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

10 Romel SOLIS-BECERRIL,

11 Petitioner,

12 v.

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

Respondents.

Case No. **'26CV3688 DMS BJW**

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

PETITIONER DHS NO: A



INTRODUCTION

1. Petitioner, Romel Solis-Becerril, a citizen of Mexico, is in the physical custody of Respondents at Otay Mesa Detention Center in San Diego, California. He has been in the custody of U.S. Immigration and Customs Enforcement (ICE) since being detained pursuant to a warrantless arrest on June 12, 2026, by a roving ICE patrol.

2. Mr. Solis, by and through his undersigned counsel, hereby files this Petition for Writ of Habeas Corpus to compel his immediate release from Respondents' custody.

3. Mr. Solis was previously detained by the U.S. Department of Homeland Security (DHS) on May 24, 2017. On June 13, 2017, he was granted release by an Immigration Judge on a bond of \$1,500.00, the statutory minimum bond amount, *see* 8 U.S.C. § 1226(a)(2)(A), with no DHS monitoring (known as Alternatives to Detention or ATD). Both parties waived appeal and Mr. Solis was released on bond on June 14, 2017. No material change in facts or circumstances has occurred since his bond was granted.

4. On May 24, 2017, the DHS issued Mr. Solis a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States without admission or parole.

5. On June 7, 2022, the DHS moved to dismiss the removal proceedings as a matter of prosecutorial discretion, and on that same date, the Immigration Court granted the DHS's motion and dismissed the proceedings.

6. Mr. Solis must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that there are changed circumstances justifying Mr. Solis' re-detention. DHS will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing *prior to* re-detention; re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

7. Because no circumstance justified Mr. Solis' re-detention, and his detention is unlawful and unconstitutional, the Court should accordingly order Mr. Solis' immediate release, and order that Respondent DHS must release Petitioner within one day.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, California.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is currently detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. 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

15. Petitioner Romel Solis-Becerril was arrested by ICE agents on or about June 12, 2026 in Vista, California, and has been in immigration detention since that date. Since Petitioner's arrest, ICE is holding him without bond.

16. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioners' detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

17. Respondent David Venturella is the Acting Director of Immigration and Customs Enforcement, a federal law enforcement agency within the Department of Homeland Security. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Venturella exercises control over and is custodian of persons held in ICE facilities nationally. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. At all times relevant to this Complaint, Respondent Venturella was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

18. Respondent Patrick Divver is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities in the San Diego Field Office. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

19. Respondent Christopher J. LaRose is employed by CoreCivic, Inc., as Warden of the Otay Mesa Detention Center in San Diego, California. He has immediate physical custody of Petitioner. He is sued in his official capacity.

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

21. Respondent Immigration and Customs Enforcement (ICE) is the agency within DHS responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

23. “The Fifth Amendment guarantees that that ‘[n]o person shall be...deprived of life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. Amend. V). “[T]he Due Process Clause applies to all ‘persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.’” *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).

24. Immigration detention is a form of civil confinement, and thus “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 423 (1979).

25. Immigration detention that is punitive in purpose and effect violates the Due Process Clause. *Zadvydas*, 533 U.S. at 690. The only legitimate use of immigration detention is when, based on an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court, or they are a danger to the community. *Id.*

26. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

27. The Immigration and Nationality Act establishes various procedures through which individuals may be detained pending a decision on whether or not the noncitizen is to be removed. 8 U.S.C. § 1226(a).

28. Immigration officers may only conduct warrantless arrests in limited circumstances. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) “is likely to escape before a warrant can be obtained for his arrest”. 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii). An officer “has reason to believe” when they have the equivalent of “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

29. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.

30. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations

1 for detention regardless of flight or safety risks, § 1226(a) requires a case-by-case review of
2 the facts and circumstances.

3 31. Courts in this District have consistently held that noncitizens who have been released
4 from immigration custody pending removal proceedings have a constitutionally protected
5 liberty interest in remaining out of immigration custody. *Lesic v. LaRose*, No. 3:25-cv-02746-
6 LL-BJW, 2025 WL 3158675, at *2 (S.D. Cal. Nov. 12, 2025) (“[O]nce an IJ grants a
7 petitioner’s bond for release, it is a constitutionally protected liberty interest, which DHS
8 cannot unilaterally cancel absent a material, individualized change in circumstance.”)
9 “[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal
10 proceedings, after that individual is released from custody she has a protected liberty interest
11 in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025)
12 (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022)
13 (“[T]his Court joins other courts of this district facing facts similar to the present case and
14 finds Petitioner raised serious questions going to the merits of his claim that due process
15 requires a hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-
16 01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-
17 5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d
18 963, 969 (N.D. Cal. 2019) (“Just as people on preparole, parole, and probation status have a
19 liberty interest, so too does [a noncitizen released from immigration detention] have a liberty
20 interest in remaining out of custody on bond.”). “[E]ven if immigration detainees must wait
21 months before a periodic re-review of their detention, those already released on immigration
22 bond... after a neutral adjudicator has performed an individualized assessment and found no
23 flight risk or danger...possess an interest in their continued liberty, which grows over time,
24 and a due process right to a hearing before being re-detained.” *Guillermo M.R. v. Kaiser*, 791
25 F. Supp. 1021, 1031-32 (N.D. Cal. July 17, 2025).

26 FACTS

27 32. Petitioner Romel Solis-Becerril, 50, is a native and citizen of Mexico.

33. Before his detention, Mr. Solis was residing in Vista, California. Mr. Solis has been
residing in the United States since approximately 1995, over 30 years.

1 34. Mr. Solis has four United States citizen daughters, one of whom is a minor, age 17.

2 [Exh. H, Birth Certificate of Mr. Solis' Daughters.]

3 35. On October 8, 2003, Mr. Solis was convicted of a violation of California Health and
4 Safety Code § 11377(a), simple possession of a controlled substance, and California Vehicle
5 Code § 23152(a), DUI. [Exh. C, San Diego Superior Court Record, Case No. 
6 This is Mr. Solis' only criminal arrest.

7 36. On May 24, 2017, Mr. Solis was arrested and detained by ICE. [Exh. D, Form I-213¹,
8 Record of Deportable/Inadmissible Alien, dated May 24, 2017.]

9 37. On May 24, 2017, the DHS issued Mr. Solis a Notice to Appear, charging him with
10 removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States
11 without admission or parole. [Exh. E, Notice to Appear, dated May 24, 2017.]

12 38. On June 13, 2017, Mr. Solis was granted release by an Immigration Judge on a bond of
13 \$1,500.00, the statutory minimum bond amount, *see* 8 U.S.C. § 1226(a)(2)(A),² [*see* Exh. A,
14 Immigration Judge Bond Order, dated June 13, 2017], with no ATD monitoring by DHS.³
15 Both parties waived appeal. *Id.* Mr. Solis was released from custody on June 14, 2017. [Exh.
16 B, Notice of Release, dated June 14, 2017.]

17 39. On January 8, 2018, the Superior Court granted Mr. Solis' petition under California
18 Penal Code § 1203.4 to dismiss and expunge his conviction. [Exh. C, Order Granting Petition
19 for Dismissal in Case No. CN164832.] Thus, Mr. Solis is no longer convicted of Cal. H. & S.
20 Code § 11377(a) for immigration purposes. *See Lujan-Armendariz v. INS*, 222 F.3d 728 (9th

21 ¹ The I-213 inaccurately states that Mr. Solis was arrested for "11352(a) HS-Transport, Sale of a Narcotic
22 Controlled Substance..." Mr. Solis was never charged under § 11352(a); as the Superior Court record shows, he
23 was charged under Cal. H. & S. Code § 11377, for simple possession.

24 ² Mr. Solis was eligible for bond in 2017 notwithstanding the conviction under Cal. H. & S. Code § 11377
25 based on the Ninth Circuit Court of Appeals' decision in *Preap v. Johnson*, 831 F.3d 1193 (9th Cir. 2016), vacated by
26 *Preap v. McAleenan*, 922 F.3d 1013 (9th Cir. 2019), because the conviction occurred in 2003 and Mr. Solis was not
27 taken into immigration custody immediately upon his release from criminal custody. Mr. Solis is no longer
convicted under Cal. H. & S. Code § 11377(a) for immigration purposes because the conviction was expunged on
January 8, 2018 pursuant to Cal. Pen. Code § 1203.4. *See Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000);
see also Nuñez-Reyes v. Holder, 646 F.3d 684, 694 (9th Cir. 2011) ("For those aliens convicted before the
publication of this decision, *Lujan-Armandariz* applies.").

³ The Immigration Judge made the no- ATD monitoring order orally on the record at the bond hearing on
June 13, 2017.

1 Cir. 2000); *see also* *Nuñez-Reyes v. Holder*, 646 F.3d 684, 694 (9th Cir. 2011) (“For those
2 aliens convicted before the publication of this decision, *Lujan-Armandariz* applies.”).

3 40. On June 7, 2022, the DHS moved to dismiss the removal proceedings as a matter of
4 prosecutorial discretion, and on that same date, the Immigration Court granted the DHS’s
5 motion and dismissed the proceedings. [Exh. F, Order of the Immigration Judge and Record
6 of Individual Appearance, dated June 7, 2022.]

7 41. On information and belief, on the morning of June 12, 2026, Mr. Solis was arrested and
8 detained as he was driving to work pursuant to a warrantless arrest by a roving ICE patrol in
9 Vista, California.

10 42. On information and belief, none of the agents ever provided Mr. Solis with a warrant or
11 any document of any kind.

12 43. On information and belief, the agents told Mr. Solis that they arrested him because he
13 did not have documentation to lawfully reside in the United States.

14 44. On information and belief, none of the agents ever asked Mr. Solis any questions about
15 his family, employment, or community ties.

16 45. On information and belief, following his transfer to the Otay Mesa Detention Center,
17 ICE issued a custody determination to continue Mr. Solis’ detention without an opportunity to
18 post bond or be released on other conditions.

19 46. On June 12, 2026, the DHS issued Mr. Solis a Notice to Appear, charging him with
20 removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States
21 without admission or parole. [Exh. G, Notice to Appear, dated June 12, 2026.]

22 47. Mr. Solis is currently detained at the Otay Mesa Detention Center.

23 48. Mr. Solis is scheduled to appear for a Master Calendar Hearing at the Otay Mesa
24 Immigration Court on July 8, 2026.

25 EXHAUSTION OF ADMINISTRATIVE REMEDIES

26 49. With regard to habeas claims, exhaustion of administrative remedies is prudential, not
27 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
the prudential exhaustion requirement if “administrative remedies are inadequate or not
efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury
will result, or the administrative proceedings would be void.” *Id.* (quoting *Liang v. Ashcroft*,

1 370 F.3d 994, 1000 (9th Cir. 2004). Petitioner asserts that exhaustion should be waived
 2 because administrative remedies are (1) futile and (2) his continued detention results in
 3 irreparable harm.

4 50. No statutory exhaustion requirements apply to Mr. Solis' claim of unlawful custody in
 5 violation of his due process rights, and there are no administrative remedies that he needs to
 6 exhaust. *See American-Arab Anti-Discrimination Comm. V. Reno*, 70 F.3d 1045, 1058 (9th
 7 Cir. 1995) (Finding exhaustion to be a "futile exercise because the agency does not have
 8 jurisdiction to review constitutional claims); *In re Indefinite Det. Cases*, 83 F. Supp. 2d 1098,
 1099 (C.D. Cal. 2000) (same).

9 51. Mr. Solis is the sole financial provider for his family. [Exh. I, Mr. Solis' 2025 Federal
 10 Income Tax Return and W-2 Form.] His family is at risk of suffering extreme financial and
 11 emotional hardship in his absence. [Exh. J, Letters of Support.]

12 52. In addition, the irreparable injury Mr. Solis faces extends beyond a chance at physical
 13 liberty. There are several "irreparable harms imposed on anyone subject to immigration
 14 detention[.]" *Hernandez*, 872 F.3d at 995. These include conditions threatening the health and
 15 safety and the lives of persons in ICE custody.⁴

19
 20
 21 ⁴ "County sues DHS over access to Otay Mesa detention facility: County officials say detainees have
 22 reported freezing temperatures, untreated medical conditions and food unfit for human consumption," NBC San
 23 Diego, March 10, 2026, available at: <https://www.nbcsandiego.com/news/local/county-sues-dhs-over-access-to-otay-mesa-detention-facility/3992889/>; *see also* "Deaths of detainees in ICE custody surge under 2nd Trump
 24 Administration," ABC News, March 30, 2026, available at: <https://abcnews.com/US/deaths-detainees-ice-custody-surge-2nd-trump-administration/story?id=131473647>; *see also* "Deaths in ICE Custody Are Growing. 'They Let
 25 Him Rot in There,'" New York Times, March 29, 2026, available at: <https://www.nytimes.com/2026/03/29/us/ice-detention-deaths-immigrants.html>; *see also* "Data: More ICE custody deaths reported in last 6 months than in all of
 26 FY 2025," Action 5 News, March 31, 2026, available at: <https://www.actionnews5.com/2026/03/31/data-more-ice-custody-deaths-reported-last-6-months-than-all-fy2025/>; *see also* "Death rate in ICE immigrant detention centers
 27 more than doubles under Trump, Reuters analysis finds," Reuters, June 17, 2026, available at:
<https://www.reuters.com/legal/government/death-rate-ice-immigrant-detention-centers-more-than-doubles-under-trump-reuters-2026-06-17/>

FIRST CLAIM FOR RELIEF

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9) –
Abuse of Discretion**

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

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

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

56. To survive an APA challenge, the agency must articulate “a satisfactory explanation for its action, “including a rational connection between the facts found and the choice made.” *Dept. of Com. v. New York*, 139 S. Ct. 2251, 2569 (2019) (citation omitted).

57. By re-arresting and re-detaining Mr. Solis without consideration of his individualized facts and circumstances, Respondents have violated the APA. There have been no changes to his facts or circumstances that would warrant his re-arrest and re-detention since an Immigration Judge made the initial custody determination on June 13, 2017 and the DHS waived appeal of that determination.

58. Respondents considered Mr. Solis’ facts and circumstances in June 2017 and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this re-arrest and re-detention nine years later. The fact that Mr. Solis has already been granted release on bond by Respondents under the same facts and circumstances shows that the Respondents do not consider him to be a danger to the community or a flight risk. Nine years have passed with no intervening violations.

SECOND CLAIM FOR RELIEF

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii) –
Warrantless Arrest Without Probable Cause or Likelihood of Escape**

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

60. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has “reason to believe” that an individual is “likely to escape before a warrant can be obtained for [their] arrest.” To meet this requirement, officers must have “grounds for a reasonable belief that they were particularly likely to escape.” *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995); *see also Yeleshev v. Larocco*, No. 26-cv-2294, 2026 WL 1353806, at *3 (E.D.N.Y. May 14, 2026) (noting that “the limited circumstances permitting warrantless arrests ... often all turn on the existence of exigent circumstances”).

61. Similarly, 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is “likely to escape before a warrant can be obtained.”

62. Respondents’ warrantless arrest of Petitioner without an individualized determination that Petitioner was “likely to escape” before a warrant is issued is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

63. Respondents failed to make any individualized determination regarding whether Mr. Solis is a flight risk prior to detaining him.

THIRD CLAIM FOR RELIEF

Petitioner’s Detention Violations His Fourth Amendment Right Against Unlawful Arrest

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

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

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

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

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

13 69. Here, Respondents’ re-arrest and re-detention of Petitioner is premised on nothing more
14 than his unauthorized presence in the United States, which formed the basis of his initial
15 detention and subsequent release from custody in 2017. [See Exhs. E and G, Notices to
16 Appear.] No material change in facts or circumstances has occurred since Mr. Solis was
17 granted bond and released from custody nine years ago in 2017. Thus, his re-arrest and re-
18 detention violates the Fourth Amendment

19 **FOURTH CLAIM FOR RELIEF**

20 **Petitioner’s Detention Violates His Fifth Amendment Right to Substantive Due Process**

21 70. Petitioner repeats re-alleges, and incorporates by reference each and every allegation in
22 the preceding paragraphs as if fully set forth herein.

23 71. The Government may not deprive a person of life, liberty, or property without due
24 process of law. U.S. Const. Amend. V. “Freedom from imprisonment – from government
25 custody, detention, or other forms of physical restraint – lies at the hearing of the liberty that
26 the Clause protects.” *Zadvydas*, 533 U.S. at 690.

27 72. This interest in freedom from detention is particularly strong for individuals who are
facing re-arrest and re-detention. In *Morrissey v. Brewer*, the Supreme Court held that an
individual who is re-detained after being released- has a “valuable” liberty interest
notwithstanding the “indeterminate” nature of his freedom. 408 U.S. 471, 482 (1972). “There is

1 also a meaningful distinction between a challenge to an initial period of detention . . . and a
2 challenge to *re-detention* after a court has previously granted release on bond pending
3 immigration proceedings.” *Carballo v. Andrews*, No. 1:25-CV-00978- KES-EPG (HC), 2025
4 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025) (emphasis in original).

5 73. Mr. Solis has resided in the United States for over 30 years. He has never missed any
6 court dates or check-ins with authorities. The Immigration Court and the DHS were aware of
7 his 2003 conviction for violations of Cal. H. & S. Code § 11377(a) and Cal. Veh. Code §
8 23152(a) in 2017 when the judge granted bond and the DHS waived appeal. On the date of Mr.
9 Solis’ re-detention on June 12, 2026, he had been on release status for nine years following an
10 individualized determination. The DHS itself moved to dismiss Mr. Solis’ removal proceedings
11 in 2022 as a matter of prosecutorial discretion. No material change in facts or circumstances
12 has occurred since Mr. Solis was released on bond. The Respondents have violated Mr. Solis’
13 Due Process interest in freedom from arbitrary detention.

14 **FIFTH CLAIM FOR RELIEF**

15 **Petitioner’s Detention Violates His Fifth Amendment Right to Procedural Due Process**

16 74. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
17 the preceding paragraphs as if fully set forth herein.

18 75. Due process requires that government action be rational and non-arbitrary. *See U.S. v.*
19 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

20 76. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and
21 to revoke custody decision under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and
22 must comport with due process. *See Zadvydas*, 533 U.S. at 698.

23 77. Once a determination to release an individual from custody is made, the release order may
24 be revisited only if the facts and circumstances warrant revocation or reconsideration. “In
25 practice, the DHS re-arrests individuals only after a ‘material’ change in circumstances. To
26 satisfy due process, those changed circumstances must represent individualized legal
27 justification for detention.” *Sanchez v. Larose*, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26,
2025) (internal citations omitted); *Tran v. Noem*, No. 25cv2334-JES-MSB, at *6-7 (S.D. Cal.
Sep. 29, 2025) (citing *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004). “This
standard prevent[s] arbitrary revocations and ensure[s] that detention decisions rest[] on

1 individualized assessments of changed circumstances rather than categorical assumptions.
2 *Gonzalez v. Bostock*, No. 2:25cv01404-JNW-GJL at *13 (W.D. Wash. Oct. 7, 2025) (discussing
3 *Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020)
4 (quoting *Ortega v. Bonnar*, 415 F.Supp.3d 963, 968 (N.D. Cal. 2019) (quoting *Matter of Sugay*,
5 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D.
6 Cal. 2017). Cf. *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).

7 78. To determine the procedural protections required to satisfy the Due Process Clause, the
8 Court applies the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The
9 Court must consider: (1) “the private interest that will be affected by the official action;” (2)
10 the “risk of an erroneous deprivation of such interest through the procedures used, and the
11 probable value, if any, of additional or substitute procedural safeguards;” and (3) “the
12 Government’s interest including the function involved and the fiscal and administrative
13 burdens that the additional or substitute procedural requirement would entail.” *Id.* The Ninth
14 Circuit has “assume[d] without deciding” that *Mathews* applies in the immigration detention
15 context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022); *see also Pinchi v.*
16 *Noem*, 792 F. Supp. 3d 1025, 1033 n. 2 (N.D. Cal. Jul. 24, 2025) (collecting cases where the
17 Ninth Circuit has applied *Mathews* in the immigration context).

18 79. First, Mr. Solis has a significant liberty interest in remaining at liberty after being
19 released on bond. “[E]ven when ICE has the initial discretion to detain or release a noncitizen
20 pending removal proceedings, after that individual is released from custody she has a
21 protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025,
22 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
23 (N.D. Cal. May 6, 2022) (‘[T]his Court joins other courts of this district facing facts similar to
24 the present case and finds Petitioner raised serious questions going to the merits of his claim
25 that due process requires a hearing before an IJ prior to re-detention.’); *Jorge M. F. v.*
26 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v.*
27 *Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v.*
Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (‘Just as people on preparole, parole, and
probation status have a liberty interest, so too does [a noncitizen released from immigration
detention] have a liberty interest in remaining out of custody on bond.’)); *see also Guillermo*
M.R. v. Kaiser, 791 F. Supp. 1021, 1031-32 (N.D. Cal. July 17, 2025) (“[E]ven if immigration

1 detainees must wait months before a periodic re-review of their detention, those already
2 released on immigration bond... after a neutral adjudicator has performed an individualized
3 assessment and found no flight risk or danger...possess an interest in their continued liberty,
4 which grows over time, and a due process right to a hearing before being re-detained.”)
5 Courts in this District have consistently held that noncitizens who have been released from
6 immigration custody pending removal proceedings have a constitutionally protected liberty
7 interest in remaining out of immigration custody. *Lesic v. LaRose*, No. 3:25-cv-02746-LL-
8 BJW, 2025 WL 3158675, at *2 (S.D. Cal. Nov. 12, 2025) (“[O]nce an IJ grants a petitioner’s
9 bond for release, it is a constitutionally protected liberty interest, which DHS cannot
10 unilaterally cancel absent a material, individualized change in circumstance.”) Thus, under
11 the first *Mathews* factor, Mr. Solis has a protected liberty interest in remaining out of
12 immigration custody after his release on bond in 2017. Indeed, he has accrued a substantial
13 liberty interest after having been freely and openly living, working, and caring for his family
14 for nine years since his release on bond in 2017.

15 80. Second, “without notice and a pre-deprivation hearing, the risk of erroneous deprivation
16 is high.” *Espinoza Palacios v. Hermosillo*, No. 2:26-cv-491-JNW, 2026 WL 686138, at *8
17 (W.D. Wash. Mar. 11, 2026). Indeed, a high risk of erroneous deprivation of this liberty
18 interest exists when the government fails to provide a pre-deprivation hearing to demonstrate
19 a material change in circumstances justifying re-detention. *Pinchi*, 792 F. Supp. 3d at 1035.
20 When a noncitizen “was previously released following a determination that he posed no flight
21 risk or danger to the community, and absent any new evidence showing a material change in
22 circumstances, the risk of erroneous detention without a hearing is substantial.” *Alegria*
23 *Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025).
24 The requirement of an individualized determination is even stronger in cases of re-detention
25 because, when DHS released the noncitizen in the past, that prior “[r]elease reflects a
26 determination by the government that the noncitizen is not a danger to the community or a
27 flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom.*
Saravia for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018). *See also* 8 C.F.R. § 236.1(c)(8)
(authorizing release of noncitizens under § 1226(a) if they demonstrate to the satisfaction of
the officer that their release “would not pose a danger to property or persons,” and that they
are “likely to appear for any future proceeding”). “To be lawful” their re-detention “must be

1 based on evidence that the circumstances relevant to that original release decision have
2 changed.” *Saravia* 280 F. Supp at 1196; *see also Sanchez*, 2025 WL 2770629 at *3 (“To
3 satisfy due process, those changed circumstances must represent individualized legal
4 justification for detention.” (internal citation omitted)).

5 81. Mr. Solis did not receive notice or a pre-detention hearing before his re-arrest and re-
6 detention. On the contrary, he was hunted down by ICE agents early one morning while
7 driving to work and subjected to warrantless arrest. A “post-deprivation hearing cannot serve
8 as an adequate procedural safeguard because [it occurs] after the fact and [thus] cannot
9 prevent an erroneous deprivation of liberty.” *E.A. T.-B.* F. Supp. 3d at 1324. This second
10 *Mathews* factor therefore weighs in Mr. Solis’ favor

11 82. Third, “the Government’s interest in re-detaining non-citizens previously released
12 without a hearing is minimal: any administrative financial burdens in providing Petitioner a
13 hearing are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.”
14 *Tesara*, 2025 WL 3288295, at *6, (internal quotation marks omitted), citing *Ortega v. Bonnar*,
15 415 F. Supp. 3d at 970 (“If the government wishes to re-arrest Ortega at any point, it has the
16 power to take steps toward doing so; but its interest in doing so without a hearing is low.”).

17 83. When no evidence of changed circumstances in the record justifies re-detention, the
18 government’s interest in re-detention is low. *Chancely Fanfan, et al. v. Noem*, No. 25-cv-3291,
19 2025 WL 3563739, at *3 (S.D. Cal. Dec. 12, 2025) (citing *Doe v. Chestnut*, No. 1:25-cv-
20 01372-CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26, 2025) (further citations
21 omitted)). Moreover, to the extent that Respondents seek to re-detain a noncitizen such as Mr.
22 Solis “to meet an administrative quota or because the government has not yet established
23 constitutionally required pre-detention procedures,” or because providing pre-deprivation
24 procedures would be “fiscally or administratively onerous,” those excuses are not legitimate
25 government interests that outweigh a Petitioner’s liberty interest. *Pinchi*, 792 F. Supp. 3d at
26 1036. The high cost of detaining noncitizens likely exceeds the cost of providing a pre-
27 detention hearing. *Id.*

84. In summary, the three *Mathews* factors favor Mr. Solis. Mr. Solis’ re-detention without a
pre-deprivation hearing to determine whether material changes in his circumstances justify his
re-detention violates his procedural Due Process rights. The appropriate remedy is to order the
Petitioner’s immediate release from Respondents’ custody and a return to the status quo ante.

85. In the alternative, if the Court deems it appropriate to order a bond hearing in lieu of immediate release as requested, Petitioner asks that the burden of proof be placed on the Department to prove that he is a flight risk or a danger to the community by clear and convincing evidence. *See e.g., Torres Barahona v. Semaia*, 2026 WL 1465141, *2 (C.D. Ca. May 22, 2026) (unpub) (“Moreover, consistent with the form of relief that other detainees have been receiving under *Maldonado Bautista* when enforcing the judgment of that case through individual habeas petitions, the government should bear the burden at a discretionary detention hearing before an immigration judge to prove by clear and convincing evidence whether Petitioner poses a flight risk or danger to the public.”) (also collecting cases); *Belto Fuentes v. Warden et al.*, No. 1:26-CV-03886-DJC-CKD, 2026 WL 1637821, at *1 (E.D. Cal. June 5, 2026) (“The Government shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or risk of flight.”); *Singh v. Andrews, et al.*, No. 1:26-CV-04140-DJC-CSK, 2026 WL 1603740, at *1 (E.D. Cal. June 4, 2026) (same); *Benito v. Warden, et al.*, No. 1:26-CV-04127-MWJS, 2026 WL 1603888, at *2 (E.D. Cal. June 3, 2026) (same).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

- a. Order that Petitioner shall not be transferred outside of the Southern District of California while this petition is pending;
- b. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;
- c. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner from their custody immediately to the status quo ante, with no ATD monitoring by DHS;

- d. In the alternative, conduct an immediate bonding hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear or convincing evidence;
- e. Order that prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for re-detention and a hearing before an immigration judge to determine whether detention is warranted. Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing;
- f. Declare that Petitioner's detention is in violation of statute and regulation;
- g. Declare that Petitioner's detention violates the Fourth Amendment;
- h. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- j. Grant any other further relief this Court deems just and proper.

DATED: June 23, 2026

s/ Jan Joseph Bejar
Jan Joseph Bejar, Esq.
For: JAN JOSEPH BEJAR,
A Professional Law Corp.

Attorneys for Petitioner

VERIFICATION

I, Jan Joseph Bejar, declare as follows:

I am an attorney admitted to practice law in the State of California.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 23, 2026.

s/ Jan Joseph Bejar
JAN JOSEPH BEJAR
FOR: JAN JOSEPH BEJAR,
A PROFESSIONAL LAW CORP.

Attorney for Petitioner