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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ENDY GUERRA-PORTILLO,¹

Petitioner,

v.

Todd BLANCHE, in his official capacity
as Acting Attorney General,

Markwayne MULLIN, in his official
capacity as Secretary of the Department
of Homeland Security,

Christopher J. LAROSE, in his official
capacity as Warden of Otay Mesa
Detention Center,

Daniel BRIGHTMAN, in his official
capacity as San Diego ICE Field Office
Director,

Case No. '26CV3625 JAO DEB

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

¹ When initially detained in 2019 as a minor, Respondents incorrectly recorded Petitioner's first name as "Eddy," instead of "Endy," resulting in name errors in Petitioner's immigration records.

1 U.S. DEPARTMENT OF HOMELAND
2 SECURITY,

3 Respondents.
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INTRODUCTION

1. Petitioner, Mr. Endy Guerra-Portillo, brings this petition for a writ of habeas corpus to obtain immediate release from Respondents' custody, where he has been detained for the past two months following an unlawful re-detention.

2. Petitioner was released on Order of Release on Recognizance (OR) under 8 U.S.C § 1226 on April 17, 2019. *See* Exhibit A.² He was unlawfully re-detained with no notice on or about April 6, 2026. Petitioner requests that this Court order his immediate release, as Respondents' actions violated Petitioner's substantive and procedural due process rights, the Fourth Amendment, and were arbitrary and capricious under the Administrative Procedure Act (APA).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the APA; habeas jurisdiction pursuant to 28 U.S.C. § 2241 et seq.; Art I., § 9, Cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act); the Fourth and Fifth Amendments to the U.S. Constitution; and the common law.

² The Court should note that the documentation issued by Immigration authorities incorrectly lists Petitioner's first name as Eddy, however, his legal name is Endy.

1 4. This action arises under the Due Process Clause of the Fifth
2 Amendment of the U.S. Constitution and the INA. This Court may grant relief
3 under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory
4 Judgment Act, 28 U.S.C. § 2001 et seq., and the All-Writs Act, 28 U.S.C. § 1651.
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6 5. Federal district courts have jurisdiction to hear habeas claims by
7 noncitizens challenging the lawfulness or constitutionality of DHS conduct.
8 Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g.*,
9 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
10

11 6. Further, Petitioner is detained at the Otay Mesa Detention Center and
12 venue lies in the United States District Court for the Southern District, the judicial
13 district in which Petitioner currently is detained.

14 7. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
15 because Respondents are employees, officers, and agencies of the United States,
16 and because a substantial part of the events or omissions giving rise to the claims
17 occurred in the Southern District.

18 **REQUIREMENTS OF 28 U.S.C. § 2243**
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20 8. The Court must grant the petition for writ of habeas corpus or issue an
21 order to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not
22 entitled to relief. 28 U.S.C. § 2243.
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9. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

10. Petitioner, Mr. Endy Guerra-Portillo, is a citizen of Honduras who has been in the custody of Respondents since approximately April 6, 2026. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

11. Respondent Todd Blanche, the Acting Attorney General, is the highest-ranking official within the Department of Justice (DOJ). Respondent Blanche has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103. As the Immigration and Nationality Act (INA) has not been amended to reflect the designation of the Secretary of the Department of Homeland Security (DHS) as the administrator and enforcer of immigration laws, Respondent Blanche is sued in his official capacity to the extent that 8 U.S.C. § 1102 gives him authority over immigration law.

1 12. Respondent Markwayne Mullin, the Secretary of the DHS, is the
2 highest-ranking official within the DHS. Respondent Mullin, by and through his
3 agency for the DHS, is responsible for the implementation of the INA, and for
4 ensuring compliance with applicable federal law. He is also responsible for the
5 detention of non-citizens by ICE. Respondent Mullin is sued in his official
6 capacity as an agent of the government of the United States.
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8 13. Respondent Christopher J. LaRose, the Warden of Otay Mesa
9 Detention Center, oversees Petitioner's place of custody.
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11 14. Respondent Daniel Brightman is the Field Office Director of the San
12 Diego office of Immigration and Customs Enforcement. He oversees the custody
13 of all Immigration and Customs Enforcement detainees at the Otay Mesa Detention
14 Center. Respondent Brightman is sued in his official capacity as an agent of the
15 government of the United States.
16

17 15. Respondent Department of Homeland Security (DHS) is the federal
18 agency responsible for implementing and enforcing the INA, including the
19 detention and removal of noncitizens.
20

21 **FACTUAL ALLEGATIONS & PROCEDURAL HISTORY**

22 16. Petitioner, a native and citizen of Honduras, entered the United States
23 with his mother and sister on April 13, 2019, when he was fifteen years old. *See*
24 Exhibit B. Petitioner's family fled Honduras and came to the United States

1 seeking asylum. Petitioner was briefly detained by Immigration officials for
2 several days. He was then released with an Order of Release on Recognizance on
3 April 17, 2019. *See* Exhibit A.

4 17. Petitioner was not subjected to any additional monitoring or check-
5 ins. Rather, he was allowed to freely remain in the United States without any
6 further constraint. At that time, he was served with a Notice to Appear dated April
7 15, 2019,³ which does not include a date or time for a hearing. *See* Exhibit C.
8 Nevertheless, officers advised him to present himself at court. When Petitioner
9 presented himself at the Miami Immigration Court, he was advised that his name
10 was not on the list and that he would be mailed a notice. *See* Exhibit C. Petitioner
11 never received a notice of hearing and it appears that this Notice to Appear was
12 never filed with the court.
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15 18. On August 6, 2019, Petitioner's mother timely filed an affirmative
16 asylum application (Form I-589) with United States Citizenship and Immigration
17 Services (USCIS), including Petitioner as her derivative. *See* Exhibit D. Based on
18 the pending asylum application, Petitioner was issued an employment
19 authorization document (EAD) and also obtained a social security number in
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22 ³ The initial NTA only charges Petitioner with removability under §
23 1182(a)(6)(A)(i), for having entered without inspection and does not include the
24 second charge listed in the second Notice to Appear under § 1182(a)(7)(A)(i)(I).
Compare Exhibit B with Exhibit C.

1 March 2020. *See* Exhibit E. He was also able to renew the EAD in or around
2 2024. *See id.*

3 19. On or about April 6, 2026, Petitioner who was working as a
4 subcontractor, went with his employer to the Navy Seal Base in Key West, Florida
5 for a job. The employer was never advised by the contractor of any requirements
6 to enter the base and when Petitioner presented his identification to base personnel,
7 he was advised that the documents needed to be investigated. As instructed,
8 Petitioner left the base and then returned four hours later.
9

10 20. On information and belief, he was detained at that time and
11 transferred to Immigration authorities. He was issued a second Notice to Appear
12 dated April 16, 2016, where he is charged with removability under 8 U.S.C. §
13 1182(a)(6)(A)(i), for having entered the United States without inspection and under
14 8 U.S.C. § 1182(a)(7)(A)(i)(I), for lacking valid entry documents. *See* Exhibit B.
15

16 21. Petitioner was initially detained in Florida before being transferred to
17 the Otay Mesa Detention Center, where he remains detained. Upon information
18 and belief, Petitioner was not provided with any notice or information on why he
19 was being re-detained.
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21 22. On information and belief, ICE has no particularized evidence that
22 Petitioner is a danger to the community or a flight risk.
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EXHAUSTION

25. Further, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Immigration Judges are incorrectly treating noncitizens who entered the United States without inspection as applicants for admission and finding that they have no statutory right to a bond hearing under 8 U.S.C. § 1225.⁴ Additionally, *Maldonado Bautista v. Santacruz*, 813 F.Supp.3d 1075, 2025 WL 3713982 (C.D.

Cal. Dec. 18, 2025), is stayed outside of the Central District, hence, Petitioner is not entitled to a bond hearing under current agency law. *See Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026). Therefore, administrative relief is not available and would be futile. *See J.A.C.P. v. Wofford*, 2025 WL 3013328, at *7 n.9 (E.D. Cal. Oct. 27, 2025) (“In addition, pursuit of administrative remedies would almost certainly be futile given the BIAs recent holding that all noncitizens present in the United States without admission are ‘seeking admission’ for purposes of 8 U.S.C. § 1225(b)(2)(A) and must be detained.”) (*citing Yajure Hurtado*); *Chavez v. Noem*, 2025 WL 2730228, at *3 (S.D. Cal. Sept. 24, 2025) (waiving prudential exhaustion requirement because the BIA “already applied its expertise in deciding and designating” *Yajure Hurtado* as precedential, pursuant to which detainees are subject to mandatory detention without bond under § 1225(b)(2)).

LEGAL FRAMEWORK

26. The Due Process Clause of the U.S. Constitution prohibits deprivations of liberty without due process of law. U.S. Const. amend. V. These protections extend to noncitizens present in the United States. *Zadvydas*, 533 U.S. at 693 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent.”)

1 27. “The touchstone of due process is protection of the individual against
2 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974),
3 including “the exercise of power without any reasonable justification in the service
4 of a legitimate government objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,
5 846 (1998).
6

7 28. Further, “[t]he fact that a decision-making process involves discretion
8 does not prevent an individual from having a protectable liberty interest.” *Ortega*
9 *v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). “[T]he government’s
10 decision to release an individual from custody creates ‘an implicit promise,’ upon
11 which that individual may rely, that their liberty ‘will be revoked only if [they]
12 fail[] to live up to the ... conditions [of release].’” *Pinchi v. Noem*, 792 F. Supp. 3d
13 1025, 1032 (N.D. Cal. 2025) (*quoting Morrissey v. Brewer*, 408 U.S. 471, 482
14 (1972)).
15

16 29. Once Immigration authorities have made the initial decision to release
17 a noncitizen, “she has a protected liberty interest in remaining out of custody.”
18 *Pinchi* at 1025 (*citing Romero v. Kaiser*, 2022 WL 1443250, at *2 (N.D. Cal. May
19 6, 2022)).
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21 30. To protect this great substantive liberty interest, certain procedures
22 must be followed, the due process clause “requires some kind of a hearing before
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1 the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
2 113, 127 (1990).

3 31. “A person at risk of suffering a serious loss being given notice and an
4 opportunity to be heard, in a meaningful manner and at a meaningful time, is the
5 essence of procedural due process.” *Mathews v. Eldridge*, 424 U.S. 319, 335
6 (1976).
7

8 32. Many district courts have agreed with the arguments raised by
9 Petitioner in this habeas and have ordered immediate release following an unlawful
10 re-detention that fails to comply with due process. *See C.A.R.V. v. Wofford*, 2025
11 WL 3059549, at *9 (E.D. Cal. Nov. 3, 2025) (finding due process violation where
12 petitioner was originally released OR); *Leiva Flores v. Albarran*, 2025 WL
13 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (similarly finding procedural due
14 process violation for petitioner released OR and requiring hearing before
15 detention); *Faizyan v. Casey*, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025)
16 (same); *Valdez v. Joyce*, 803 F. Supp. 3d 213 (S.D.N.Y. 2025) (finding Petitioner’s
17 re-detention when Petitioner had made his immigration court dates and there was
18 “no notice, explanation, or opportunity for Petitioner to be heard” to establish a
19 high risk of erroneous deprivation of his protected liberty interest); *E.A. T.B. v.*
20 *Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash. 2025) (finding that even if
21 petitioner is detained due to violations of his release conditions, this does not mean
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1 he “can be detained for those violations without a hearing.”); *M.S.L. v. Bostock et*
2 *al.*, 2025 WL 2430267, at *9-16 (D. Or. August 21, 2025) (granting habeas relief
3 where ICE did not afford petitioner an opportunity to respond to the alleged
4 reasons for revocation of release); *Gergawi v. Larose*, 2025 WL 3719321, at *1
5 (S.D. Cal. Dec. 23, 2025) (due process violation after being detained following
6 OR).
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9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED**
12 **STATES CONSTITUTION (SUBSTANTIVE DUE PROCESS –**
13 **DETENTION)**

14 33. Petitioner re-alleges and incorporates each allegation contained in
15 paragraphs 1–32.

16 34. “Freedom from imprisonment lies at the heart of the liberty protected
17 by the Due Process Clause.” *Zadvydas*, 533 U.S. at 690. Immigration detention is
18 constitutionally permissible only when it furthers the government’s legitimate
19 goals of ensuring the noncitizen’s appearance during removal proceedings and
20 preventing danger to the community. *See id.*

21 35. Petitioner is not a flight risk or danger to the community.
22 Respondents’ detention of Petitioner is, therefore, unjustified and unlawful.
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1 Accordingly, Petitioner is being detained in violation of the Due Process Clause of
2 the Fifth Amendment.

3 36. Moreover, Petitioner’s detention is punitive as it bears no “reasonable
4 relation” to any legitimate government purpose. *Id.* (finding immigration detention
5 is civil and thus ostensibly “nonpunitive in purpose and effect”). Here, the purpose
6 of Petitioner’s detention is not to protect against risk of flight or dangerousness.
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8 37. The regulations authorizing ICE to release a noncitizen from custody
9 require that the noncitizen “demonstrate to the satisfaction of the officer that such
10 release would not pose a danger to property or persons” and that the noncitizen is
11 “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8); *see also*
12 *Pinchi*, 792 F. Supp. 3d at 1034.
13

14 38. Respondents already made the finding that Petitioner was not a flight
15 risk or a danger when they released him OR in 2019. Further, despite Respondents
16 attempt to reclassify Petitioner as an “applicant for admission,” this attempt fails
17 because Petitioner was detained by Immigration authorities and released OR under
18 8 U.S.C. § 1226 and has been present in the United States for seven years. *See*
19 *Garcia v. Chesnut*, 2025 WL 3771348, at *8 (E.D. Cal. Dec. 31, 2025) (“Thus,
20 because Petitioner has been present in the United States for approximately three
21 years and was released on her own recognizance by ICE before Respondents
22 adopted the new interpretation of the governing statutes, the Court concludes that
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1 the government’s recent interpretation of the relationship between § 1225 and §
2 1226, even assuming it is correct—though the Court is unconvinced that it is—
3 does not apply here such that detention is not ‘mandatory’ in this case.”); *H.F. v.*
4 *Albarran*, 2025 WL 3691081, at *3 (E.D. Cal. Dec. 19, 2025) (similarly rejecting
5 that mandatory detention applies after prior release OR).

7 39. Further, other district court judges have found that Section 1226(a),
8 not Section 1225(b)(2), provides the appropriate framework for noncitizens
9 released following their initial encounter with immigration authorities and have
10 resided in the United States for a significant period of time, like Petitioner here.
11 *See, e.g., H.J.G.G. v. Wofford*, No. 2025 WL 3761803, at *4 (E.D. Cal. Dec. 30,
12 2025) (*citing Castillo v. Wofford*, 2025 WL 3466064, at *8 (E.D. Cal. Dec. 2,
13 2025)); *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 935-37 (N.D. Cal. 2025),
14 *appeal filed*, No. 25-7472 (9th Cir. Nov. 26, 2025).

16 40. Under such circumstances, “the government cannot switch tracks” and
17 subject Petitioner to mandatory detention now under section 1225(b)(2) “after it
18 previously released him on his own recognizance under section 1226(a).” *Valencia*
19 *Zapata*, 801 F. Supp. 3d at 936; *see also Souza v. Robbins*, 2025 WL 3263897, at
20 *2 (E.D. Cal. Nov. 23, 2025); *Dzhatdоеv v. Warden of the Golden State Annex*
21 *Facility, et al.*, 2026 WL 309644, at *9 (E.D. Cal. Feb. 5, 2026).

SECOND CAUSE OF ACTION
VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (PROCEDURAL DUE PROCESS – DETENTION)

41. Petitioner re-alleges and incorporates each allegation contained in paragraphs 1–32.

42. The U.S. Supreme Court recognizes a protected liberty interest from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Further, “the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause.” *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025).

43. “In the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (internal citations and quotations omitted).

44. Further, “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original).

45. For these hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the

1 noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638
2 F.3d 1196, 1203–04 (9th Cir. 2011) (overruled on other grounds) (“Because it is
3 improper to ask the individual to “share equally with society the risk of error when
4 the possible injury to the individual”—deprivation of liberty—is so significant, a
5 clear and convincing evidence standard of proof provides the appropriate level of
6 procedural protection.”).

8 46. Prior to his re-detention in April 2026, Petitioner had no notice of
9 Respondents’ intention to re-detain him and no opportunity to contest that action.

10 47. Petitioner’s re-detention without a pre-deprivation hearing violated
11 due process. Seven years after deciding to release Petitioner from custody on his
12 own recognizance, Respondents re-detained Petitioner with no notice, no
13 explanation of the justification for his re-detention, and he was given no
14 opportunity to contest his re-detention before a neutral adjudicator before being
15 taken into custody. Further, as explained above, new agency case law strips an
16 immigration judge of any authority to release him on bond now, eliminating the
17 only possibility of review of his detention status within the immigration court
18 system.
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21 48. The government has no legitimate interest in detaining Petitioner
22 without a hearing. *See e.g. Francis Tsyamba v. Laura Hermossiollo, et al.*, 2026
23 WL 237514, at *6 (W.D. Wash. Jan. 29, 2026) (“the Government’s interest in re-
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1 detaining a previously released, compliant noncitizen without a hearing is low.”);
2 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (noting the
3 government “has the power to take steps toward” re-arresting petitioner, but “its
4 interest in doing so without a hearing is low”).

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6 49. In addition, as bond proceedings are common in the immigration
7 context the administrative burden is low. *Ledesma Gonzalez v. Bostock*, 2025 WL
8 2841574, at *8 (W.D. Wash. Oct. 7, 2025) (“The Court assumes that requiring pre-
9 detention process would present *some* administrative burden. Even so, given the
10 high risk of erroneous deprivation, the fundamental liberty interest at stake, and the
11 fact that ICE was previously convinced that Ledesma Gonzalez would not flee nor
12 pose a danger to his community, providing effectively no pre-detention process—
13 as ICE did here—is constitutionally deficient.”) (emphasis in original).

14
15 50. Finally, over the course of seven years, prior to his re-detention
16 Petitioner established a life for himself in the United States. He filed an asylum
17 application, obtained work authorization, renewed his work authorization, obtained
18 a social security number, and was gainfully employed. He also previously
19 presented himself at the Miami Immigration Court after issuance on the 2019
20 Notice to Appear, despite not having a hearing scheduled, so there is no reason to
21 think that his compliance will change if he is released pending a pre-deprivation
22 custody hearing.
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THIRD CAUSE OF ACTION
ADMINISTRATIVE PROCECURE ACT (FAILURE TO CONSIDER
INDIVIDUALIZED FACTS AND CIRCUMSTANCES PRIOR TO
REVOKING RELEASE)

51. Petitioner re-alleges and incorporates each allegation contained in paragraphs 1–32.

52. “The APA ‘sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (*quoting Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). “It requires agencies to engage in reasoned decisionmaking and directs that agency actions be set aside if they are arbitrary or capricious.” *Id.* (citation modified).

53. The APA forbids agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). A court reviewing agency action “must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment”; it must “examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted); *see also Ledesma Gonzalez v. Bostock*, --- F.Supp.3d ---- 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (“The Government’s decision fails for multiple independent reasons: the agency provided no contemporaneous explanation for its decision; the post-hoc justifications it later offered are

1 unsupported by the record and contradict the evidence; and the revocation was
2 made by an official lacking regulatory authority to do so.”).

3 54. Here, the arbitrariness of Respondents’ actions are clear, as Petitioner
4 was residing in the United States for seven years and pursuing an asylum claim
5 while released OR. There was simply no basis for his re-detention.
6

7 55. Further, when Respondents released Petitioner from custody in 2019,
8 they determined that he did not pose a danger or a flight risk. Under 8 C.F.R. §
9 1236.1(c)(8): “Any officer authorized to issue a warrant of arrest may, in the
10 officer’s discretion, release [a noncitizen] not described in section 236(c)(1) of the
11 Act, under the conditions at section 236(a)(2) and (3) of the Act; provided that the
12 [noncitizen] must demonstrate to the satisfaction of the officer that such release
13 would not pose a danger to property or persons, and that the [noncitizen] is likely
14 to appear for any future proceeding.”
15

16 56. “Where the release decision was made by a DHS officer, not an
17 immigration judge, the Government’s practice has been to require a showing of
18 changed circumstances before re-arrest.” *Garcia v. Chesnut*, 2025 WL 3771348 at
19 *1 (E.D. Cal. Dec. 31, 2025) (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168,
20 1197 (N.D. Cal. 2017)).
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22 57. Petitioner’s re-arrest was done without changed circumstances being
23 present.
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FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AMENDMENT TO THE
CONSTITUTION (UNLAWFUL ARREST)

58. Petitioner re-alleges and incorporates each allegation contained in paragraphs 1–32.

59. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials.

60. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause.

61. “Further seizure requires a court order or new cause; the original probable cause determination is no justification.” *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (internal citations omitted); *see also United States ex rel. Heikkinen v. Gordon*, 190 F.2d 16, 19 (8th Cir. 1951) (“Ordinarily in criminal cases, where one has been released on bail he can not be rearrested in the same jurisdiction on the same charge on which he was originally arrested.”).

62. In the immigration context, this prohibition means that a person who immigration authorities released from initial custody cannot be rearrested “solely on the ground that he is subject to removal proceedings” and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

63. Here, Respondents' arrest of Petitioner is premised on nothing more than his unlawful entry into the United States in 2019, which formed the basis of his initial detention and subsequent release from custody. Thus, his re-detention violated the Fourth Amendment.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on the same terms of supervision as he was on prior to his arrest in April 2026, without imposing any additional restrictions on him, such as electronic monitoring;
3. Issue an Order prohibiting Respondents from transferring Petitioner from this district without the Court's approval;
4. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioner's arrest and detention violate the Fourth Amendment;
6. Declare that Petitioner's arrest and detention violated the APA;
7. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the

1 government bears the burden of proving, by clear and convincing evidence,
2 that Petitioner is a flight risk or danger to the community;

3 8. Award Petitioner her costs and reasonable attorneys' fees in this action as
4 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, and on
5 any further basis justified under law;
6

7 9. Grant such further relief as the Court deems just and proper.

8 RESPECTFULLY SUBMITTED this 18th day of June, 2026.

9 /s/ Nanya Thompson
10 Nanya Yoshiko Morinaga Thompson, Esq.
11 For: Nanya Thompson Law, Inc.

12 *Attorney for Petitioner*
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