

1 Neil D. Van Dalsem (Okla. Bar Assn. No. 16326)
2 Office of the Federal Public Defender
3 112 North 7th Street
4 Muskogee, OK 74401
5 Telephone: (918) 687-2430
6 E-mail: neil_van_dalsem@fd.org
7 Attorney for Petitioner

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**AXEL SANTIAGO MORENO
TOVAR,**

Petitioner,

v.

TODD BLANCHE, in his official
capacity as Acting Attorney General of
the United States,

DAVID J. VENTURELLA, in his
official capacity as Acting Director of
U.S. Immigration and Customs
Enforcement,

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

ORESTES CRUZ and **POLLY
KAISER**, in their official capacities as
Field Office Directors for ICE
Enforcement and Removal Operations,
San Francisco, California,

CHRISTOPHER CHESTNUT, in his
official capacity as Facility
Administrator of California City
Detention Facility.

Respondents.

Case No. 1:26-CV-5066-EJD

**VERIFIED AMENDED PETITION
FOR A WRIT OF HABEAS CORPUS**

INTRODUCTION

The Petitioner, Axel Santiago Moreno Tovar, through undersigned counsel, respectfully offers this Verified Amended Petition to supplement the original petition filed pro se by Petitioner. *See* Fed. R. Civ. P. 15 (a) (authorizing amendment as a matter of course within 21 days of filing). Petitioner challenges his immigration detention because he has been deprived of procedural and substantive due process in violation of the Fifth Amendment to the United States Constitution. He requests that the Court issue a writ requiring his immediate release from custody and prohibiting the government from re-detaining him absent a substantial change in circumstances that provides new grounds for detention and requiring a pre-detention hearing.

I. The Parties

Petitioner, Alex Santiago Moreno Tovar, is a citizen of Venezuela. Before his current detention, he lived near Miami, Florida. He is 35 years old and has been present in the United States for over eight years.

Respondent Todd Blanche is the Acting Attorney General of the United States. Respondent Blanche is the legal custodian of Petitioner and is sued in his official capacity.

Respondent David J. Venturella is the Senior Official Performing the Duties of the Director (Acting Director) of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity.

Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (“DHS”) and is sued in his official capacity.

Respondents Orestes Cruz and Polly Kaiser are Field Office Directors for ICE Enforcement and Removal Operations (“ERO”) in San Francisco, California, and are sued in their official capacities. As the Field Office Directors, they are Petitioner’s immediate custodians, responsible for his detention at California City Detention Facility and have immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens.

Respondent Christopher Chestnut is the facility administrator (and de facto

warden) of the California City Detention Facility in California City, California and is sued in his official capacity. He oversees operations at California City Detention Facility where Petitioner is detained and is the legal custodian of Petitioner.

II. Jurisdiction

This case arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act (“APA”), 5 U.S.C. §§ 500–596, 701–706.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), 28 U.S.C. § 1651 (All Writs Act), and this Court’s inherent equitable powers. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Due Process Clause of the Fifth Amendment; and the Court’s inherent equitable powers.

In the context of a habeas petition, the administrative exhaustion requirement is prudential, not mandatory or jurisdictional. *See Y.S.G. v. Andrews*, 2025 WL 2979309, at *7 (E.D. Cal. Oct. 22, 2025) (“The federal habeas statute under which this case was filed does not require exhaustion of administrative remedies.”). As such, the exhaustion requirement may be waived “where 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.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *Sec. & Exch. Comm’n v. C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)) (internal quotation marks omitted); *Villa v. Mullin*, No. 5:26-cv-01690-JDE, 2026 WL 1583941, at *4 (C.D. Cal. June 2, 2026) (waiving exhaustion and reviewing an immigration court bond denial for legal error); *Rodriguez Cabrera v. Mattos*, 808 F. Supp. 3d 1159, 1176 (D. Nev. 2025) (“[R]equiring Petitioner to be subjected to unlawful detention pending the BIA’s decision would cause irreparable

1 harm,”); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1095 (E.D. Cal. 2025) (same). Pursuit of
2 administrative remedies would cause irreparable harm and extend Petitioner’s detention,
3 the BIA cannot address this claim, and the proceedings would be void, as all detention
4 proceedings against Petitioner have been unlawful. *Hasratyan v. Bondi*, No. 5:26-cv-
5 00210-MCS-ADS, 2026 WL 288909, at *4 (C.D. Cal. Feb. 2, 2026). Petitioner will
6 “suffer irreparable harm if unable to secure immediate judicial consideration” of his
7 claim. *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

8 **III. Venue**

9 Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
10 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this
11 district. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500
12 (1973). Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because
13 Respondents are employees, officers, and agencies of the United States, and because a
14 substantial part of the events or omissions giving rise to the claims occurred in the Central
15 District of California.

16 **IV. Factual Background for All Claims**

17 Petitioner is a citizen of Venezuela, and that is where he lived. The totalitarian
18 government in Venezuela persecuted Petitioner.

19 On December 31, 2017, Petitioner entered the United States lawfully with a valid
20 B-2 visitor visa.

21 Petitioner was arrested and placed in immigration custody. On January 9, 2019, he
22 applied for asylum due to an expectation of persecution should he return to Venezuela.

23 On February 7, 2019, Immigration Judge John Opaciuch held a bond hearing in
24 federal immigration court in Florida, found that Petitioner did not pose a flight risk or
25 danger to the community, and ordered that he be released on bond. (February 7, 2019
26 Order, Exhibit A). Petitioner’s release was conditioned on him not being arrested in the
27 future. (*Id.*).

28 In the following years, the government granted Petitioner Temporary Protected

1 Status pursuant to 8 U.S.C. § 1254a, which authorizes lawful residence, work
2 authorization, protection from removal, and protection from immigration detention. *See*,
3 *e.g.*, *Id.* § 1254a(d)(4) (“An alien provided temporary protected status under this section
4 *shall not be detained* by the Attorney General on the basis of the alien’s immigration
5 status in the United States.”) (emphasis added). That protection remains available even if
6 the TPS holder has a final removal order or lacks other immigration status because the
7 government “shall not remove the [noncitizen] from the United States during the period in
8 which such [TPS] status is in effect.” *Id.* § 1254a(a)(1)(A). Further, once granted, an
9 individual’s Temporary Protected Status cannot be revoked, except when the individual
10 becomes ineligible or fails to renew the status. *Id.* § 1254a(c)(3).

11 In 2021, and again in 2023, then-Department of Homeland Security (DHS)
12 Secretary Alejandro Mayorkas designated Venezuela for TPS pursuant to the authority in
13 8 U.S.C. § 1254a. He extended those designations on January 17, 2025. *See* Extension of
14 the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5,961
15 (Jan. 17, 2025).

16 On February 3, 2025, then Homeland Security director Kristi Noem vacated DHS’s
17 January 17, 2025, extension of TPS for citizens of Venezuela who had fled to the United
18 States. *See* Vacatur of 2025 Temporary Protected Status Decision for Venezuela, 90 Fed.
19 Reg. 8,805 (Feb. 3, 2025).

20 Petitioner has resided in the United States for over eight years. He has been a hard
21 worker who has maintained lawful employment and developed substantial community
22 ties. (*See* Letters of Support, Exhibit B). He has never failed to appear in court, and he
23 would comply with a lawful removal order. He has a broad system of support, and he
24 would have a place to live if he were released. He poses no danger to the community.

25 As of April 21, 2026, Petitioner was living in Oakland Park, Florida with his long-
26 term partner, Vanessa Ramirez Jaramillo. They had a good relationship. However, on
27 that date, they had a loud verbal argument. At no point did the argument become
28 physical. However, the police were called, apparently by a neighbor who overheard the

1 argument. Ms. Ramirez Jaramillo told the police that she had not been harmed and that no
2 assault had occurred. Nonetheless, Officers arrested Petitioner and took him into Florida
3 state custody on a domestic assault charge. Ms. Ramirez Jaramillo then informed the
4 state's attorney that, "there was a verbal disagreement, but at no point was she physically
5 harmed or did I feel threatened or in danger."

6 On or about April 23, 2026, Petitioner then was transferred to ICE custody.
7 Prior to that detention, ICE did not make a pre-arrest determination that Petitioner posed a
8 flight risk or danger to the community.

9 On May 2, 2026, the government filed a submission of evidence referencing
10 Petitioner's arrest. (Exhibit C).

11 On or about May 15, 2026, the State of Florida declined to prosecute the domestic
12 assault case for lack of evidence and released Petitioner from any bond. (Exhibits D and
13 E).

14 On June 1, 2026, Petitioner filed a Motion for Bond Determination in the
15 immigration court, seeking release from ICE detention on bond. (Exhibit F).

16 On June 9, 2026, Immigration Judge Jorge Pereira ("the IJ") held a bond hearing at
17 the Krome Immigration Court in Miami, Florida. (*See generally* Bond Hearing
18 Transcript, Exhibit G)¹. Respondents bore the burden of demonstrating by clear and
19 convincing evidence that there was a change in circumstance between February 7, 2019
20 (when Petitioner was paroled) and his re-detention by the government in April 2026 that
21 demonstrated Petitioner now posed a flight risk or danger to the community.

22 Petitioner proffered that Ms. Ramirez Jaramillo, who was present at the bond
23 hearing, denied that there was any basis for Petitioner's arrest because no assault
24

25 ¹ Undersigned counsel created a transcript of the bond hearing as an aid to the Court using
26 the Axon computer program, and the transcript has been checked against the recording for
27 accuracy. The date indicated on this transcript, July 20, 2026, is the date the transcript
28 was created. The hearing date was June 9, 2026. A recording of the bond hearing has
also been provided to the Court as Dkt. # 10. Citations are the timestamps as indicated in
the transcript.

1 occurred. (*Id.* at 2:53-4:07).

2 The IJ did not find that the government proved Petitioner was a flight risk. (*See,*
3 *id.*, generally).

4 The IJ did not find that the government proved Petitioner presented a danger to the
5 community. (*See, id.*, generally).

6 The IJ did not find that, contrary to Ms. Ramirez Jaramillo's assertions, Petitioner
7 had assaulted her. (*Id.*).

8 Instead, the IJ's analysis was that: (1) Immigration Judge John Opaciuch's
9 February 7, 2019 Order prohibited Petitioner from being arrested: (2) Petitioner had been
10 arrested; so (3) the immigration judge lacked discretion to release Petitioner on bond.
11 (*Id.*, 4:35-6:28).

12 The IJ asserted that he had "no choice" but to deny a bond. (*Id.* at 4:35-4:58). The
13 IJ believed himself to be "bound by the court's prior order" (*Id.* at 3:37-3:50). The IJ
14 explained the denial of bond to Petitioner, asserting that Judge Opaciuch "gave you
15 conditions . . . [a]nd part of those conditions were that you not get arrested for anything....
16 Unfortunately, you were arrested." (*Id.* at 5:00 to 5:50). The IJ asserted that "you did
17 violate the condition, so there's nothing I can do." (*Id.* at 6:06-6:09). The IJ told
18 Petitioner he was "stuck here." (*Id.* at 6:28-6:32).

19 The IJ did not find that Petitioner had committed a crime, posed a danger to the
20 community, or presented a flight risk.

21 The IJ entered an order denying bond. (Exhibit H).

22 After the bond hearing, ICE transferred Petitioner to multiple detention facilities,
23 and he ultimately arrived at the California City Detention Facility, in the Eastern District
24 of California, where he remains.

25 Petitioner is being detained despite his lawful entry into the United States, no
26 criminal convictions, no indication he is a flight risk or danger, the availability of less
27 restrictive alternatives to his detention, and in the absence of a finding that he will flee or
28 endanger society.

Petitioner is experiencing extreme stress and mental anguish related to his unlawful detention, including emotional distress from not being able to continue to provide financial and emotional support to Ms. Ramirez Jaramillo and his family. Ms. Ramirez Jaramillo lost their apartment because Ms. Ramirez Jaramillo could not afford it. She had to abandon part of their personal possessions. During Petitioner's detention, his mother developed a medical condition requiring her hospitalization.

V. This Court has authority to grant the requested writ.

8 U.S.C. § 1226(e) does not “preclude habeas jurisdiction over constitutional claims or questions of law.” *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (quotation marks and citations omitted). A habeas claim that the bond process in an immigration case was constitutionally flawed “is cognizable in federal court on habeas because [it] fit[s] comfortably within the scope of [28 U.S.C.] § 2241.” *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011). “[A] federal district court has habeas jurisdiction under 28 U.S.C. § 2241 to review bond hearing determinations for constitutional claims and legal error.” *Id.* at 1200 (ordering release absent a finding by clear and convincing evidence that the alien was dangerous or a flight risk).

The IJ's factual findings were: (1) Petitioner's original release bond provided that Petitioner was not to be rearrested; and (2) Petitioner was rearrested. Petitioner does not challenge those factual findings.

VI. Respondents are detaining Petitioner in violation of his right to procedural due process because the IJ denied bond without requiring the government to prove by clear and convincing evidence that Petitioner is a flight risk or poses a danger to his community.

The allegations in the above paragraphs are realleged and incorporated herein.

“[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 (2001). Petitioner's Due Process rights have been violated, and his continued detention is unlawful.

To state a claim for a violation of procedural due process rights, a petitioner must

1 establish (1) a protected property or liberty interest, and (2) a denial of adequate
2 procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).
3 The Court must also consider “the Government’s interest, including the function involved
4 and the fiscal and administrative burdens that the additional or substitute procedural
5 requirement would entail.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir.
6 2022) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

7 Petitioner’s interest in not being detained is “the most elemental of liberty
8 interests[.]” *Acosta-Ginori v. Bondi*, No. 2:25-CV-02649-RAJ, 2026 WL 221509, at *4
9 (W.D. Wash. Jan. 28, 2026) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004))
10 (granting petition and ordering immediate release with no re-detention “unless and until
11 providing at least 10 days’ notice and an opportunity to be heard before an immigration
12 judge to determine whether re-detention is appropriate”) *Id.* at *7.

13 Where prolonged detention of an immigrant is permissible by statute, “due process
14 requires “adequate procedural protections” to ensure that the government’s asserted
15 justification for physical confinement “outweighs the individual’s constitutionally
16 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. In the
17 immigration context, the Supreme Court has recognized only two valid purposes for civil
18 detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*

19 Consistent with those controlling interests, at an immigration bond hearing, “the
20 government must prove by clear and convincing evidence that an alien is a flight risk or a
21 danger to the community to justify denial of bond.” *Singh*, 638 F.3d at 1203; *see also*
22 *Martinez v. Clark*, 124 F.4th 775, 784–86 (9th Cir. 2024) (applying clear and convincing
23 standard to bond hearing ordered pursuant to due process and citing to *Singh*); *De La*
24 *Garza v. Albarran*, No. 25-CV-10305-HSG, 2025 WL 3707049, at *2 (N.D. Cal. Dec. 22,
25 2025). The clear and convincing evidence standard requires “an abiding conviction that
26 the truth of [the] factual contentions at issue is highly probable.” *Mondaca-Vega v. Lynch*,
27 808 F.3d 413, 422 (9th Cir. 2015) (en banc) (citation modified). If the government fails to
28 meet its burden, then bond or conditional parole must be granted. *See Gomes v. Hyde*, No.

1 1:25-cv-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025); *Bermeo Sicha v.*
2 *Bernal*, No. 1:25-cv-00418-SDN, 2025 WL 2494530, at *4 (D. Me. Aug. 29, 2025).

3 The lack of judicial independence within the immigration court system makes it
4 crucial for this Court to assure compliance with Petitioner's constitutional right to due
5 process. In making a bond determination, immigration judges must sufficiently explain
6 their reasoning to permit appellate or judicial review of their decision. *Mayancela*
7 *Mayancela v. FCI Berlin, Warden*, No. 25-cv-348-LM-TSM, 2025 WL 3215638, at *6
8 (D.N.H. Nov. 18, 2025) (citing *Barnica-Lopez v. Garland*, 59 F.4th 520, 530 (1st Cir.
9 2023)). They must give "reasoned consideration to the evidence as a whole, [make]
10 supportable findings, and adequately explain[] [their] reasoning." *Id.* (quotations
11 omitted).

12 To determine whether a noncitizen is a danger to the community or a risk of flight,
13 an immigration judge must weigh nine factors under applicable precedent:

- 14 (1) whether the alien has a fixed address in the United States;
15 (2) the alien's length of residence in the United States; (3) the
16 alien's family ties in the United States, and whether they may
17 entitle the alien to reside permanently in the United States in the
18 future; (4) the alien's employment history; (5) the alien's record
19 of appearance in court; (6) the alien's criminal record, including
20 the extensiveness of criminal activity, the recency of such
21 activity, and the seriousness of the offenses; (7) the alien's
22 history of immigration violations; (8) any attempts by the alien
23 to flee prosecution or otherwise escape from authorities; and (9)
24 the alien's manner of entry to the United States.

25 *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also Singh*, 638 F.3d at 1206
26 (applying *Matter of Guerra* to § 1226(a)). At the June 9, 2026 bond hearing, the IJ did
27 not address or explain any of those factors.

28 At the bond hearing, the IJ violated Petitioner's right to due process because he did

1 not require the government to prove by clear and convincing evidence that Respondent
2 posed a danger to the community or a risk of failing to appear. The government did not
3 present any evidence except that Petitioner had been arrested and that the charges were
4 dismissed. The IJ did not find – based on clear and convincing evidence, or otherwise –
5 that Petitioner was a flight risk or posed a danger to the community.

6 An immigration judge abuses his or her discretion and violates due process by
7 failing to apply the correct burden of proof. *See e.g., Mendoza v. Noem*, No. 25-CV-3227,
8 2026 WL 923311, at *4 (C.D. Cal. Apr. 1, 2026) (“The bond hearing Petitioner received
9 ... failed to comport with due process because ‘the IJ did not hold Respondents to a clear
10 and convincing burden of showing that Petitioner was a flight risk.’ ... Such a failure to
11 apply the correct legal standard constitutes an abuse of discretion by the IJ.” (quoting
12 *Melchor-Melchor v. Noem*, No. 26-CV-766, 2026 WL 760058, at *1 (C.D. Cal. Mar. 16,
13 2026))). Here, the IJ completely failed to hold the government to its burden and did not
14 apply the controlling standard governing Petitioner’s release *at all*.

15 The IJ also violated Petitioner’s right to due process by ruling that the IJ lacked
16 discretion to grant bond and refusing to even consider the controlling facts and law. The
17 IJ ruled that Judge Opaciuch’s February 7, 2019, Order required Petitioner be held in
18 custody without bond if he were arrested. The IJ thus ruled that he “had no choice” but to
19 deny bond. When a judge erroneously decides that he lacks the authority to rule in favor a
20 party, that amounts to a clear error of law and an abuse of discretion. “A district court
21 necessarily abuses its discretion ... if it makes a legal error.” *United States v. Holden*, 908
22 F.3d 395, 403 (9th Cir. 2018); *Central Valley Typographical Union, No. 46 v. McClatchy*
23 *Newspapers*, 762 F.2d 741, 749 (9th Cir. 1985)(“[F]ailure to exercise its discretion... [is]
24 an abuse of that discretion.”).

25 The IJ acted unreasonably, committed clear legal error, and abused its discretion to
26 the extent the IJ treated evidence of an arrest as the factual basis to deny bond. “The mere
27 fact that a [person] has been arrested has very little, if any, probative value in showing that
28 he has engaged in any misconduct.” *Schware v. Bd. of Bar Exam. of State of N.M.*, 353

1 U.S. 232, 241 (1957). The IJ could not, consistent with due process, assume facts about
2 underlying conduct based solely on the fact of the arrest.

3 Even if the IJ had found Petitioner was either a flight risk or danger (and the IJ did
4 not make those findings), such findings are subject to review by habeas. The question of
5 whether a petitioner poses a flight risk is a mixed question of law that is reviewable in a
6 habeas proceeding. *Martinez*, 124 F.4th at 779-80, 783; *Aslan v. Semaia*, 2026 WL
7 1722902, at *5 (C.D. Cal. June 11, 2026). Any finding that Petitioner was a flight risk or
8 presented a danger to the community necessarily involved an abuse of discretion. There
9 was no evidence Petitioner was a flight risk or a danger. The evidence only established
10 the bald fact of Petitioner's arrest, and the supposed victim denied that Petitioner
11 committed the underlying "offense." The supposed victim informed the IJ that the arrest
12 lacked a factual basis. Further, the government acknowledged that the underlying case had
13 been dismissed.

14 The IJ also violated Petitioner's right to due process by failing to consider
15 alternatives to detention. "The government has no legitimate interest in detaining
16 individuals who have been determined not to be a danger to the community and whose
17 appearance at future immigration proceedings can be reasonably ensured by a lesser bond
18 or alternative conditions." *Hernandez*, 872 F.3d at 994. "[D]ue process requires the IJ to
19 affirmatively inquire into an individual's financial ability to post bond and suitability for
20 release on alternative conditions. . . Here, the IJ did not inquire or consider whether
21 Petitioner 'may be released on alternative conditions of release, alone or in combination
22 with a lower bond, that are sufficient to mitigate flight risk.'" *Aslan*, 2026 WL 1722902,
23 at *7 (citation omitted).

24 **VII. Respondents denied Petitioner procedural due process by detaining him**
25 **without holding a pre-arrest hearing establishing he was a flight risk or**
26 **danger to the community.**

27 The allegations in the above paragraphs are realleged and incorporated herein.
28 Procedural due process requires notice and an opportunity to be heard. *Mathews*, 424 U.S.

1 at 333–34.

2 Generally, “the Constitution requires some kind of a hearing before the State
3 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).
4 This is so even in cases where that freedom is lawfully revocable. *See Hurd v. District of*
5 *Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152
6 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation
7 hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context);
8 *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context). After an initial
9 release from custody on conditions, even a person paroled following a conviction for a
10 criminal offense for which they may lawfully have remained incarcerated has a protected
11 liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme
12 Court recognized, “[t]he parolee has relied on at least an implicit promise that parole will
13 be revoked only if he fails to live up to the parole conditions.” *Id.* “By whatever name, the
14 liberty is valuable and must be seen as within the protection of the [Constitution].” *Id.*

15 When Petitioner was re-detained by ICE, he had been released on bond based on a
16 finding that he was not a flight risk or danger to the public, and he had a protected liberty
17 interest in his continuing release from custody. “[I]ndividuals who have been released
18 from custody, even where such release is conditional, have a liberty interest in their
19 continued liberty.” *Doe v. Becerra*, 787 F.Supp.3d 1083, 1093 (E.D. Cal. 2025) (citing
20 *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 150. “Given the civil context [of
21 immigration detention], [the] liberty interest [of noncitizens released from custody] is
22 arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
23 970 (N.D. Cal. 2019).

24 As an individual who was previously released by ICE, a petitioner has a higher
25 liberty interest than that of the normal ICE detainee. “A released individual had an
26 opportunity to form the enduring attachments of normal life and thus has a heightened
27 liberty interest.” *See Lecky v. Bondi*, No. CV25-02637-TLF, 2026 WL 266066, at *7
28 (W.D. Wash. Feb. 2, 2026). When Petitioner was placed in ICE detention, he had been

1 living in Florida for years and had substantial community ties.

2 A detainee's prior release to the community "reflected ICE's determination that
3 [he] was neither a flight risk nor a danger to the community." *Francisco Lorenzo v. Bondi*,
4 No. CV25-02660-LK, 2026 WL 237501, at *5 (W.D. Wash. Jan. 29, 2026). "Petitioner's
5 re-detention without any change in circumstances or procedure establishes a high risk of
6 erroneous deprivation of his protected liberty interest." *Todd v. Bondi*, No. CV25-02519-
7 JHC, 2026 WL 145725, at *4 (W.D. Wash. Jan. 20, 2026). That is particularly true where,
8 as here, the only purported change in condition was an arrest for an alleged offense that
9 the "victim" says never happened.

10 "[T]he Government's interest in re-detaining non-citizens previously released
11 without a hearing is low[.]" *Lecky*, 2026 WL 266066, at *8 (citation omitted). "While a
12 pre-detention process would impose some administrative burden, that burden is minimal
13 when weighed against the fundamental liberty interest at stake and the high risk of
14 erroneous deprivation. Providing effectively no pre-deprivation process, as ICE did here,
15 is constitutionally insufficient." *Id.*

16 Due process required that, to deprive Petitioner of that liberty interest, he should
17 have received notice and an opportunity to be heard prior to being taken into ICE custody
18 a second time. *See, e.g., Perez Bueno v. Janecka*, No. 5:25-CV-03376-CAS-BFM, 2026
19 WL 309934, at *4 (C.D. Cal. Feb. 5, 2026) (ordering that the petitioner be released from
20 immigration detention and that he not be re-detained without a pre-deprivation hearing);
21 *Mourey v. Bowen*, No. 5:25-CV-03262-WLH (DTB), 2026 WL 467567, at *6 (C.D. Cal.
22 Jan. 31, 2026), report and recommendation adopted, No. 5:25-CV-03262-WLH (DTB),
23 2026 WL 464788 (C.D. Cal. Feb. 17, 2026) ("If the Government seeks to re-detain
24 Petitioner, he must be provided some kind of hearing *before* the state deprives him of his
25 liberty. Further, such hearing must be before a neutral arbiter in which the Government
26 bears the burden of providing by clear and convincing evidence that Petitioner is a flight
27 risk or danger to the community.") (emphasis in original; internal quotation marks,
28 brackets, and citation omitted).

1 Internal documentation of Petitioner's re-arrest on April 23, 2026, makes no
2 mention of a prior determination of a valid basis for revocation on the basis that Petitioner
3 had become a flight risk or danger to his community.

4 Respondents violated Petitioner's right to procedural due process by failing to
5 provide him pre-detention hearing.

6 **VIII. Petitioner's ongoing detention violates his substantive due process right**
7 **not to be re-detained without cause.**

8 The allegations in the above paragraphs are realleged and incorporated herein.
9 "[S]ubstantive due process prevents the government from engaging in conduct that shocks
10 the conscience, or interferes with rights implicit in the concept of ordered liberty." *United*
11 *States v. Salerno*, 481 U.S. 739, 746 (1987) (internal citation omitted). "Freedom from
12 bodily restraint has always been at the core of the liberty protected by the Due Process
13 Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80,
14 (1992); *see also Zadvydas*, 533 U.S. at 696, (finding that a noncitizen has a liberty interest
15 "strong enough" to challenge "indefinite and potentially permanent" immigration
16 detention). Due Process protections extend to noncitizens facing detention, as "[i]n our
17 society liberty is the norm, and detention prior to trial or without trial is the carefully
18 limited exception." *Salerno*, 481 U.S. at 755.

19 "A due process violation occurs when detention becomes punitive rather than
20 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the
21 detention or the detention appears excessive in relation to its regulatory purpose." *United*
22 *States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. &*
23 *Customs Enf't.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects
24 against immigration detention that is not reasonably related to the legitimate purpose of
25 effectuating removal or protecting against danger and flight risk.").

26 The Supreme Court has recognized only two permissible non-punitive purposes for
27 immigration detention: ensuring a noncitizen's appearance at immigration proceedings
28 and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore*

1 *v. Kim*, 538 U.S. 510, 519–20, 527–28, 31 (2003). The regulatory purpose of immigration
2 detention is to hold a person who is a flight risk or a danger to the community. *In re*
3 *Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006), *abrogated on other grounds*, *Hernandez-Lara v.*
4 *Lyons*, 10 F.4th 19 (1st Cir. 2021). Regulations governing parole identify only those two
5 factors for consideration in the release decision. 8 C.F.R. § 236.1(c)(8).

6 Thus, if a re-arrest and detention is punitive or exceeds the justifications permitted
7 by regulation, it violates the individual’s substantive right to due process.

8 Here, there is no basis for concluding that Petitioner poses either a risk of failure
9 to appear for his removal hearing or a danger to the community. Indeed, the government
10 presented no evidence of those facts at the detention hearing.

11 **IX. Prayer for Relief.**

12 District courts in this circuit and across the country regularly grant detained
13 noncitizen petitioners release when the government fails to provide them with a hearing
14 consistent with the Due Process Clause. *See Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119
15 (S.D. Cal. 2008) (ordering petitioner’s release when “[t]he evidence before the IJ failed,
16 as a matter of law, to prove flight risk or danger pursuant to the Court’s order”); *Sales v.*
17 *Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017)
18 (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to
19 correctly apply clear and convincing standard). If the clear and convincing standard has
20 not been met, then release is the appropriate remedy following an IJ’s failure to conduct a
21 bond hearing that demonstrates that Petitioner is a flight risk or danger to others. *See*
22 *Melchor-Melchor v. Noem*, No. 5:26-cv-00766-SSS-BF, 2026 WL 760058, at *2 (C.D.
23 Cal. Mar. 16, 2026) (citing *Martinez* 124 F.4th at 786).

24 The federal habeas corpus statute “does not limit the relief that may be granted to
25 discharge of the applicant from physical custody.” *Carafas v. LaVallee*, 391 U.S. 234, 239
26 (1968). “Its mandate is broad with respect to the relief that may be granted.” *Id.* “It
27 provides that ‘[t]he court shall . . . dispose of the matter as law and justice require.’” *Id.*
28 (quoting 28 U.S.C. § 2243); *see also Brown v. Davenport*, 596 U.S. 118, 128 (2022)

1 (explaining that district courts have equitable discretion, “as law and justice require,” for
2 remedying unlawful detention in habeas proceedings).

3 Given the violation of Petitioner’s due process rights at the bond hearing, this
4 Court should find that “Petitioner’s release is necessary to return [his] to the status quo.”
5 *Nazarian v. Noem*, 2025 WL 3236209, at *7 (C.D. Cal. Nov. 3, 2025). The status quo is
6 “the last uncontested status which preceded the pending controversy.” *GoTo.com, Inc. v.*
7 *Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (internal quotation marks omitted).
8 The last uncontested status here is Petitioner’s release from custody. *See Nazarian*, 2025
9 WL 3236209, at *7 (“The last uncontested status in this case is Petitioner’s release on his
10 second OSUP before his current re-detention.”); *Hoac v. Becerra*, No. 2:25-CV-01740-
11 DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025). Accordingly, Petitioner’s
12 release from custody is the appropriate remedy. *See Ramos v. LaRose*, No. 6CV0812-LL-
13 VET, 2026 WL 931710, at *3 (S.D. Cal. Apr. 6, 2026) (“The proper remedy for the
14 unlawful detention is Petitioner’s immediate release subject only to the conditions of his
15 preexisting release.”); *see also Guillermo Alexander Escalante Vargas v. Fereti Semaia,*
16 *et al.*, No. 5:26-CV-01208-MCS-AJR, 2026 WL 1195989, at *4 (C.D. Cal. Mar. 23,
17 2026); *Coronado Serrano v. Blanche*, No. 2:26-CV-00684-GMN-BNW, 2026 WL
18 1048348, at *4 (D. Nev. Apr. 17, 2026).

19 Furthermore, there is a significant likelihood that Respondents would seek to again
20 re-detain Petitioner unlawfully. Respondents have a policy to round up as many
21 noncitizens as possible. *See, e.g.,* Jose Olivares, “Trump administration sets quota to arrest
22 3,000 people a day in anti-immigration agenda,” *The Guardian* (May 29, 2025),
23 [https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-](https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota)
24 [quota\[https://perma.cc/6P5L-NUDM\]](https://perma.cc/6P5L-NUDM). Due process also requires individualized notice and
25 a pre-deprivation hearing before Petitioner may be re-detained following his release. *See*
26 *Perez Bueno v. Janecka*, No. 5:25-CV-03376-CAS-BFM, 2026 WL 309934, at *4 (C.D.
27 Cal. Feb. 5, 2026) (ordering that the petitioner be released from immigration detention and
28 that he not be re-detained without a pre-deprivation hearing); *Mourey v. Bowen*, No. 5:25-

1 CV-03262-WLH (DTB), 2026 WL 467567, at *6 (C.D. Cal. Jan. 31, 2026), *report and*
2 *recommendation adopted*, No. 5:25-CV-03262-WLH (DTB), 2026 WL 464788 (C.D. Cal.
3 Feb. 17, 2026) (“If the Government seeks to re-detain Petitioner, he must be provided
4 some kind of hearing before the state deprives him of his liberty. Further, such hearing
5 must be before a neutral arbiter in which the Government bears the burden of providing
6 by clear and convincing evidence that Petitioner is a flight risk or danger to the
7 community.”) (internal quotation marks, brackets, and citation omitted).

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

- 10 1. Assume jurisdiction over this matter;
- 11 2. Issue a writ of habeas corpus ordering Respondents to immediately
12 release Petitioner from custody;
- 13 3. Declare that the government’s failure to provide Petitioner a pre-detention
14 hearing violated the Due Process Clause of the Fifth Amendment;
- 15 4. Declare that the conduct of the Bond Hearing violated the Due Process
16 Clause of the Fifth Amendment;
- 17 5. Declare that Petitioner is being detained in violation of his substantive right
18 to personal liberty;
- 19 6. Enjoin Respondents from re-arresting and re-detaining Petitioner in
20 violation of his constitutional rights and 8 U.S.C. § 1226 and specifically, without an
21 individualized pre-deprivation notice and hearing regarding the basis for his arrest at
22 which Respondents must prove, in accordance with 8 U.S.C. § 1226 and its implementing
23 regulations, based on a change in circumstances, by clear and convincing evidence that
24 Petitioner presents a flight risk or danger to others;
- 25 7. Enjoin Respondents from placing any monitoring devices, such as an ankle
26 monitor that he was not required to wear as a condition of his February 7, 2019 release, on
27 Petitioner’s person in violation of his constitutional rights without an individualized
28 notice of the basis for such device and a hearing before a neutral arbiter at which

1 Respondents must prove by clear and convincing evidence of a material change of
2 circumstances that Petitioner presents a flight risk or danger to others such that such
3 monitoring is necessary; and

4 Grant any other further relief as this Court deems just and proper.

5
6 Respectfully submitted,

7
8 OFFICE OF THE FEDERAL PUBLIC DEFENDER

9 Scott Graham, Federal Public Defender

10
11 By: s/Neil D. Van Dalsem

12 Neil D. Van Dalsem, Okla. Bar Assn. No. 16326

13 Assistant Federal Public Defender

14 112 North 7th Street

15 Muskogee, Oklahoma 74401

16 Telephone: (918) 687-2430

17 E-mail: neil_van_dalsem@fd.org

18
19 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**
20 **PURSUANT TO 28 U.S.C. § 2242**

21 I, Neil D. Van Dalsem, declare as follows:

22 I am an attorney, and I have been admitted to practice law in the State of Oklahoma
23 since 1994. I am employed as an Assistant Federal Public Defender and I act as the
24 Appellate Chief for the Office of the Federal Public Defender for the Eastern District of
25 Oklahoma. I am admitted to practice in all United States District Courts in Oklahoma and
26 Wyoming, the United States Court of Appeals for the Tenth Circuit, and the United States
27 Supreme Court. The Court approved me to act as counsel for Petitioner in this case.

28 I am providing the verification for this Amended Petition for two reasons. First, it
would be impractical for me to submit this Amended Petition for Petitioner's signature
because he is in custody in California and I am in Oklahoma. Doing so would delay this

1 proceeding and cause Petitioner additional harm. Second, many of the allegations of this
2 Amended Petition require legal knowledge that Petitioner does not possess.

3 To determine the accuracy of this Amended Petition, I have spoken by phone
4 with Petitioner, spoken by phone with Vanessa Ramirez Jaramillo, spoken by phone with
5 Juan C. Blanco (Petitioner's attorney in Immigration Court), reviewed documents relating
6 to Petitioner's Immigration Court proceedings, reviewed documents relating to Petitioner's
7 Florida arrest, listened to the recording of the June 9, 2026, bond hearing, read an affidavit
8 that Ms. Ramirez Jaramillo submitted to prosecutors in Florida, reviewed medical records
9 for treatment provided to Petitioner's mother, and reviewed miscellaneous other
10 documents, including but not limited to the attached Exhibits.

11 I inform the Court that Petitioner speaks basic conversational English, and basic
12 communication between Petitioner and counsel was feasible. My goal was to hold a
13 videocall with Petitioner and an Interpreter to review the details of this Amended Petition
14 with Petitioner. I scheduled such a call with the California City Detention Facility, using
15 that facility's formal process, for July 23, 2026. The interpreter and I appeared for that
16 call, but the Detention Facility did not bring Petitioner to join in the call. The Detention
17 Facility called me and advised that the facility's internet was not working but agreed to
18 reschedule the call for the morning of July 24, 2026. The facility then did not respond to a
19 request to set another call for July 24. Counsel notified counsel for the government,
20 Johnathan Yu that the Facility was not taking steps to allow an attorney-client videocall
21 with Petitioner. In response, Mr. Yu confirmed that he had communicated "with ICE"
22 regarding my concerns. Counsel scheduled another call with Petitioner for 8:00 a.m. on
23 July 31, 2026. Once again, the facility did not connect Petitioner for the call. I thus
24 inform the Court that Counsel has not been able to review this Amended Petition in detail
25 with Petitioner with the benefit of an interpreter, but that is only because the government
26 has prevented the call, either by nonfeasance or malfeasance, from happening.

27 Despite this omission, counsel believes all factual assertions contained in this
28 Amended Petition are accurate. The most significant facts relate to the events in the

1 underlying Immigration Court proceeding, and the recording of that hearing has been
2 provided to the Court.

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

5 I certify under penalty of perjury that the foregoing is true and correct and that I
6 executed this declaration on July 31, 2026.

7
8 s/Neil D. Van Dalsem

Neil D. Van Dalsem

Appointed Counsel for Petitioner
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