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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 NEIKER YOUSEE MENDOZA
12 BUSTAMANTE,,

13 Petitioner,

14 v.

15 Patrick, DIVVER, Field Office Director
16 of Enforcement and Removal Operations,
17 San Diego Field Office, Immigration and
18 Customs Enforcement; Todd M.
19 LYONS, Acting Director, U.S.
20 Immigration and Customs Enforcement;
21 Markwayne MULLIN, Secretary, U.S.
22 Department of Homeland Security; U.S.
23 DEPARTMENT OF HOMELAND
24 SECURITY; Todd BLANCE, U.S.
25 Attorney General; EXECUTIVE
26 OFFICE FOR IMMIGRATION
27 REVIEW; Christopher J. LAROSE,
28 Warden of Otay Mesa Detention Facility,

Respondents.

Case No. 3:26-cv-02294-LEK-JLB

**First Amended Petition for Writ of
Habeas Corpus**

1
2 Petitioner hereby files this First Amended Petition for Writ of Habeas
3 Corpus pursuant to 28 U.S.C. § 2241. This amended petition supersedes the
4 original petition and includes additional grounds supporting habeas relief.

5 I. Introduction

6 On October 8, 2023, ICE detained Petitioner almost immediately upon his
7 entry into the United States. 2 days later, on October 10, 2023, ICE released
8 Petitioner on his own recognizance pending removal proceedings. A Notice to
9 Appear was issued on September 28, 2025, while Petitioner was at liberty.
10 Thereafter, on January 28, 2026, Petitioner was arrested by ICE officers leaving
11 work. He was not provided a reason for his detention and his circumstances have
12 not changed since his release on his own recognizance on October 10, 2023.

13 This civil immigration habeas petition explains that his detention violates
14 Due Process Clause of the Fifth Amendment. This Court should order Petitioner's
15 release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a)
16 within seven days.

17 II. Statement of Facts

18 Neiker Mendoza Bustamante is a 30 year-old Venezuelan national who
19 entered the United States on October 8, 2023, when he was twenty seven years
20 old to seek asylum. He was detained for 2 days and then released on his own
21 recognizance. His circumstances have not changed since his release from custody
22 on October 10, 2023. He was arrested on March 31, 2024 in New York. However,
23 the case was dismissed and therefore petitioner has no criminal convictions in the
24 United States. On January 28, 2026, Mr. Mendoza leaving work when ICE
25 officials detained him without cause or explanation.

26 III. Legal Argument

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28

1 **I. Mr. Mendoza’s detention is a violation of the Due Process Clause.**

2 1. **Ms. Velloz’s detention is a violation of the Due Process**
 3 **Clause.**

4 The Due Process Clause of the Fifth Amendment forbids the government
 5 from depriving any person of liberty without due process of law. U.S. Const.
 6 amend. V. “Freedom from imprisonment—from government custody, detention,
 7 or other forms of physical restraint—lies at the heart of the liberty” that the Due
 8 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing
 9 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

10 An individual released from immigration custody has a constitutionally
 11 protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,
 12 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also*
 13 *Sanchez v. LaRose*, 25-cv-2396; 2025 WL 2770629, at * 3 (S.D. Cal.). Thus,
 14 Petitioner has a fundamental interest in liberty and being free from official
 15 restraint.

16 “Even when ICE has the initial discretion to detain or release a noncitizen
 17 pending removal proceedings, after that individual is released from custody [he]
 18 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792
 19 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). That liberty
 20 interest applies to individuals who are paroled into the United States and released
 21 to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB,
 22 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*,
 23 No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-*
 24 *L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9,
 25 2025).

26 To determine which procedures are constitutionally sufficient to satisfy the
 27 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v.*
 28 *Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (1) “the private

1 interest that will be affected by the official action”; (2) “the risk of an erroneous
2 deprivation of such interest through the procedures used, and the probable value,
3 if any, of additional or substitute procedural safeguards”; and (3) “the
4 Government’s interest, including the function involved and the fiscal and
5 administrative burdens that the additional or substitute procedural requirement
6 would entail.” *Id.*

7 All three factors support a finding that the Mr. Mendoza’s re-detention
8 without reasoning or an opportunity to be heard denied him of his due process
9 rights. First, Mr. Mendoza has a significant liberty interest in remaining out of
10 custody. His wife and two children are also present in the United States and have
11 pending applications for asylum. They are all non-detained. “Freedom from
12 imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”
14 *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining with the
15 community. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“Subject to the
16 conditions of his parole, he can be gainfully employed and is free to be with
17 family and friends and to form the other enduring attachments of normal life.”).
18 Petitioner was living in the community pursuant to DHS’s own grant of
19 humanitarian parole and was then re-detained.

20 Second, the risk of an erroneous deprivation of such interest is high as Mr.
21 Mendoza’s was re-detained without providing him a reason for such re-detention
22 or giving him an opportunity to be heard. Petitioner was released on his own
23 recognizance for the specific purpose of pursuing removal proceedings outside
24 detention. When was released, the government made a finding that he did not pose
25 a danger to the community and was not a flight risk. See *Saravia v. Sessions*, 280
26 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017) (“Release reflects a determination by the
27 government that the noncitizen is not a danger to the community or a flight
28 risk.”). “Once a noncitizen has been released, the law prohibits federal agents

1 from rearresting him merely because he is subject to removal proceedings.” *Id.*
2 “Rather, the federal agents must be able to present evidence of materially changed
3 circumstances—namely, evidence that the noncitizen is in fact dangerous or has
4 become a flight risk.” *Id.* “Where, as here, ‘the petitioner has not received any
5 bond or custody hearing,’ ‘the risk of an erroneous deprivation of liberty is high’
6 because neither the government nor [Petitioner] has had an opportunity to
7 determine whether there is any valid basis for [his] detention.” *Pinchi*, 2025 WL
8 2084921 at *5 (cleaned up).

9 Petitioner’s release from custody was tied to an identified governmental
10 purpose. There has been no indication that any changed circumstances justify re-
11 detention. Here, the central factual question, whether the Petitioner’s
12 circumstances have changed to justify re-detention, was readily ascertainable, yet
13 Respondents allegedly deprived Petitioner of liberty without any meaningful pre-
14 deprivation procedure and without any prompt opportunity to challenge that
15 determination. Here, ‘the petitioner has not received any bond or custody
16 hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither
17 the government nor [Petitioner] has had an opportunity to determine whether there
18 is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921 at *5 (cleaned
19 up).

20 Third, the Government’s interest in detaining Mr. Mendoza without proper
21 notice and reasoning or a hearing is “low.” *Id.*; see also *Matute*, 2025 WL
22 2817795 at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22,
23 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has the
24 power to take steps toward doing so; but its interest in doing so without a hearing
25 is low.”). Respondents do have legitimate interests in enforcing the immigration
26 laws and efficiently administering custody determinations. But requiring basic
27 process before re-detaining an individual that was previously released on a his
28 own recognizance, would impose only modest administrative burdens.

Thus, Mr. Mendoza's detention is unlawful. *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of her preexisting parole on due process grounds).

II. This Court has jurisdiction to consider Mr. Mendoza's claim.

In cases raising similar claims, the government has argued that this Court lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and 1252(b)(9). This argument fails here.

Courts have jurisdiction to “decide a purely legal question that does not challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*, the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

They do not. First, Petitioner claim relates to the government’s authority to detain her, and courts have widely held that review of issues related to detention is not barred by § 1252(g) or (b)(9). *See, e.g., Flores–Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a challenge to immigration detention based on a citizenship claim); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that “assertions of illegal detention [were] plainly collateral to ICE’s prosecutorial decision to execute [a detainee’s removal] and thus not subject to § 1252’s jurisdictional bars); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (§ 1252(g) did not apply to a “claim concern[ing] detention”).

1 As a result, in *Noori v. Larose*, 2025 WL 2800149 at *1, Judge Curiel
2 explained that he had jurisdiction over a similar claim. He explained, “Petitioner
3 challenges the legality of the revocation of humanitarian parole in violation of the
4 law and dismissal of ongoing removal proceedings without due process.” *Id.* So
5 even assuming the agency’s re-detention “constitutes a decision or action to
6 adjudicate cases,” that action is not “in the discretion” of the agency under
7 § 1252(g) where it was not carried out in accordance with due process of law.

8 **CLAIM AND PRAYER FOR RELIEF**

9 For the reasons just given, the statute, the regulations, and the Fifth
10 Amendment Due Process Clause prohibits the government from continuing to
11 detain Petitioner.

12 Accordingly, Petitioner respectfully requests that this Court:

- 13 1. Issue a writ of habeas corpus requiring Respondents to release Petitioner
14 unless they provide a bond hearing within seven days where the
15 Government bears the burden of establish risk of flight and dangerousness;
16
 - 17 2. Order that Petitioner shall not be transferred outside the Southern District
18 of California.
 - 19 3. Order that Respondents shall not re-detain or continue to detain Petitioner
20 absent a material change in circumstances;
 - 21 4. Order that Respondents shall provide Petitioner’s counsel with advance
22 written notice of their position in advance of any bond hearing; and
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 - 24 5. Order all other relief that the Court deems just and proper.
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Respectfully submitted,

Dated: May 28, 2026

s/ Tina Malek

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