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6 **Jimmy Guerrero-Cortez**

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8
9 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

10 Jimmy Guerrero-Cortez,

11
12 Petitioner,

13 v.

14 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
15 Diego Field Office, Immigration and Customs
Enforcement; et al,

16 Respondents.
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Case No. '26CV3047 DMS MSB

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

1 Petitioner Jimmy Guerrero-Cortez, through counsel, petitions for a writ of habeas corpus
2 under 28 U.S.C. § 2241 and alleges:

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4 **I. INTRODUCTION**

- 5 1. Petitioner Jimmy Guerrero-Cortez remains in civil immigration detention despite this
6 Court's prior habeas order recognizing that he is detained under 8 U.S.C. § 1226(a), not §
7 1225, and directing Respondents to provide a bond hearing within fourteen days. In the
8 prior case, Respondents acknowledged that Petitioner is detained under § 1226(a) and is
9 entitled to a custody redetermination hearing, and the Court granted the petition on that
10 basis. The Court specifically ordered that Respondents "shall hold a bond hearing within
11 fourteen days" and "cannot deny bond at the hearing based on 8 U.S.C. § 1225."
12 2. Respondents have now provided the appearance of process without the substance that due
13 process requires. Petitioner received a bond hearing, bond was denied, and the Board of
14 Immigration Appeals denied relief. But the hearing did not cure the constitutional
15 problem because it did not meaningfully test whether continued detention is necessary as
16 applied to Petitioner. A hearing that applies the wrong burden, fails to require the
17 government to justify detention by clear and convincing evidence, attributes the conduct
18 of others to the detained person, and fails to consider less restrictive alternatives is not the
19 "meaningful opportunity to be heard" required by the Fifth Amendment. *Mathews v.*
20 *Eldridge*, 424 U.S. 319, 333–35 (1976); *Singh v. Holder*, 638 F.3d 1196, 1203–09 (9th
21 Cir. 2011); *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).
22 3. This petition does not seek ordinary appellate review of the immigration judge's
23 discretionary weighing of bond evidence. Section 1226(e) limits review of discretionary
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1 custody judgments, but it does not bar habeas review of constitutional challenges to the
2 legality of detention or to the procedures used to authorize continued custody. *Demore v.*
3 *Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 295–96 (2018).
4 Petitioner challenges the constitutionality of his continued detention after a legally
5 inadequate bond process, not merely the Immigration Judge’s discretionary bond result.

6 4. Petitioner’s detention is civil, not punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
7 He is not subject to a final order of removal, is not serving a criminal sentence, and is not
8 detained under the mandatory detention statute, 8 U.S.C. § 1226(c). Because he is
9 detained under § 1226(a), Congress authorized release on bond or conditional parole, and
10 continued confinement must be justified through constitutionally adequate procedures.
11 See 8 U.S.C. § 1226(a)(2). The prior habeas order recognized that Petitioner falls within
12 the § 1226(a) framework, consistent with *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
13 01873-SSS-BFM, 2025 WL 3713987, at *1 (C.D. Cal. Dec. 18, 2025).

14 5. The constitutional defect is especially acute here because the central “danger” theory
15 appears to rest on the June 20, 2025 arrest incident, yet Petitioner’s declaration explains
16 that he was not engaged in criminal activity. He was at Lemon Grove after going to
17 Home Depot to seek day labor, accepted a construction job, entered the vehicle because
18 he believed they were going to a worksite, and panicked only after the driver fled when
19 ICE vehicles surrounded the vehicle. Once Petitioner realized the individuals were
20 officers, he stopped, knelt, and apologized. He did not fight, threaten, assault, resist by
21 force, possess a weapon, or harm anyone.

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23 6. Due process does not permit continued civil confinement based on guilt by association. A
24 constitutionally adequate custody hearing must distinguish the driver’s conduct from

1 Petitioner's conduct, must consider the actual facts of the arrest, must evaluate the
2 pending protection claim as an incentive to appear, must consider ability to pay and
3 alternatives to detention, and must require the government to carry the burden of proving
4 that detention is necessary. Because the hearing failed to perform those functions,
5 Petitioner remains detained without due process of law.

6 **II. JURISDICTION AND VENUE**

- 7 7. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal
8 immigration custody within this District and challenges the legality of that custody under
9 the Constitution and laws of the United States.
- 10 8. This Court is authorized to grant habeas relief under 28 U.S.C. §§ 2241–2243.
- 11 9. This Court also has federal-question jurisdiction under 28 U.S.C. § 1331 because
12 Petitioner alleges that Respondents' continued detention violates the Fifth Amendment
13 and federal law. To the extent Petitioner seeks relief under the Administrative Procedure
14 Act, jurisdiction is also proper under § 1331.
- 15 10. Venue is proper in this District because Petitioner is detained at Otay Mesa Detention
16 Center in San Diego, California, within the Southern District of California, and
17 Respondents exercise custody over him in this District.
- 18 11. This Petition challenges Petitioner's present physical confinement and the legality of
19 Respondents' continued custody over him. Petitioner does not ask this Court to review
20 the merits of his removal proceedings, adjudicate his asylum, withholding, or CAT
21 claims, or substitute its judgment for the immigration courts on the merits of his
22 protection applications.
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1 18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center,
2 where Petitioner is detained. He has day-to-day physical custody of Petitioner and is sued
3 in his official capacity only.

4 19. Respondent Department of Homeland Security is the federal agency responsible for
5 implementing and enforcing the Immigration and Nationality Act, including the detention
6 and removal of noncitizens.


7 20. This Petition challenges Petitioner's present physical confinement under 28 U.S.C. §
8 2241. Respondents are the officials and agency responsible for Petitioner's custody and
9 continued detention.

10 **V. FACTUAL BACKGROUND**

11 21. Petitioner Jimmy Guerrero-Cortez is a native and citizen of Ecuador. His A-Number is

12  He was born in Durán, Ecuador, 

13 22. Petitioner entered the United States near San Ysidro, California, in June 2024. The prior
14 habeas order states that he entered without inspection near San Ysidro and that ICE later
15 arrested and detained him before DHS issued a Notice to Appear commencing removal
16 proceedings.

17 23. Petitioner has a pending protection case. His immigration court record includes an I-589
18 application for asylum, withholding of removal, and protection under the Convention
19 Against Torture. The I-589 identifies his A-Number as  lists Ecuador as his
20 nationality, and reflects that he is in immigration court proceedings.

21 24. Petitioner's protection evidence includes his prior declaration, Ecuadorian identification
22 documents, passport evidence, death documents, a provider statement, medical
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1 documents, and USCIS/EOIR receipt evidence. His country-conditions evidence also
2 included reporting on Latin Kings activity in Ecuador, extortion, criminal capital in
3 Durán, and Ecuador human-rights reports.

4 25. The pending protection claim is directly relevant to custody because it gives Petitioner a
5 strong incentive to appear and continue litigating his case. A person seeking asylum,
6 withholding of removal, and CAT protection has a concrete reason to appear before the
7 immigration court rather than abandon the proceedings.

8 26. On February 26, 2026, this Court granted Petitioner's prior habeas petition. The Court
9 ordered Respondents to hold a bond hearing within fourteen days and prohibited denial of
10 bond based on § 1225.

11 27. After the order, Petitioner received a bond hearing, but bond was denied. Petitioner
12 appealed, and the Board of Immigration Appeals denied relief. He remains detained.

13 28. The post-habeas bond hearing did not provide the process required by the Fifth
14 Amendment. The hearing failed to meaningfully consider Petitioner's actual arrest facts,
15 the distinction between Petitioner's conduct and the driver's conduct, the government's
16 burden, his pending protection claim, ability to pay, and alternatives to detention.
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18 VI. LEGAL STANDARD

19 29. Habeas jurisdiction exists under 28 U.S.C. § 2241 because Petitioner is in federal custody
20 and challenges the legality of that custody. The writ remains available to test whether
21 immigration detention violates the Constitution. *INS v. St. Cyr*, 533 U.S. 289, 301–14
22 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).
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1 30. Section 1226(e) does not bar this petition. That provision limits review of discretionary
2 judgments regarding detention or release, but it does not preclude review of constitutional
3 claims or questions of law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v.*
4 *Rodriguez*, 583 U.S. 281, 295–96 (2018). Petitioner does not ask this Court to substitute
5 its own discretionary bond judgment for the IJ’s; he asks the Court to determine whether
6 his continued detention is unlawful because the hearing failed to satisfy due process.

7 31. The Due Process Clause applies to all “persons” in the United States, including
8 noncitizens in removal proceedings. *Zadvydas*, 533 U.S. at 693; *Reno v. Flores*, 507 U.S.
9 292, 306 (1993). Civil immigration detention may not become punishment, and its
10 procedures must be adequate to ensure that detention remains justified by legitimate
11 regulatory purposes rather than inertia, error, or administrative convenience. *Zadvydas*,
12 533 U.S. at 690.

13 32. Under *Mathews v. Eldridge*, the Court considers the private interest affected, the risk of
14 erroneous deprivation under the procedures used, the probable value of additional
15 safeguards, and the government’s interests. 424 U.S. at 335. Petitioner’s private interest
16 is physical liberty, “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S.
17 507, 529 (2004). The risk of erroneous deprivation is high where an individual remains
18 detained after a hearing that fails to require the government to justify detention, fails to
19 address alternatives, and fails to separate the individual’s conduct from the conduct of
20 others. The government’s interests in ensuring appearance and protecting the community
21 can be served through constitutionally adequate custody procedures and, where
22 appropriate, conditions of release.
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1 33. The Ninth Circuit has repeatedly recognized that civil immigration detention requires
2 meaningful procedural safeguards. In *Singh v. Holder*, the Ninth Circuit held that due
3 process requires the government to justify continued immigration detention by clear and
4 convincing evidence at a bond hearing. 638 F.3d 1196, 1203–09 (9th Cir. 2011). In
5 *Casas-Castrillon v. Department of Homeland Security*, the court held that prolonged
6 detention requires an individualized bond hearing before a neutral decisionmaker. 535
7 F.3d 942, 951 (9th Cir. 2008). In *Diouf v. Napolitano*, the court reaffirmed that prolonged
8 civil immigration detention requires a hearing at which the government must justify
9 continued confinement. 634 F.3d 1081, 1086–92 (9th Cir. 2011).

10 34. *Hernandez v. Sessions* is especially important. There, the Ninth Circuit held that due
11 process requires consideration of ability to pay and alternative conditions of release when
12 setting immigration bond under § 1226(a). 872 F.3d 976, 990–91 (9th Cir. 2017). The
13 court recognized that detention cannot be justified where the government’s interests can
14 be achieved through less restrictive conditions, and it affirmed relief requiring
15 immigration officials to consider financial ability to post bond and alternative conditions
16 where appropriate. *Id.*

17 35. These principles apply with particular force after a prior habeas order. Once the federal
18 court orders a bond hearing to remedy unlawful detention, Respondents must provide a
19 hearing that is meaningful in substance. The Constitution is not satisfied by a nominal
20 hearing that leaves the original detention defect intact. See *Mathews*, 424 U.S. at 333;
21 *Singh*, 638 F.3d at 1203–09; *Hernandez*, 872 F.3d at 990–91.
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1 **VII. GROUND ONE: Continued Detention After a Constitutionally Inadequate**
2 **Bond Hearing Violates the Fifth Amendment**

3 34. Petitioner incorporates the preceding paragraphs.

4 35. The Due Process Clause requires a meaningful opportunity to be heard “at a meaningful
5 time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In the
6 immigration detention context, that means more than allowing the detained person to
7 appear before an Immigration Judge. The hearing must actually test whether detention is
8 necessary to serve a valid civil purpose. *Zadvycas v. Davis*, 533 U.S. 678, 690 (2001);
9 *Singh v. Holder*, 638 F.3d 1196, 1203–09 (9th Cir. 2011).

10 36. Petitioner’s hearing was constitutionally inadequate because it failed to meaningfully
11 evaluate whether he personally posed a danger or flight risk. The central incident relied
12 upon against him involved a vehicle in which other individuals fled from ICE. But
13 Petitioner’s declaration explains that he was a day laborer who accepted construction
14 work, that he did not control the vehicle, that he did not direct or encourage the driver to
15 flee, and that he stopped once he realized the individuals were law enforcement officers.

16 37. A custody determination cannot constitutionally rest on the unexamined attribution of
17 another person’s conduct to the detained individual. Due process requires individualized
18 decisionmaking. *Zadvycas*, 533 U.S. at 690–92; *Singh*, 638 F.3d at 1205. Treating
19 Petitioner as dangerous because a driver fled is not individualized adjudication; it is guilt
20 by association.

21 38. The hearing also failed to meaningfully account for Petitioner’s pending protection claim.
22 Petitioner has filed an I-589 and submitted evidence supporting asylum, withholding of
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1 removal, and CAT protection. That pending claim creates a strong incentive to appear.

2 Ignoring that incentive distorts the flight-risk analysis and increases the risk of erroneous
3 deprivation.

4 39. Nor did the hearing meaningfully consider alternatives to detention. *Hernandez* requires
5 consideration of alternative conditions where appropriate, especially where detention is
6 not the only means of ensuring appearance or protecting the community. 872 F.3d at
7 990–91. Conditions such as reporting, ICE check-ins, telephonic supervision, electronic
8 monitoring, sponsor support, and address-update requirements are directly relevant to the
9 constitutional analysis.

10 40. Because the bond hearing failed to meaningfully assess Petitioner’s actual circumstances,
11 it did not cure the constitutional violation that led to the prior habeas order. Petitioner
12 remains detained without due process.

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14 **VIII. GROUND TWO: Continued Detention Violates Due Process Because the**
15 **Government Was Not Required to Prove Necessity by Clear and Convincing**
16 **Evidence**

17 41. Petitioner incorporates the preceding paragraphs.

18 42. Civil detention requires heightened procedural protection because the individual’s liberty
19 interest is fundamental and the detention is not imposed as criminal punishment.
20 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80
21 (1992).

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23 43. The Ninth Circuit has held that due process requires the government to prove by clear
24 and convincing evidence that continued immigration detention is justified. *Singh v.*

1 *Holder*, 638 F.3d 1196, 1203–09 (9th Cir. 2011). That standard is necessary because the
2 consequences of error are severe: a person remains physically confined despite the civil
3 nature of the proceedings.

4 44. At Petitioner’s bond hearing, the government should have been required to establish, by
5 clear and convincing evidence, that Petitioner presented a danger or flight risk that could
6 not reasonably be addressed through conditions of release. The burden could not properly
7 rest on Petitioner to prove that he deserved liberty. In civil detention, the government is
8 the party seeking to continue confinement and must justify that confinement. See *Singh*,
9 638 F.3d at 1203–09; *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011).

10 45. The burden mattered here. Petitioner’s arrest facts, properly understood, do not establish
11 danger. He was looking for work. He did not know the people who hired him well. He
12 did not flee in a vehicle. He did not assault or threaten officers. He stopped, knelt, and
13 apologized once he realized they were officers. If DHS had been required to prove danger
14 by clear and convincing evidence, rather than rely on generalized suspicion, the outcome
15 could reasonably have been different.

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17 46. The failure to impose the correct burden and standard infected the hearing and left
18 Petitioner detained without constitutionally adequate process.

19 **IX. GROUND THREE: Continued Detention Violates Due Process Because the**
20 **Hearing Failed to Consider Ability to Pay and Less Restrictive Alternatives**

21 47. Petitioner incorporates the preceding paragraphs.

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23 48. *Hernandez v. Sessions* controls the due-process analysis for § 1226(a) custody hearings in
24 this Circuit. The Ninth Circuit held that immigration officials must consider ability to pay

1 and alternative conditions of release when setting bond. 872 F.3d 976, 990–91 (9th Cir.
2 2017). A custody hearing that fails to conduct that analysis is not meaningfully tailored to
3 the government’s interests.

4 49. The constitutional problem is not limited to cases where bond is set too high. The same
5 principle applies where bond is denied outright without meaningful consideration of
6 whether conditions short of detention can reasonably address the asserted concerns. If
7 non-monetary or less restrictive conditions would reasonably ensure appearance and
8 community safety, detention is excessive in relation to its civil purpose. See *Zadvydas v.*
9 *Davis*, 533 U.S. 678, 690 (2001); *Hernandez*, 872 F.3d at 990–91.

10 50. Petitioner is a detained asylum seeker and day laborer with limited financial means. The
11 hearing should have considered ability to pay, release on recognizance, affordable bond,
12 reporting requirements, sponsor support, electronic monitoring, ICE check-ins, and other
13 tailored conditions. A hearing that fails to meaningfully consider those options treats
14 detention as the default rather than the last resort.

15 51. Because the hearing failed to consider ability to pay and alternatives to detention in the
16 manner required by *Hernandez* and *Mathews*, Petitioner’s continued confinement violates
17 due process. *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976); *Hernandez*, 872 F.3d at
18 990–91.

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20 **X. GROUND FOUR: Continued Detention Violates Due Process Because**
21 **Inadequate Bond Representation Prevented a Meaningful Hearing.**

22 52. Petitioner incorporates the preceding paragraphs.
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1 53. The right at issue is not a standalone Sixth Amendment right to appointed counsel in
2 immigration bond proceedings. Rather, the issue is whether the process Petitioner
3 actually received was meaningful enough to justify continued civil detention. Under
4 *Mathews*, the Court must assess the risk of erroneous deprivation produced by the
5 procedures used. 424 U.S. at 335.

6 54. Here, inadequate representation at the bond stage materially increased the risk of
7 erroneous deprivation. Counsel failed to adequately develop and present the facts
8 showing that Petitioner was merely seeking day labor, did not know the driver well, did
9 not participate in the decision to flee, did not assault or threaten anyone, stopped once he
10 realized the individuals were officers, and did not pose a danger to the community.

11 55. Counsel also failed to adequately connect the pending protection claim to the flight-risk
12 analysis. Petitioner's pending asylum, withholding, and CAT claims provide a substantial
13 reason to appear and continue litigating his removal case. Failure to develop that point
14 deprived the Immigration Judge of a central custody consideration.

15 56. Counsel further failed to adequately present less restrictive alternatives, ability to pay,
16 and the proper burden of proof. Those failures directly affected the constitutional
17 adequacy of the hearing because they concern the precise safeguards required by *Singh*
18 and *Hernandez*. *Singh v. Holder*, 638 F.3d 1196, 1203–09 (9th Cir. 2011); *Hernandez v.*
19 *Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

20 57. A habeas court may consider whether the hearing that purportedly cured unlawful
21 detention was meaningful in substance. Where counsel's omissions prevented material
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1 facts and legal standards from being presented, the resulting hearing cannot support
2 continued confinement.

3 **XI. GROUND FIVE: Continued Detention Violates the Prior Habeas Order**
4 **Because Respondents Provided Only a Nominal Hearing Rather Than a**
5 **Constitutionally Adequate Custody Redetermination.**

6 58. Petitioner incorporates the preceding paragraphs.

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8 59. This Court previously granted habeas relief because Petitioner was entitled to a bond
9 hearing under § 1226(a). The order was not satisfied by merely placing Petitioner before
10 an Immigration Judge if the resulting hearing failed to comply with due process. A
11 federal habeas remedy must be meaningful, and where the ordered process is
12 constitutionally defective, the underlying unlawful detention persists. See *Mathews v.*
13 *Eldridge*, 424 U.S. 319, 333 (1976); *Singh v. Holder*, 638 F.3d 1196, 1203–09 (9th Cir.
14 2011).

15 60. Respondents were required to provide a lawful § 1226(a) custody redetermination, not
16 simply a hearing in name. Under § 1226(a), the statutory scheme permits release on bond
17 or conditional parole, and the constitutional question is whether detention remains
18 necessary after individualized consideration of the person’s circumstances. 8 U.S.C. §
19 1226(a)(2); *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017).

20 61. The bond hearing did not provide that individualized consideration. It failed to
21 meaningfully separate Petitioner’s conduct from the conduct of others, failed to require
22 DHS to prove detention was necessary, failed to consider the pending protection claim as
23 an incentive to appear, and failed to address conditions short of detention.
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1 62. Because the ordered bond hearing did not cure the constitutional violation, Petitioner
2 remains unlawfully detained and further habeas relief is warranted.

3 **XII. REQUEST FOR RELIEF**

4 WHEREFORE, Petitioner respectfully requests that this Court:

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6 A. Assume jurisdiction over this matter;

7 B. Issue an order to show cause directing Respondents to justify Petitioner's continued
8 detention;

9 C. Grant the petition for writ of habeas corpus;

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11 D. Declare that Petitioner's continued detention after a constitutionally inadequate bond
12 hearing violates the Fifth Amendment;

13 E. Order Petitioner released under reasonable conditions of supervision;

14 F. In the alternative, order Respondents to provide a new constitutionally adequate bond
15 hearing within seven days before a different Immigration Judge;

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17 G. Order that, at any new hearing, DHS must bear the burden of proving by clear and
18 convincing evidence that Petitioner presents a danger or flight risk that cannot reasonably be
19 addressed by any condition or combination of conditions;

20 H. Order that any new hearing must include meaningful consideration of Petitioner's
21 ability to pay and alternatives to detention;

1 I. Order that any new hearing must meaningfully consider Petitioner’s pending protection
2 claims, his incentive to appear, the actual facts of the June 20, 2025 arrest, and the availability of
3 less restrictive alternatives;

4 J. Enjoin Respondents from transferring Petitioner outside this District while this petition
5 is pending and until any ordered relief is completed;

6 K. Award reasonable attorney’s fees and costs under any applicable authority; and

7 L. Grant any further relief the Court deems just and proper.

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9 DATED this May 15, 2026.

10
11 /s/ Jose Torres
12 Jose Torres
13 *Counsel for Petitioner*
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