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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Jimmy LOPEZ LOPEZ,

12 Petitioner,

13 v.

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

28 Respondents.

Case No. 26-cv-03768-JAO-SBC

**Amended Petition for Writ of
Habeas Corpus**

I. Introduction

On November 26, 2020, ICE detained Petitioner almost immediately upon her entry into the United States. Shortly thereafter, he was released on conditional parole, pending removal proceedings. Thereafter, on June 4, 2026, he was apprehended by immigration authorities as a passenger in his friend's vehicle. He was not provided a reason for his detention. A Notice to Appear was issued on June 4 2026.

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

II. Statement of Facts

Jimmy Lopez Lopez is a native and citizen of Guatemala who entered the United States on or about November 26 2020. He was detained for 2 days and then released on her own recognizance. He was issued a Notice to Appear on June 4, 2026. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. On June 4 2026, the vehicle in which he was a passenger was pulled over by ICE officials. Officials detained him without cause or explanation.

III. Legal Argument

I. Mr. Lopez Lopez's detention is a violation of the Due Process Clause.

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

An individual released from immigration custody has a constitutionally

1 protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,
 2 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also*
 3 *Sanchez v. LaRose*, 25-cv-2396; 2025 WL 2770629, at * 3 (S.D. Cal.). Thus,
 4 Petitioner has a fundamental interest in liberty and being free from official
 5 restraint. “Even when ICE has the initial discretion to detain or release a
 6 noncitizen pending removal proceedings, after that individual is released from
 7 custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi*
 8 *v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted).
 9 That liberty interest applies to individuals who are paroled into the United States
 10 and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-
 11 01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia*
 12 *Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal.
 13 Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at
 14 *13 (D. Or. July 9, 2025).

15 To determine which procedures are constitutionally sufficient to satisfy the
 16 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v.*
 17 *Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (1) “the private
 18 interest that will be affected by the official action”; (2) “the risk of an erroneous
 19 deprivation of such interest through the procedures used, and the probable value,
 20 if any, of additional or substitute procedural safeguards”; and (3) “the
 21 Government's interest, including the function involved and the fiscal and
 22 administrative burdens that the additional or substitute procedural requirement
 23 would entail.” *Id.*

24 All three factors support a finding that the Mr. Lopez Lopez’s re-detention
 25 without reasoning or an opportunity to be heard denied him of his due process
 26 rights. First, Mr. Lopez Lopez has a significant liberty interest in remaining out of
 27 custody. For nearly 6 years, he was living and working in California. He had
 28 established a community and network in California. “Freedom from

1 imprisonment—from government custody, detention, or other forms of physical
2 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”
3 *Zadvydas*, 533 U.S. at 690. She also has an interest in remaining with the
4 community. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“Subject to the
5 conditions of his parole, he can be gainfully employed and is free to be with
6 family and friends and to form the other enduring attachments of normal life.”).
7 Petitioner was living in the community pursuant to DHS’s own exercise of
8 discretion to release Petitioner and was then re-detained.

9 Second, the risk of an erroneous deprivation of such interest is high as Mr.
10 Lopez Lopez was re-detained without providing him a reason for such re-
11 detention or giving him an opportunity to be heard. Petitioner was released for the
12 specific purpose of pursuing removal proceedings outside detention. When he was
13 released, the government made a finding that he did not pose a danger to the
14 community and was not a flight risk. See *Saravia v. Sessions*, 280 F. Supp. 3d
15 1168, 1760 (N.D. Cal. 2017) (“Release reflects a determination by the
16 government that the noncitizen is not a danger to the community or a flight
17 risk.”). “Once a noncitizen has been released, the law prohibits federal agents
18 from rearresting her merely because she is subject to removal proceedings.” *Id.*
19 “Rather, the federal agents must be able to present evidence of materially changed
20 circumstances—namely, evidence that the noncitizen is in fact dangerous or has
21 become a flight risk.” *Id.*

22 Petitioner’s release from custody was tied to an identified governmental
23 purpose. There has been no indication that any changed circumstances justify re-
24 detention. Here, the central factual question, whether the Petitioner’s
25 circumstances have changed to justify re-detention, was readily ascertainable, yet
26 Respondents allegedly deprived Petitioner of liberty without any meaningful pre-
27 deprivation procedure and without any prompt opportunity to challenge that
28 determination. Here, ‘the petitioner has not received any bond or custody

1 hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither
 2 the government nor [Petitioner] has had an opportunity to determine whether there
 3 is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921 at *5 (cleaned
 4 up).

5 Third, the Government’s interest in detaining Mr. Lopez Lopez without
 6 proper notice and reasoning or a hearing is “low.” *Id*; *see also Alvarenga Matute*
 7 *v. Wofford*, No. 1:25-cv-01206-KES-SKO (HC), 2025 WL 2817795, at *6 (E.D.
 8 Cal. Oct. 3, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov.
 9 22, 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has
 10 the power to take steps toward doing so; but its interest in doing so without a
 11 hearing is low.”). Respondents do have legitimate interests in enforcing the
 12 immigration laws and efficiently administering custody determinations. But
 13 requiring basic process before re-detaining an individual that was previously
 14 released on her own recognizance, would impose only modest administrative
 15 burdens.

16 Thus, Mr. Lopez Lopez’s detention is unlawful. *See, e.g., Alegria Palma v.*
 17 *Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
 18 2025) (granting a TRO based on a procedural due process challenge to a
 19 revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025
 20 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from
 21 custody to the conditions of her preexisting parole on due process grounds).

22 **II. This Court has jurisdiction to consider Mr. Lopez Lopez’s claim.**

23 In cases raising similar claims, the government has argued that this Court
 24 lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and
 25 1252(b)(9). This argument fails here.

26 Courts have jurisdiction to “decide a purely legal question that does not
 27 challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United*
 28 *States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*,

the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

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

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

CLAIM AND PRAYER FOR RELIEF

For the reasons just given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner.

Accordingly, Petitioner respectfully requests that this Court:

- 1 1. Order Respondents to immediately release Petitioner from custody under
2 the same previous conditions;
- 3 2. Alternatively, issue a writ of habeas corpus requiring Respondents to
4 release Petitioner unless they provide a bond hearing within seven days
5 where the Government bears the burden of establish risk of fight and
6 dangerousness;
- 7 3. Order that Petitioner shall not be transferred outside the Southern District
8 of California.
- 9 4. Order that Respondents shall not re-detain or continue to detain Petitioner
10 absent a material change in circumstances;
- 11 5. Order that Respondents shall provide Petitioner's counsel with advance
12 written notice of their position in advance of any bond hearing; and
- 13 6. Order all other relief that the Court deems just and proper.
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Respectfully submitted,

Dated: July 6, 2026

s/ Tina Malek

Tina Malek

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