims they may have regarding why
11 their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*,
12 864 F.3d at 683. Thus, Mr. Molina retains a truly weighty liberty interest even though he
13 was under conditional release.

15 39. What is at stake in this case for Mr. Molina is one of the most profound
16 individual interests recognized by our legal system: whether ICE may unilaterally nullify
17 a prior bond decision and take away his physical freedom, i.e., his “constitutionally
18 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203
19 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always
20 been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
21 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from
22 imprisonment—from government custody, detention, or other forms of physical restraint—
23 lies at the heart of the liberty that [the Due Process] Clause protects.”).

1 40. Courts considering petitions like that of Mr. Molina, filed by individuals who
2 were re-detained following release on parole, have concluded that the petitioners' liberty
3 interests were "significant," *Alberto R.C.*, 2025 U.S. Dist. LEXIS 260211 at *14, as well
4 as "sacred and profound." *Rosado v. Figueroa*, No. 25-2157, 2025 WL 2337099, *37 (D.
5 Ariz. Aug. 11, 2025).

6 41. Thus, it is clear that there is a profound private interest at stake in this case,
7 which must be weighed heavily when determining what process Mr. Molina is owed under
8 the Constitution. *See Mathews*, 424 U.S. at 334-35.

9
10 **The Government's Interest in Continuing to Detain Mr. Molina Without a Due**
11 **Process Hearing is Low, and the Risk of Erroneous Deprivation Is High Absent**
Immediate Release.

12 42. The government's interest in continuing to detain Mr. Molina without a due
13 process hearing is low, and when weighed against Mr. Molina's significant private interest
14 in his liberty, the scale tips sharply in favor of requiring Respondents to release Mr. Molina
15 immediately and provide him with a pre-deprivation hearing at which the government will
16 bear the burden of demonstrating by clear and convincing evidence that Petitioner is a flight
17 risk or danger to the community.

18 43. As immigration detention is civil, it can have no punitive purpose. The
19 government's only interest in holding an individual in immigration detention can be to
20 prevent danger to the community or to ensure a noncitizen's appearance at immigration
21 proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly
22 assert that it has any basis for detaining Mr. Molina in December 2025 when he has lived
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1 at liberty since May 2013 while diligently pursuing removal proceedings before the
2 Immigration Court, and ICE did not show changed circumstances. *See* Exhibits D, F, G, I.

3 44. ICE implicitly determined that Mr. Molina was not a danger to the
4 community or a flight risk in May 2013, when it released him on bond, and he has done
5 nothing to undermine that determination, even since the bond was cancelled and he
6 remained at liberty over twelve years. *See Pinchi*, 792 F. Supp. 3d at 1034 (reasoning that
7 a grant of release represents “a determination by the government that [an individual is]
8 neither a flight risk nor a danger to the community”); *see also Morrissey*, 408 U.S. at 482
9 (“It is not sophistic to attach greater importance to a person’s justifiable reliance in
10 maintaining his conditional freedom so long as he abides by the conditions on his release,
11 than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v.*
12 *Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)). “Where, as here, DHS
13 determines that a petitioner is neither a flight risk nor a danger to the community, that
14 determination strongly reduces any valid interest the Government has in the petitioner’s
15 continued detention.” *Khorsheed v. Larose*, No. 25-3346, 2025 U.S. Dist. LEXIS 260080,
16 *4 (S.D. Cal. Dec. 15, 2025).

17
18 45. It is difficult to see how the government’s interest in ensuring his presence at
19 the moment of removal has materially changed since he was released in May 2013, when
20 it has not presented evidence of a violation of any conditions of release, it has provided
21 evidence that the conditions of Mr. Molina’s bond were satisfied over a decade ago, Mr.
22 Molina has provided for his family, and his removal proceedings were administratively
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1 closed by the government. The government's interest in detaining Mr. Molina at this time
2 is therefore extremely low.

3 46. Additionally, "the administrative and financial burdens associated with
4 detaining [a petitioner] for the remainder of his removal proceedings far surpasses the cost
5 of providing him a hearing to decide if that detention is justified." *Chacon*, 2025 U.S. Dist.
6 LEXIS 257776, *11. Accordingly, "the government's interest in detaining [Mr. Molina]
7 without a pre-deprivation hearing is minimal." *Id.*

8 47. Furthermore, enjoining Mr. Molina's re-arrest until ICE (1) moves for a bond
9 re-determination before an IJ and (2) demonstrates by clear and convincing evidence that
10 Mr. Molina is a flight risk or danger to the community is far *less* costly and burdensome
11 for the government than keeping him detained. As the Ninth Circuit noted in 2017, which
12 remains true today, "[t]he costs to the public of immigration detention are 'staggering':
13 \$158 each day per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez v.*
14 *Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

15 48. "[D]ue process requires Petitioner to be released from custody and receive a
16 bond hearing before an immigration judge before he can be re-detained" because "if
17 Petitioner is detained, he will already have suffered the injury he is now seeking to avoid."
18 *Faizyan v. Casey*, No. 25-2884, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025) (quoting
19 *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021)). Where, as here, a
20 petitioner has not violated any conditions of release, "a post-deprivation hearing cannot
21 serve as an adequate procedural safeguard because it is after the fact and cannot prevent an
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1 erroneous deprivation of liberty.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. WA
2 2025).

3 49. Thus, ordering Mr. Molina’s release and providing him with a pre-
4 deprivation hearing would decrease the risk of him being erroneously deprived of his
5 liberty. Before Mr. Molina can be lawfully detained, he must receive a hearing before a
6 neutral adjudicator at which the government is held to show by clear and convincing
7 evidence that circumstances have changed such that Mr. Molina is now a danger to the
8 community or a flight risk.

9 CLAIMS FOR RELIEF

10 COUNT I

11 **Violation of the Fifth Amendment Right to Due Process** 12 **Procedural Due Process**

13 50. Petitioner incorporates by reference the allegations of fact set forth in the
14 preceding paragraphs.

15 51. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
16 prohibits the federal government from depriving any person of “life, liberty, or property,
17 without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’
18 within the United States, including [non-citizens], whether their presence here is lawful,
19 unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

20 52. Due process requires that government action be rational and non-arbitrary.
21 *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
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1 53. While the government has discretion to detain individuals under 8 U.S.C. §
2 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not
3 “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at
4 698; *Hernandez*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to
5 incarcerate non-citizens is always constrained by the requirements of due process.”);
6 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that due process applies to
7 revocation of parole).

8 54. Here, after initially releasing Petitioner upon a grant of bond and allowed
9 him to remain at liberty for over a year, Respondents have chosen to re-detain Petitioner in
10 an arbitrary manner and not based on a rational and individualized determination of
11 whether he is a safety or flight risk, in violation of due process. Had Respondents conducted
12 such an assessment, they would have concluded that no facts or circumstances had changed
13 to justify a revocation of Petitioner’s release.

14 55. On information and belief, because no individualized custody revocation or
15 re-detention decision has been made and no circumstances have changed to make Petitioner
16 a flight risk or a danger to the community, Respondents have violated Petitioner’s right to
17 procedural due process.
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19 COUNT II

20 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the** 21 **Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations Not in** 22 **Accordance with Law and in Excess of Statutory Authority Unlawful Detention**

23 56. Petitioner repeats, re-alleges, and incorporates by reference each allegation
24 in the preceding paragraphs as if fully set forth herein.

1 57. Under the APA, a court shall “hold unlawful and set aside agency action”
2 that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

3 58. An action is an abuse of discretion if the agency “entirely failed to consider
4 an important aspect of the problem, offered an explanation for its decision that runs counter
5 to the evidence before the agency, or is so implausible that it could not be ascribed to a
6 difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v.*
7 *Def’s. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S.,*
8 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

9 59. The INA provides that Respondents may, as they did years ago in Petitioner’s
10 case, release an individual from custody based on an individualized determination of their
11 danger and flight risk. See 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *see Pinchi*, 792
12 F. Supp. 3d at 1034 (reasoning that a grant of release on parole represents “a determination
13 by the government that [an individual is] neither a flight risk nor a danger to the
14 community”). After such a release decision is made, a revocation of the custody
15 determination may be made only when warranted by a change in an individual’s specific
16 facts and circumstances. *Ruhai Shen*, 2025 U.S. Dist. LEXIS 256924 at *11 (quoting
17 *Saucedo Aceros*, No. 25-6924, 2025 WL 2637503, *7).

18 60. To survive an APA challenge, the agency must articulate “a satisfactory
19 explanation” for its action, “including a rational connection between the facts found and
20 the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation
21 omitted).
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1 61. By categorically revoking Petitioner's release without consideration of
2 Petitioner's individualized facts and circumstances, Respondents have violated the INA,
3 implementing regulations, and the APA. *See Sanchez v. Larose*, No. 25-2396, 2025 WL
4 2770629 (S.D. Cal. Sep. 26, 2025) (concluding that where ICE revokes a noncitizen's
5 parole and detains the individual "without any rational individualized fact-finding or
6 consideration of the effects of altering their prior decisions," ICE "act[s] arbitrarily and
7 capriciously in violation of the APA"); *see also N-E-M-B-*, 2025 WL 3527111, *19-*20
8 (same).

9
10 62. On information and belief, Respondents have made no finding that Petitioner
11 is a danger to the community.

12 63. On information and belief, Respondents have made no finding that Petitioner
13 is a flight risk because Petitioner has diligently pursued and has now been granted an
14 application for relief.

15 64. On information and belief, by detaining Petitioner categorically,
16 Respondents have further abused their discretion because, since the agency made its initial
17 custody determination, on information and belief, there have been no changes to
18 Petitioner's facts or circumstances that support the revocation of Petitioner's release from
19 custody.

20 65. The fact that Petitioner has already been granted release by Respondents
21 under the same facts and circumstances shows that Respondents do not consider Petitioner,
22 on an individualized basis, to be a danger to the community or a flight risk.
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PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Set this matter for expedited consideration;
- c. Order Mr. Molina's immediate release from custody as his continued detention violates his right to procedural due process and his rights under the APA;
- d. Enjoin ICE from re-arresting Mr. Molina unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;
- e. Order that Respondents be prohibited from transferring Petitioner outside the Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

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1 DATED this 23rd day of March, 2026.

/s/ Gregory P. Fay

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Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 23rd day of March, 2026 in Tempe, Arizona.

/s/ Gregory Fay

Gregory P. Fay
Attorney for Petitioner