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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 GONZALEZ CONTRERAS, Rodolfo

13 *Petitioner,*

14 v.

15 Christopher J. LAROSE, Warden, Otay
16 Mesa Detention Center; Daniel A
17 BRIGHTMAN, Field Office Director, San
18 Diego Field Office, United States
19 Immigration and Customs Enforcement;
20 Todd M. LYONS, Acting Director, United
21 States Immigration and Customs
22 Enforcement; Markwayne MULLIN,
23 Secretary of Homeland Security; TODD
24 BLANCHE, acting Attorney General, *in*
25 *their official capacities,*

26 *Respondents.*

27 **Case No.: '26CV2430 BAS AHG**

28 **PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § § 2241**

1 **INTRODUCTION**

2 1. Petitioner Rodolfo Gonzalez Contreras is a noncitizen who was previously
3 released from immigration custody but then was abruptly re-detained and jailed for
4 no legitimate reason. When they previously released Petitioner from his custody,
5 Respondents necessarily determined that Petitioner was neither a flight risk nor a
6 danger to the community. However, U.S. Immigration and Customs Enforcement
7 (ICE) officials re-detained Petitioner on a San Clemente, CA highway as a result of
8 an apparent traffic infraction.

9 2. Petitioner does not pose a danger to the community, nor does Petitioner pose
10 a flight risk; Petitioner has appeared for ongoing removal proceedings and complied
11 with ICE's supervision requirements. However, ICE continues to unlawfully detain
12 Petitioner, separating Petitioner from family and community.

13 3. ICE provided Petitioner with no pre-deprivation hearing prior to his re-
14 detention on the highway in San Diego to determine whether material changes in
15 Petitioner's circumstances warrant his re-detention based on danger to the
16 community or risk of flight.

17 4. Petitioner's detention violates his right to procedural and substantive Due
18 Process, as it is not justified by a legitimate government purpose. Under *Mathews v.*
19 *Eldridge*, 424 U.S. 319 (1976), Petitioner's fundamental liberty interest far
20 outweighs the government's interest in detaining him, and the risk of error is great
21 where there has been no pre-deprivation process to determine whether Petitioner's
22 loss of liberty is justified. For similar reasons, Petitioner's detention also contravenes
23 the Administrative Procedure Act (APA). Finally, because Respondents failed to
24 contemporaneously provide a justification for Petitioner's re-detention, Petitioner's
25 re-detention is arbitrary and capricious in violation of the APA.

26 5. Petitioner's arrest by ICE/ERO occurred on or around December 6, 2025, on
27 a San Clemente, CA highway as a result of an apparent traffic infraction.

28

1 6. After Petitioner's arrest, ICE initially held Petitioner at ICE ERO San Diego
2 Office, with limited contact with family or his legal counsel.

3 7. ICE then transferred Petitioner to the Otay Mesa Detention Center in south
4 San Diego, where, to date, Petitioner has languished in detention for 130 days.

5 8. While in detention, Petitioner has suffered from multiple health conditions
6 including respiratory concerns, ear infections, severe anxiety, stress, and depression.

7 9. Accordingly, Petitioner seeks his release and challenges his detention as a
8 violation of the Due Process Clause of the Fifth Amendment and the APA.

9 10. Petitioner respectfully requests that this Court issue the Writ of Habeas
10 Corpus commanding Respondents to immediately release him from custody and
11 enjoining Respondents from re-detaining Petitioner without a pre-deprivation
12 hearing before a neutral decision-maker at which Respondents must prove material
13 changes in circumstances justify re-detention. Petitioner seeks that relief under the
14 federal habeas statute, 28 U.S.C. § 2241, which is the proper vehicle for challenging
15 civil immigration detention. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir.
16 2024) (noting that a noncitizen's challenge to his present confinement falls within
17 the "core of habeas").

18 CUSTODY

19 11. Petitioner is in the physical custody of Respondents while imprisoned
20 at Otay Mesa Detention Center, an immigration detention facility in San Diego,
21 California. Petitioner is under the direct control of Respondents and their agents.

22 JURISDICTION AND VENUE

23 12. This Court has jurisdiction to consider this habeas petition under 28
24 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment,
25 U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, 2.

26 13. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C.
27 § 2242 because at least one Respondent is in this District, Petitioner is detained in
28 this District, Petitioner's immediate physical custodian is located in this District, and

1 a substantial part of the events giving rise to the claims in this action have taken
2 place in this District.

3 **PARTIES**

4 14. Petitioner Rodolfo Gonzalez Contreras is currently detained by
5 Respondents at the Otay Mesa Detention Center, an immigration detention facility
6 in San Diego, California. Petitioner has been in ICE custody since on or about
7 December 6, 2025.

8 15. Respondent, Christopher J. LaRose is the Warden of the Otay Mesa
9 Detention Center where Petitioner is currently detained. The warden is a legal
10 custodian of Petitioner and is named in his official capacity.

11 16. On information and belief, Respondent Daniel A Brightman is the
12 current Field Office Director responsible for the San Diego Field Office of ICE with
13 administrative jurisdiction over Petitioner's immigration case. He is a legal
14 custodian of Petitioner and is named in his official capacity.

15 17. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal
16 custodian of Petitioner and is named in his official capacity.

17 18. Respondent Markwayne Mullin is the Secretary of the United States
18 DHS. He is a legal custodian of Petitioner and is named in his official capacity.

19 19. Respondent Todd Blanche is the acting Attorney General of the United
20 States Department of Justice. In his official capacity, he oversees the DHS and
21 EOIR.

22 **STATEMENT OF FACTS**

23 20. Petitioner Rodolfo Gonzalez Contreras is a 52-year-old native of
24 Mexico, who has resided in Huntington Beach, CA since approximately early 2019.

25 21. Petitioner is currently in immigration proceedings where Petitioner
26 is pursuing immigration relief including asylum, withholding of removal, and
27 protections under the Convention Against Torture, and adjustment of status to lawful
28

1 permanent resident based on a family petition, and has consistently complied with
2 court and agency requirements.

3 22. Petitioner last entered the United States on or about May 10, 2018.
4 Petitioner presented at a port of entry, where DHS questioned Petitioner about
5 criminal history, ties, and other screening factors. Respondent was placed in a
6 Credible Fear Interview with a USCIS asylum officer. Upon receiving a positive
7 credible fear finding on or about June 7, 2018, Petitioner was released with a Notice
8 to Appear.

9 23. Petitioner is a *Franco-Gonzalez v. Holder* class member, as he was
10 found to have a “serious mental disorder or defect that renders [him] incompetent to
11 represent himself in removal proceedings.” See *Franco-Gonzalez v. Holder*, Case
12 No.CV 10-02211. (C.D. Cal. 2013), Order re Plaintiff’s Motion for Partial Summary
13 Judgment and Plaintiff’s Motion for Preliminary Injunction on Behalf of Seven
14 Class Members at 3. Pursuant to Immigration Judge E. Mark Barcus’s order on
15 October 4, 2018, Petitioner was appointed a qualified representative in immigration
16 proceedings.

17 24. DHS previously released Petitioner from immigration custody pursuant
18 to a bond granted by Immigration Judge Olga E. Attia on December 17,
19 2018, and permitted Petitioner to remain in the community while immigration
20 proceedings continued. Both Petitioner and DHS waived rights to appeal the
21 Immigration Judge’s grant of bond.

22 25. After release, Petitioner devoted himself to building and maintaining a
23 stable life in the United States. He has resided in Southern California since 2018,
24 and his mother and father live in Prescott, Arizona. Petitioner supports himself
25 through participation in medical clinical trials and through family financial support
26 when needed.

27 26. Since his prior release from custody, Petitioner has had one criminal
28 conviction in 2020 in Orange County, California. As a result of his mental illnesses,

1 including diagnoses of delusional disorders and major depressive disorder,
2 Petitioner has suffered from intermittent homelessness and paranoia. While
3 struggling with homelessness in Orange County, in 2019, Petitioner was charged
4 with misdemeanor “child annoyance” pursuant to California Penal Code 646(a)(1).

5 27. Petitioner voluntarily cooperated with law enforcement investigations
6 and was ultimately convicted of misdemeanor child annoyance, and sentenced to
7 time served for the misdemeanor offense (108 days in county jail). Since then,
8 Petitioner has completed all court obligations.

9 28. Petitioner has also complied with the requirements imposed
10 by DHS and the immigration court. Since his release on bond granted by the
11 immigration court, for over seven years, Petitioner has complied with court and
12 ICE/ERO supervision appointments. Petitioner never missed an ICE check in
13 obligation, nor has he ever missed an immigration court hearing.

14 29. On or about December 6, 2025, Petitioner was operating his personal
15 motorcycle on a highway in San Diego, when he was pulled over by ICE/ERO
16 officials due to an apparent inadvertent traffic infraction.

17 30. ICE officers arrested Petitioner without providing reasons for the stop,
18 and questioned Petitioner about his immigration status, without the benefit of
19 contacting his legal counsel. Petitioner shared that he had an open case in
20 immigration court in which he was seeking asylum. ICE did not provide an
21 individualized explanation for why Petitioner’s abrupt re-detention was warranted.

22 31. Instead, ICE justified the stop by claiming to Petitioner they had a
23 “hold” on Petitioner. However, Petitioner was never shown a warrant for an ICE
24 arrest, notice of intention to revoke bond, nor was Petitioner ever afforded the
25 opportunity for an interview to contest the recent re-detention.

26 32. On March 30, 2026, Petitioner sought re-release at a bond hearing
27 before an Immigration Judge Eugene Robinson at the Otay Mesa Immigration Court.
28

1 33. The day before the hearing, on March 29, 2026, DHS served
2 Petitioner's qualified representative the ICE I-213 form dated December 6, 2025,
3 which contained no substantive information or reasoning as to Petitioner's re-
4 detention. The I-213 cites no new allegations or rationale for why re-detention was
5 necessary.

6 34. Despite already having been granted bond in December 2018,
7 Petitioner was denied bond on March 31, 2026 by the Immigration Judge. The Court
8 cited purported ineligibility for a bond grant as Petitioner was listed as an arriving
9 alien on his 2018 Notice to Appear. The Court further concluded that because
10 Petitioner was re-detained, the Immigration Judge did not have jurisdiction to grant
11 bond, and as a *Franco-Gonzalez* class member, Petitioner would have to complete
12 an additional 180 days of detention after his recent re-detention, before he could seek
13 release on bond with the immigration court, "absent Respondent seeking relief in
14 another forum."

15 35. Furthermore, after reviewing the evidence submitted by parties,
16 Immigration Judge further concluded that but for this lack of jurisdiction, he would
17 have granted bond at the minimum amount of \$1,500.00 as Petitioner did not pose a
18 danger to the community.

19 36. Petitioner's re-detention is part of increased enforcement in the
20 Southern California border region, including through arrests of non-citizens who
21 appear as required for immigration court proceedings or ICE check-ins and
22 appointments.

23 37. As of the filing of this Petition on April 16, 2026, Petitioner has been
24 detained for approximately 130 days.

25 38. Petitioner's detention has caused profound harm. During Petitioner's
26 current detention, he has suffered from respiratory concerns, ear infections, severe
27 anxiety, stress, and depression. Since his re-detention, Petitioner has lost several job
28

1 opportunities, and missed criminal probation check-in obligations which he has
2 consistently complied with since 2020.

3 39. Detention has also interfered with Petitioner’s ability to pursue
4 immigration relief and meaningfully participate in ongoing proceedings. Since his
5 re-detention, preparation and participation in his immigration removal proceedings
6 have been a significant challenge as his EOIR-appointed Qualified Representative’s
7 office is in downtown Los Angeles and in person attorney-client meetings are
8 difficult, and private remote meetings via phone or video are limited in availability
9 and duration at the Otay Mesa detention center.

10 40. Petitioner seeks habeas relief because Petitioner is being unlawfully
11 deprived of his liberty and continues to be detained without a meaningful,
12 individualized process that justifies detention under the governing legal standards.

13 LEGAL FRAMEWORK

14 **A. Due Process Constraints on the Detention of Individuals Who Were** 15 **Previously Released from DHS Custody**

16 37. The Due Process Clause of the Fifth Amendment protects all
17 “person[s]” from deprivation of liberty “without due process of law.” U.S. Const.
18 amend. V. This protection applies to noncitizens. *Zadvydas v Davis*, 533 U.S. 678,
19 693 (2001).

20 38. “Freedom from imprisonment—from government custody, detention,
21 or other forms of physical restraint—lies at the heart of the liberty that [the Due
22 Process] Clause protects.” *Id.* at 690. While immigration laws afford ICE discretion
23 over its decisions to arrest, detain, and revoke prior releases, those decisions are
24 nonetheless constrained by the requirements of the Constitution, including the Due
25 Process Clause. *See generally id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
26 Cir. 2017); *Kazybayeva v. Warden of Otay Mesa Det. Ctr.*, No. 26-CV-0421-GPC-
27 MMP, 2026 WL 280478, at *3 (S.D. Cal. Feb. 3, 2026) (“The Supreme Court has
28 repeatedly recognized that individuals who have been released from custody, even

1 where such release is conditional, have a liberty interest in their continued liberty”)
2 (quoting *Doe v. Bacerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025)).

3 **a. Procedural Due Process**

4 39. Procedural Due Process ensures that no persons are deprived of their
5 liberty absent a fair process. Under *Mathews v. Eldridge*, 424 U.S. at 319 (1976),
6 courts evaluate procedural Due Process by balancing (1) the private interest affected;
7 (2) the risk of erroneous deprivation of such interest; and (3) the government’s
8 interest. *Id.* at 335.

9 40. With respect to the first *Mathews* factor, the Supreme Court has long
10 recognized that “the liberty [of a person released from government custody] is
11 valuable and must be seen as within the protection of the [Due Process Clause].”
12 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

13 41. In the immigration context, courts have recognized that “even when
14 ICE has the initial discretion to detain or release a noncitizen pending removal
15 proceedings, after that individual is released from custody she has a protected liberty
16 interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032
17 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at
18 *2 (N.D. Cal. May 6, 2022)).

19 42. Courts in this district have consistently recognized this interest in the
20 context of ICE re-detentions, agreeing that “if DHS has released a noncitizen
21 pending civil removal proceedings, the noncitizen has a protected liberty interest in
22 remaining out of immigration custody.” *Fanfan v. Noem*, No. 3:25-cv-03291-DMS-
23 BJW, 2025 WL 3563739, at *3 (S.D. Cal. Dec. 12, 2025) (quoting *Pablo Sequen v.*
24 *Albarran*, 806 F. Supp. 3d 1069, 1082 (N.D. Cal. 2025)). *See also Bello-Tenorio v.*
25 *LaRose*, No. 26-CV-00616-RBM-BLM, 2026 WL 407959, at *2 (S.D. Cal. Feb. 13,
26 2026); *Aguilera v. City of Holtville*, No. 26-CV-532-LL-MSB, 2026 WL 381633, at
27 *2 (S.D. Cal. Feb. 11, 2026).

28

1 This protectable interest in remaining free from detention exists regardless of
2 whether DHS’s prior release was on recognizance or parole. *See Rivera v. Warden,*
3 *Otay Mesa Det. Ctr.*, No. 26-CV-375-JES-AHG, 2026 WL 310193, at *2 (S.D. Cal.
4 Feb. 5, 2026) (noting that “[w]hile courts have recognized these as distinct
5 procedures, they have consistently applied the same procedural due process
6 analysis” to petitioners previously released under recognizance or parole); *see also,*
7 *e.g., Vicky v. Casey*, No. 25-CV-949 JLS (JLB), 2026 WL 608589, at *2 (S.D. Cal.
8 Mar. 4, 2026) (holding petitioner previously released on recognizance “has a
9 protected liberty interest in remaining out of custody”); *Faizyan v. Casey*, No. 25-
10 cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) (same);
11 *Sanchez v. LaRose*, No. 25-CV-2396-JED-MMP, 2025 WL 2770629, at *3 (S.D.
12 Cal. Sept. 26, 2025) (finding liberty interest in “freedom from imprisonment” after
13 “the government grants a [noncitizen] parole into the country”) (citations omitted);
14 *Bello-Tenorio v. LaRose*, No. 26-CV-00616-RBM-BLM, 2026 WL 407959, at *2
15 (S.D. Cal. Feb. 13, 2026) (same); *Luo v. LaRose*, No. 25CV3848-LL-VET, 2026
16 WL 202872, at *2 (S.D. Cal. Jan. 27, 2026) (same).

17 44. Courts have similarly recognized a liberty interest in continued freedom
18 following release on bond from an immigration judge. *See, e.g., Singh v. Casey*, No.
19 26-CV-1061-JES-DEB, 2026 WL 559779, at *3 (S.D. Cal. Feb. 27, 2026); *Lesic v.*
20 *LaRose*, 25-cv-2746-LL-BJW, 2025 WL 3158675, at *2 (S.D. Cal. Nov. 12, 2025)
21 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019)).

22 45. With respect to the second *Mathews* factor—risk of erroneous
23 deprivation—courts in this district and beyond have similarly concluded that there
24 is a high risk of erroneous deprivation of this liberty interest when noncitizens are
25 re-detained without a pre-deprivation hearing. *Fanfan*, 2025 WL 3563739, at *6.

26 46. The requirement of an individualized determination is particularly
27 strong in cases of re-detention because the prior “[r]elease reflects a determination
28 by the government that the noncitizen is not a danger to the community or a flight

1 risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff’d sub
2 nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); see also 8 C.F.R.
3 1236.1(c)(8) (outlining requirements for release on recognizance); 8 C.F.R. 212.5(b)
4 (outlining requirements for parole); 8 C.F.R. 1003.19(h)(3); *Matter of Guerra*, 24
5 I&N Dec. 37, 40 (BIA 2006) (outlining requirements for grant of IJ bond).

6 47. “[T]o be lawful” the re-detention “must be based on evidence that the
7 circumstances relevant to that original release decision have changed.” *Saravia*, 280
8 F. Supp. 3d at 1196. “To satisfy due process, those changed circumstances must
9 represent individualized legal justification for detention.” *Sanchez*, 2025 WL
10 2770629, at *3 (internal citations omitted). Without an opportunity to respond to a
11 purported change in circumstances, risk of erroneous deprivation is particularly high.

12 48. With respect to the third *Mathews* factor, the government can claim no
13 interest in re-detention where there are no changed circumstances going to flight risk
14 or danger. See *Pinchi*, 792 F. Supp. 3d at 1036 (“The government does not claim
15 that any material circumstances have changed that would warrant reassessment of
16 *Pinchi*’s risk of flight or dangerousness, and it has articulated no other reason for her
17 detention.”); *Fanfan*, 2025 WL 3563739, at *3 (“When the Government has
18 previously decided to release a noncitizen and there is no evidence in the record of
19 any changed circumstance that might have caused the Government to reconsider its
20 initial decision to release the noncitizen ... the Government’s interest in re-detention
21 is low.”) (citing *Doe v. Chestnut*, No. 1:25-cv-01372 CDB (HC), 2025 WL 3295154,
22 at *10 (E.D. Cal. Nov. 26, 2025)); see also *Rivera*, 2026 WL 310193, at *3.

23 49. Even if the government asserted the existence of such changed
24 circumstances, its interest in denying a pre-deprivation hearing to prove that claim
25 is negligible, particularly because custody hearings are a routine practice for
26 immigration courts. Compared to the “staggering” “costs to the public of
27 immigration detention,” *Hernandez*, 872 F.3d at 996, “[t]he effort and cost required”
28 of providing a hearing “is minimal.” *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094

1 (E.D. Cal. 2025). Thus, re-detention violates procedural Due Process where there
2 has not been a pre-deprivation hearing establishing that changed circumstances
3 justify re-detention.

4 **b. Substantive Due Process**

5 50. Immigration detention only comports with Due Process when it
6 furthers the government’s goals of “ensuring the appearance of [noncitizens] at
7 future immigration proceedings and preventing danger to the community.”
8 *Zadvydas*, 533 U.S. at 690 (internal citations omitted). ICE detention violates
9 substantive Due Process where it is not justified by flight risk or danger concerns.
10 *See id.*

11 51. In cases involving re-detention, like that of Petitioner, the risk of a
12 substantive Due Process violation is particularly acute. This is because the prior
13 “[r]elease reflects a determination by the government that the noncitizen is *not*
14 danger to the community or a flight risk.” *Saravia*, 280 F. Supp. 3d at 1176
15 (emphasis added). In order to comport with substantive Due Process, a re-detention
16 must therefore “be based on evidence that the circumstances relevant to that original
17 release decision have changed.” *Id.* at 1196.

18 52. Here, Petitioner’s re-detention violates substantive Due Process
19 because it is not rationally related to any legitimate government purpose, including
20 mitigating flight risk or danger.

21 **C. The Statutory Framework Governing Petitioner’s Detention**

22 53. Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which provides,
23 in pertinent part, that:

24 “On a warrant issued by the Attorney General, a [noncitizen] may be
25 arrested and detained pending a decision on whether the [noncitizen] is to
26 be removed from the United States. Except as provided in subsection (c)
and pending such decision, the Attorney General--

- 27 (1) may continue to detain the arrested [noncitizen]; and
28 (2) may release the [noncitizen] on--

1 (A) bond of at least \$1,500 with security approved by, and
2 containing conditions prescribed by, the Attorney
3 General; or
(B) conditional parole”

4 54. Section 1226(a) governs the detention of noncitizens “inside the United
5 States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89
6 (2018).

7 55. Section 1225(b)(2), by contrast, authorizes the detention of applicants
8 for admission who are “seeking admission” but “not clearly and beyond a doubt
9 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that
10 individuals who fall under its authority “shall be detained” during the pendency of
11 proceedings, though they too remain eligible for release through the parole process.
12 *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8 U.S.C. §
13 1182(d)(5)(A) remains available even for people held under otherwise-mandatory
14 detention pursuant to section 1225(b)).

15 56. Petitioner was unquestionably detained in the interior of the country
16 due to a specious traffic stop initiated by ICE officials in San Diego, California,
17 seven and a half years after initially entering the United States. Because Petitioner
18 was not “seeking admission” at the time of his re-detention, Petitioner’s detention is
19 governed by section 1226(a). *See Morales-Vichi v. Noem*, No. 25-CV-3754-GPC-
20 KSC, 2025 WL 3764699, at *3 (S.D. Cal. Dec. 30, 2025) (finding that petitioner
21 was not “seeking admission” when he was arrested in the interior of the United States
22 at a scheduled appointment with ICE); *see also Karmamoldoyeva v. Warden of Otay*
23 *Mesa Det. Ctr.*, No. 26-CV-00423-GPC-MSB, 2026 WL 266459, at *6 (S.D. Cal.
24 Feb. 2, 2026) (finding that petitioner who had been paroled into the United States
25 was not an “arriving” noncitizen after residing in the country for three years);
26 *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
27 2025); *Martinez v. Noem*, No. 25-CV-3492-DMS-AHG, 2025 WL 3654091, at *1
28 (S.D. Cal. Dec. 17, 2025); *Sun v. LaRose*, No. 26-CV-0193-GPC-JLB, 2026 WL

1 161417, at *7 (S.D. Cal. Jan. 21, 2026); *Garcia v. Noem*, 803 F. Supp. 3d 1064, 1078
2 (S.D. Cal. 2025); *Esquivel-Pina v. Larose*, No. 25-CV-2672-JLS-BLM, 2025 WL
3 2998361, at *5 (S.D. Cal. Oct. 24, 2025).

4 **D. Administrative Procedure Act**

5 57. Under the APA, courts may set aside agency action that is arbitrary and
6 capricious, contrary to constitutional right, or in excess of statutory authority. 5
7 U.S.C. § 706(2)(A)-(C).

8 58. In order to be reviewable under the APA, the challenged action must
9 constitute final agency action, which includes “the whole or a part of an agency rule,
10 order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.”
11 5 U.S.C. § 551(13).

12 59. ICE’s decision to re-detain Petitioner constitutes final agency action
13 because the re-detention marks the “consummation” of ICE’s decision-making
14 process on the question of Petitioner’s custody, and it is an action “by which rights
15 or obligations have been determined, or from which legal consequences will flow.”
16 *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal citations omitted); *see also*
17 *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *19 (N.D.
18 Cal. Dec. 19, 2025); *Sun*, 2026 WL 161417, at *6-7; *Sanchez*, 2025 WL 2770629,
19 at *4-5. Indeed, the “practical and legal effects of the agency action” are that
20 Petitioner has been deprived of liberty with no end in sight. *Oregon Natural Desert*
21 *Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006).

22 60. Courts must “hold unlawful and set aside agency actions, findings and
23 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise
24 not in accordance with the law; (b) contrary to constitutional right, power, privilege
25 or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short
26 of statutory right; or (d) without observance of procedures required by law. 5 U.S.C.
27 § 706(2).
28

1 61. Final agency action is arbitrary and capricious if the agency fails to
2 “articulate a satisfactory explanation for its action including a rational connection
3 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v.*
4 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted).
5 Courts may not consider an agency’s “impermissible post hoc rationalizations.”
6 *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations
7 omitted).

8 62. ICE’s decision to re-detain Petitioner was arbitrary and capricious in
9 violation of the APA because the agency failed to contemporaneously articulate any
10 flight-risk or danger-based justifications for its decision. *See Garro Pinchi*, 2025
11 WL 3691938, at *19; *Aguilar-Perez v. LaRose*, No. 25-CV-3409-LL-DDL, 2026
12 WL 92045, at *5-6 (S.D. Cal. Jan. 13, 2026) (“Because Respondents revoked
13 Petitioner’s parole and detained her without any rational individualized fact-finding,
14 Respondents acted arbitrarily and capriciously in violation of the APA.”); *see also*
15 *Salvador v. LaRose*, No. 26-CV-00553-BAS-MMP, 2026 WL 381607, at *2 (S.D.
16 Cal. Feb. 11, 2026) (finding revocation of parole arbitrary and capricious under the
17 APA in light of Respondents’ “deafening silence as to the reason”);
18 *Karmamoldoyeva v. Warden of Otay Mesa Det. Ctr.*, No. 26-CV-00423-GPC-MSB,
19 2026 WL 266459, at *6 (S.D. Cal. Feb. 2, 2026); *Sun*, 2026 WL 161417, at *7.

20 63. The APA also requires courts to “hold unlawful and set aside” final
21 agency action that is “contrary to constitutional right, power, privilege or immunity.”
22 5 U.S.C. § 706(2)(B). ICE’s decision to re-detain Petitioner without any
23 individualized flight-risk or danger-based justification, is contrary to Petitioner’s
24 rights under the Due Process Clause of the Fifth Amendment as described above.

25 **CLAIMS FOR RELIEF**

26 **COUNT ONE**

27 **VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE**

28 **(Procedural Due Process)**

1 64. Petitioner realleges and incorporates by reference each and every
2 allegation contained above.

3 65. The Due Process Clause of the Fifth Amendment forbids the
4 government from depriving any person of liberty without due process of law. U.S.
5 Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas*, 533
6 U.S. at 693; *Demore v. Kim*, 538 U.S. 510 (2003).

7 66. “The Due Process Clause applies to all ‘persons’ within the United
8 States, including [noncitizens], whether their presence here is lawful, unlawful,
9 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

10 67. “In the context of immigration detention, it is well-settled that due
11 process requires adequate procedural protections to ensure that the government’s
12 asserted justification for physical confinement outweighs the individual’s
13 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872
14 F.3d at 990 (cleaned up).

15 68. Under *Mathews v. Eldridge*, courts evaluate procedural Due Process by
16 balancing 1) the private interest affected; 2) the risk of erroneous deprivation of such
17 interest; and 3) the government’s interest. 424 U.S. at 335.

18 69. Immigration detention always implicates the private liberty interest in
19 “freedom from imprisonment.” *Zadvydas*, 533 U.S. at 690. In addition, when the
20 government releases someone, they retain a liberty interest in their on-going release
21 from government custody. *Morrissey*, 408 U.S. at 482; *Fanfan*, 2025 WL 3563739,
22 at *5; *Sanchez*, 2025 WL 2770629, at *3; *Kazybayeva*, 2026 WL 280478, at *3.

23 70. Where a detained individual does not receive any pre-deprivation
24 hearing, “the risk of an erroneous deprivation of liberty is high because neither the
25 government nor [the petitioner] has had an opportunity to determine whether there
26 is any valid basis for her detention.” *Pinchi*, 792 F. Supp. 3d at 1035 (cleaned up);
27 *Fanfan*, 2025 WL 3563739, at *6; *Vicky v. Casey*, No. 26-cv-949 JLS (JLB), 2026
28 WL 608589, *3 (S.D. Cal. Mar. 4, 2026).

1 75. Immigration detention only comports with Due Process when it furthers
2 the government’s goals of “ensuring the appearance of [noncitizens] at future
3 immigration proceedings and preventing danger to the community.” *Id.* (cleaned up).

4 76. Immigration detention that does not serve the legitimate government
5 purposes of preventing flight or mitigating danger violates substantive Due Process.
6 *Id.*

7 77. As the Immigration Judge found on March 30, 2026, Petitioner’s
8 detention is not necessary to prevent flight or mitigate danger. Thus, Petitioner’s
9 detention violates the Due Process Clause because it is not rationally related to any
10 legitimate government purpose.

11 **COUNT THREE**

12 **VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**

13 **5 U.S.C. § 706(2)(A) (arbitrary and capricious agency action)**

14 78. Petitioner realleges and incorporates by reference each and every
15 allegation contained above.

16 79. The APA provides that a “reviewing court shall . . . hold unlawful and
17 set aside agency action, findings, and conclusions found to be . . . arbitrary and
18 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.
19 § 706(2)(A).

20 80. ICE’s decision to re-detain Petitioner constitutes final agency action
21 where it marks the “consummation” of agency decision making and is an action “by
22 which rights or obligations have been determined, or from which legal consequences
23 will flow.” *Bennett*, 520 U.S. at 178; *see also Garro Pinchi*, 2025 WL 3691938, at
24 *19.

25 81. Because ICE has failed to articulate a contemporaneous rational
26 explanation for its decision to re-detain Petitioner without a pre-deprivation hearing,
27 and because it cannot provide a post-hoc rationalization for that decision, ICE’s re-
28 detention of Petitioner is arbitrary and capricious in violation of the APA. *Motor*

1 *Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 42–43; *Regents*, 591 U.S. at 21.

2 **COUNT FOUR**

3 **VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**

4 **5 U.S.C. § 706(2)(B) (unlawful agency action)**

5 82. Petitioner realleges and incorporates by reference each and every
6 allegation contained above.

7 83. The APA provides that a “reviewing court shall . . . hold unlawful and
8 set aside agency action, findings, and conclusions found to be . . . contrary to
9 constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

10 84. Because Petitioners’ re-detention is contrary to Petitioner’s
11 constitutional rights under the Due Process Clause of the Fifth Amendment, the
12 policy additionally violates the APA as it is contrary to constitutional right. *Id.*

13
14 **PRAYER FOR RELIEF**

15 Petitioner respectfully requests that this Court:

- 16 1. Assume jurisdiction over this matter;
- 17 2. Order Respondents to show cause why the writ should not be
18 granted within three days, and set a hearing on this Petition within
19 five days of the return, as required by 28 U.S.C. § 2243;
- 20 3. Issue a writ of habeas corpus requiring that Respondents
21 immediately release Petitioner from custody under the same
22 conditions pursuant to which Petitioner was released prior to his
23 unlawful detention;
- 24 4. Declare that Petitioner’s detention violates the Due Process Clause
25 of the Fifth Amendment and the APA;
- 26 5. Set aside Respondents’ unlawful re-detention of Petitioner pursuant
27 to 5 U.S.C. § 706(2) as unlawful agency action that is arbitrary and
28 capricious, as well as contrary to constitutional right;

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- 6. Award reasonable attorney’s fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- 7. Grant such further relief as this Court deems just and proper.

Date: 4/16/2026

Respectfully Submitted,

/s/ Ming Tanigawa-Lau
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