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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

RAMIRO GIRON LOPEZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security;

TODD BLANCHE, Acting Attorney General of the United States;

DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement;

JESUS ROCHA, Acting Director, San Diego ICE Field Office; and

CHRISTOPHER LAROSE, Warden, Otay Mesa Detention Center,

Respondents.

Case No. '26CV4532 TWR GC

PETITION FOR WRIT OF HABEAS CORPUS

[28 U.S.C. § 2241]

PETITIONER IS DETAINED

I. INTRODUCTION

1. Petitioner, RAMIRO GIRON LOPEZ ("Petitioner"), through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his ongoing unlawful detention by the Department of Homeland Security ("DHS"), the Department of Justice ("DOJ"), and U.S. Immigration and Customs Enforcement ("ICE") (collectively, "Respondents"). **Petitioner was previously released from Respondents' custody following his apprehension in January 2024 and thereafter remained at liberty for approximately eighteen months under active ICE supervision, reporting as directed, submitting the biometric check-ins ICE required of him, and receiving ICE at his home for verification visits.** On July 25, 2026, Petitioner appeared—as he had always appeared—for a scheduled ICE check-in appointment. Respondents took him into custody at that appointment, transferred him across the country to California, and have detained him since without notice, without any individualized custody determination, and without any hearing before a neutral decisionmaker. That detention violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment.

2. This case presents a fundamental due process violation. **Courts have increasingly recognized that when the government releases a noncitizen, that**

release creates a heightened liberty interest that cannot be extinguished without meaningful procedural safeguards. Petitioner's re-detention—without notice and without a bond hearing—violates the Fifth Amendment. *See Tulyakov v. LaRose,* No. 3:26-cv-01695-BTM-BLM, 2026 U.S. Dist. LEXIS 80532 (S.D. Cal. Apr. 13, 2026); *Kai Wang v. Larose*, No. 3:26-cv-01130-BTM-BJW, 2026 U.S. Dist. LEXIS 58261 (S.D. Cal. Mar. 18, 2026); *Pacheco v. Larose*, No. 3:25-cv-2421-JO-AHG, 818 F. Supp. 3d 1168 (S.D. Cal. Jan. 29, 2026); *Oli v. Andrews,* No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 20443 (E.D. Cal. Jan. 30, 2026); *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026).

3. Nor can Respondents justify the re-detention by pointing to the Immigration Judge's decision of July 28, 2025. **That decision is not a final order of removal. Petitioner timely appealed to the Board of Immigration Appeals; the Board acknowledged receipt of that appeal on August 19, 2025; the appeal remains pending and fully briefed; and the filing of the notice of appeal automatically stayed execution of the Immigration Judge's decision by operation of regulation. The decision below is therefore neither administratively final nor executable.** Petitioner therefore remains detained, if at all, under the pre-final-order framework of 8 U.S.C. § 1226(a)—the very

framework under which Respondents themselves elected to release him and to supervise him in the community for a year and a half.

4. Respondents likewise cannot justify the re-detention by recharacterizing Petitioner as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). On July 30, 2026, the Ninth Circuit held that noncitizens apprehended in the interior of the United States are detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). *Rodriguez-Vazquez v. Bostock*, No. 25-6842, 2026 U.S. App. LEXIS 22798 (9th Cir. July 30, 2026). Petitioner was not apprehended at the border on July 25, 2026. He was taken into custody in the interior of the United States, at a scheduled ICE appointment he voluntarily attended, approximately eighteen months after Respondents released him. **That decision resolves the statutory question in Petitioner's favor. It does not, however, remedy the completed constitutional injury caused by Respondents' deprivation of Petitioner's liberty without constitutionally adequate procedures. It therefore reinforces, rather than moots, the injury alleged in this Petition, and confirms that immediate release — not a belated bond hearing — is the appropriate habeas remedy.**

5. These circumstances also create a substantial risk of an erroneous deprivation of liberty, as Petitioner remains incarcerated for an indeterminate period—pending the resolution of an administrative appeal over which he has no

control—without any meaningful determination that his continued detention is necessary to serve any legitimate governmental interest.

6. Petitioner therefore seeks immediate release. Absent immediate intervention by this Court, Petitioner will continue to suffer irreparable harm through continued unlawful detention. The ongoing deprivation of liberty—without constitutionally adequate procedures—demands urgent judicial review and prompt relief.

II. JURISDICTION

7. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101, et seq.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). 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.

9. Furthermore, federal courts retain jurisdiction over constitutional challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 513 (2018). Petitioner seeks only individualized habeas relief, which is expressly preserved under 8 U.S.C. § 1252(f)(1). That provision prohibits lower courts from

enjoining or restraining the operation of certain immigration statutes on a classwide basis, but it explicitly preserves relief "with respect to the application of such provisions to an individual alien." 8 U.S.C. § 1252(f)(1). The Supreme Court's decision in *Garland v. Aleman Gonzalez* did not eliminate federal courts' authority to grant individualized habeas relief in detention cases. Instead, it limited only classwide injunctions that restrain the operation of detention statutes. Where Respondents lack constitutional authority to continue detention without a legally adequate bond hearing, this Court retains full power to order individualized relief, including release or a constitutionally compliant bond hearing. *See Garland v. Aleman Gonzalez,* 596 U.S. 543 (2022).

10. Petitioner does not challenge the Immigration Judge's decision on the merits, and nothing in 8 U.S.C. § 1252(a)(5) or (b)(9) divests this Court of jurisdiction. Petitioner challenges only the lawfulness of his custody, which is the classic office of the writ.

III. VENUE

11. Venue is proper in this district under 28 U.S.C. § 1391(e)(2). Petitioner is detained by Respondents at the **Otay Mesa Detention Center** in San Diego, California, which is within the jurisdiction of this District, and the Officer in Charge who makes custody decisions in Petitioner's case is located within this

judicial district. Petitioner has already been transferred once, from New Jersey to California, and is subject at any time to being moved to another ICE detention facility. Undersigned counsel is not aware whether he will be moved again and thus requests that he remain in the jurisdiction of this Court.

IV. PARTIES

12. Petitioner, with **A-Number** [redacted], is a native and citizen of Mexico who entered the United States without inspection on or about January 17, 2024, near the Arizona border. He is currently detained at the **Otay Mesa Detention Center** in San Diego, California. He is currently in custody and under the direct control of Respondents and their agents.

13. Respondent MARKWAYNE MULLIN is sued in his official capacity as the Secretary of DHS. In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. This Respondent is empowered to carry out any administrative order against Petitioner and is the legal custodian of Petitioner.

14. Respondent TODD BLANCHE is sued in his official capacity as the Attorney General of the United States and the senior official of the DOJ. In that capacity, he has the authority to adjudicate removal cases and oversees the

Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

15. Respondent DAVID J. VENTURELLA is sued in his official capacity as the Acting Director of ICE. He is a legal custodian of Petitioner and has the authority to release him.

16. Respondent JESUS ROCHA is sued in his official capacity as the Acting Director of the San Diego ICE Field Office. As such, he is charged with the detention and removal of noncitizens which fall under the jurisdiction of that Field Office.

17. Respondent CHRISTOPHER LAROSE is sued in his official capacity as the Warden of the Otay Mesa Detention Center[1], and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner. As held by the Ninth Circuit, in habeas corpus cases the proper Respondent is the warden of the detention facility where the immigration detainee is held. Doe v. Garland, 109 F.4th 1188, 1197 (9th Cir. 2024).

V. STATEMENT OF FACTS

[1] As held by the Ninth Circuit, in habeas corpus cases, the proper Respondent is the warden of the detention facility where the immigration detainee is held. *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

18. Petitioner is a native and citizen of Mexico who entered the United States without inspection on or about January 17, 2024, near the Arizona border. **Following his apprehension by Respondents, Petitioner was released from custody on or about January 19, 2024 pursuant to Order of Release on Recognizance and was enrolled by ICE in its Alternative to Detention ("ATD") program.**

19. Following his release, Petitioner continuously resided in the State of New Jersey and fully complied with every condition imposed by Respondents. As a condition of the ATD program, Petitioner was required to submit photographs through the ICE mobile application and to report periodically to his assigned ICE officer, approximately every two to three months. Petitioner submitted every photograph required of him and appeared at every reporting appointment scheduled for him. ICE additionally conducted periodic home verification visits, and Petitioner was present and cooperative at each.

20. Petitioner also complied with all other immigration requirements imposed upon him. He obtained employment authorization, was issued an Employment Authorization Document ("EAD"), lawfully obtained a Social Security number, and was authorized to work throughout the pendency of his removal proceedings. Petitioner has never used a false document or a fraudulent identity. He has been employed as a cook.

21. Petitioner resides with his adult daughter and his United States citizen grandchild in Point Pleasant, New Jersey. Petitioner helps care for his grandchild, whose father is largely absent from the household.

22. Removal proceedings against Petitioner were commenced before the Newark Immigration Court, 970 Broad Street, Room 1200, Newark, New Jersey 07102, with a docket date of February 1, 2024. Petitioner appeared at every hearing scheduled in those proceedings. On July 28, 2025, the Immigration Judge entered an order of removal.

23. Petitioner timely appealed. **The Board of Immigration Appeals acknowledged receipt of Petitioner's appeal on August 19, 2025.** The Board issued a briefing schedule and, on October 2, 2025, granted Petitioner's request for an extension, setting Petitioner's brief due November 5, 2025 and DHS's brief due November 26, 2025. Petitioner's appellate brief was timely filed and received by the Board on November 1, 2025. DHS filed no brief before the briefing schedule expired. **Petitioner's appeal remains pending before the Board as of the filing of this Petition.**

24. Petitioner's daughter is a rider on Petitioner's case and on the pending appeal, under A-Number [redacted].

25. On or about July 25, 2026—nearly a year after the Immigration Judge's decision, and while Petitioner's administrative appeal was pending and

fully briefed—Petitioner appeared for a scheduled ICE check-in appointment as he had been directed to do. **Respondents took Petitioner into custody at that appointment.** Respondents thereafter transferred Petitioner from New Jersey to California, where he remains detained at the Otay Mesa Detention Center in San Diego, California.

26. At no time prior to Petitioner's re-detention did Respondents provide notice that they intended to revoke Petitioner's release or otherwise alter the conditions under which he had remained at liberty for approximately eighteen months. **Likewise, Petitioner was not afforded any pre-deprivation custody determination or bond hearing before being returned to ICE custody.**

27. Upon information and belief, Respondents have asserted that Petitioner failed to comply with the conditions of the ATD program. **Petitioner disputes that assertion.** Petitioner submitted every required photograph, appeared at every required reporting appointment, remained at his known address, and was available for every home verification visit. Respondents have never identified to Petitioner what condition he is alleged to have violated, when the alleged violation occurred, or what evidence supports the allegation. Respondents have never afforded Petitioner any opportunity to contest that allegation before a neutral decisionmaker.

28. **Throughout the approximately eighteen months that Petitioner remained released, Respondents repeatedly allowed him to remain at liberty while maintaining active and regular supervision over him.** According to information presently available, Petitioner has no criminal history, no known gang affiliation, and no history of violence, and at no time following his release did he fail to appear for any required appointment or hearing.

29. Prior counsel filed a request for an immigration bond on Petitioner's behalf. That request was denied prior to Petitioner's transfer from New York to California. Petitioner has not received an individualized custody determination addressing the re-detention at issue in this Petition, and has never received a hearing at which the Government bore the burden of justifying his detention.

30. Since his arrest on July 25, 2026, Petitioner has remained continuously detained. As a result, Petitioner now seeks habeas corpus relief from this Court to challenge his continued unlawful detention and to obtain such relief as is necessary to ensure that his custody complies with constitutional and statutory requirements.

VI. LEGAL ARGUMENT

A. Prudential Exhaustion Does Not Bar Review of Petitioner's Constitutional Challenge to His Re-Detention

31. Exhaustion does not bar review of Petitioner's constitutional challenge to his continued detention. The Ninth Circuit has repeatedly recognized that "[t]he exhaustion requirement is prudential, rather than jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Although a district court may require exhaustion where agency expertise is necessary to develop a proper record, where administrative review may allow the agency to correct its own errors, or where exhaustion would promote judicial efficiency, exhaustion may be waived where administrative remedies are inadequate or ineffective, pursuit of those remedies would be futile, irreparable injury would result, or the proceedings would be void. Id.; see also *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

32. Here, Petitioner's claims are constitutional and legal in nature. Petitioner does not challenge the validity of the removal proceedings, the merits of the Immigration Judge's decision now pending on appeal, or Respondents' authority to pursue those proceedings. **Rather, Petitioner challenges Respondents' decision to revoke his liberty and re-detain him after eighteen months of supervised liberty in the community without first providing constitutionally adequate pre-deprivation procedures. Whether Respondents violated the Fifth Amendment by depriving Petitioner of that protected liberty interest without advance notice or a meaningful opportunity to be**

heard presents a constitutional question beyond the competence of the immigration courts.

33. The administrative process is incapable of providing the relief sought herein. **Neither an Immigration Judge nor the Board possesses authority to adjudicate Petitioner's constitutional challenge, determine whether Respondents violated the Due Process Clause by re-detaining him without adequate procedural safeguards, or grant habeas corpus relief ordering Petitioner's release.** Accordingly, requiring further administrative exhaustion would neither eliminate the need for judicial review nor permit the agency to provide the relief sought in this Petition.

34. Nor would further administrative proceedings meaningfully develop the factual record. The material facts are not in dispute. Petitioner was previously released from immigration custody, remained at liberty in the community for approximately eighteen months while complying with DHS and ICE supervision requirements, and was re-detained at a scheduled check-in appointment without first receiving notice that Respondents intended to revoke his release or a pre-deprivation custody determination. The issues presented in this Petition are therefore overwhelmingly constitutional and legal.

35. Requiring Petitioner to pursue additional administrative remedies would likewise be futile. Prior counsel already sought bond, and the request was

denied. A renewed request would fare no better: **the Immigration Judge is bound to follow the erroneous legal precedent of Yajure Hurtado, where the Board found that every noncitizen is subject to mandatory detention unless the noncitizen was admitted into the United States.** Petitioner entered without inspection. Under the Board's rule, no Immigration Judge will reach the merits of his custody, and any request will produce a form denial for lack of jurisdiction rather than the individualized determination due process requires.

36. The Ninth Circuit has since rejected the statutory premise on which *Yajure Hurtado* rests. In *Rodriguez-Vazquez v. Bostock*, No. 25-6842, 2026 U.S. App. LEXIS 22798 (9th Cir. July 30, 2026), the Court held that noncitizens apprehended in the interior of the United States are detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). **Thus, the statutory interpretation that immigration judges have invoked to decline custody jurisdiction has now been rejected by the Court of Appeals, whose decisions bind the immigration courts and this Court alike.** That clarification confirms the futility of further administrative proceedings: it demonstrates that the process Petitioner was denied was process he was always owed, and it cannot undo the constitutional deprivation he has already suffered.

37. Finally, requiring further exhaustion would inflict precisely the type of irreparable injury recognized by courts considering challenges to continued

immigration detention. Petitioner's constitutional injury occurred when Respondents deprived him of his liberty without first providing constitutionally adequate process, and that injury continues with each additional day of detention. Because Petitioner's claim presents a purely constitutional challenge that the administrative process cannot resolve, prudential exhaustion is excused.

38. Accordingly, Petitioner has satisfied, or alternatively is excused from, any prudential exhaustion requirement applicable under 28 U.S.C. § 2241, and this Court should reach the merits of Petitioner's constitutional challenge to his re-detention.

B. Petitioner Is Not Subject to a Final Order of Removal, and His Detention Remains Governed by the Pre-Final-Order Framework

39. Because Petitioner's administrative appeal is pending, **the Immigration Judge's July 28, 2025 decision is not a final order of removal.** The INA is explicit: an order of removal "shall become final upon the earlier of—(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B). The implementing regulation is to the same effect. 8 C.F.R. § 1241.1(a) (an order becomes final upon dismissal of an appeal by the Board).

40. The Board has neither affirmed nor dismissed. Petitioner noticed his appeal within the permitted period, the Board acknowledged receipt on August 19, 2025, the Board set and extended a briefing schedule, Petitioner briefed the appeal, and the appeal remains pending. By regulation, a timely appeal also stays execution of the Immigration Judge's decision during the pendency of the appeal. 8 C.F.R. § 1003.6(a). Respondents therefore may not remove Petitioner, and Petitioner's detention is not detention "pending removal" under 8 U.S.C. § 1231. It is pre-final-order detention governed by 8 U.S.C. § 1226(a)—the identical authority under which Respondents elected to release Petitioner and to supervise him in the community for approximately eighteen months.

41. Petitioner's timely appeal also operated as an **automatic stay of execution of the Immigration Judge's decision**. That stay is a matter of regulation, not of agency grace or discretion: the decision in any proceeding from which an appeal to the Board may be taken "shall not be executed during the time allowed for the filing of an appeal," and the filing of a timely appeal stays execution of that decision pending the Board's disposition. 8 C.F.R. § 1003.6(a). Respondents accordingly have no lawful authority to remove Petitioner today, and will have none unless and until the Board dismisses his appeal. Detention that cannot be in the service of an executable removal order is not detention pending removal.

42. This distinction is dispositive of any argument that the Immigration Judge's decision supplied the "materially changed circumstances" that could justify re-arrest. **Courts in this District have held that once a noncitizen has been released, federal agents may not re-arrest him absent evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous, has become a flight risk, or is now subject to a final order of removal.** *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176–77 (N.D. Cal. 2017). Petitioner falls into none of those categories. He is not dangerous; he has no criminal history at all. He has not become a flight risk; he was taken into custody at an ICE appointment he voluntarily attended, as he had attended every appointment before it. And he is not subject to a final order of removal, because his appeal is pending and the decision below is stayed. **That third category is therefore unavailable to Respondents as a matter of law, not merely as a matter of proof.**

43. Timing confirms the point. The Immigration Judge's decision issued on July 28, 2025. Respondents left Petitioner at liberty, and continued to supervise him in the community, for nearly a full year afterward. Whatever Respondents may now say prompted the July 25, 2026 arrest, it was not the entry of the removal decision, and Respondents have never identified anything else.

44. To the extent Respondents assert that Petitioner failed to comply with the conditions of his release, that assertion cannot be resolved by Respondents' own unreviewed say-so. **Where the noncitizen disputes the notion that changed circumstances justify his rearrest, he is entitled to a prompt hearing before an Immigration Judge.** *Saravia*, 280 F. Supp. 3d at 1176–77. Petitioner disputes the allegation, has never been told what he is alleged to have done, and has never been given any forum in which to answer it.

C. Prior Release Creates a Heightened Liberty Interest in Continued Freedom, Requiring Robust Due Process Before Re-Detention

45. While noncitizens located outside the United States are not granted the full protection of the Constitution, **the Due Process Clause applies to all "persons" within the borders of the United States, regardless of immigration status.** *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

46. Petitioner's re-detention violates the Fifth Amendment because **his prior release created a constitutionally protected liberty interest that cannot be revoked without meaningful procedural safeguards.** The Supreme Court has made clear that "[f]reedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis,* 533 U.S. 678 (2001).

47. Furthermore, the Supreme Court in *Jennings v. Rodriguez* addressed only statutory interpretation and expressly declined to resolve the constitutional questions surrounding prolonged detention. *Jennings v. Rodriguez*, 583 U.S. 281, at 312 (2018). Courts within this Circuit have recognized that *Jennings* left intact constitutional challenges as applied to detention. *See Cruz-Zavala v. Barr*, 445 F. Supp. 3d 571, 578–79 (N.D. Cal. 2020).

48. A protected liberty interest can arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). District Courts all over the Ninth Circuit have recognized that **once the government releases a noncitizen, that release creates a constitutionally protected liberty interest. Thus, once the government elects to release a noncitizen, that individual acquires a concrete liberty interest in remaining free from physical restraint, and that interest may not be extinguished arbitrarily.** *See Tulyakov v. LaRose,* No. 3:26-cv-01695-BTM-BLM, 2026 U.S. Dist. LEXIS 80532 (S.D. Cal. Apr. 13, 2026); *Kai Wang v. Larose*, No. 3:26-cv-01130-BTM-BJW, 2026 U.S. Dist. LEXIS 58261 (S.D. Cal. Mar. 18, 2026); *Pacheco v. Larose*, No. 3:25-cv-2421-JO-AHG, 818 F. Supp. 3d 1168 (S.D. Cal. Jan. 29, 2026); *Meneses v. Santacruz*, 811 F. Supp. 3d 1158 (C.D. Cal. 2025); *Nola v. Dep't of Homeland*

Sec., No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210 (C.D. Cal. May 13, 2026); *Oli v. Andrews*, No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 20443 (E.D. Cal. Jan. 30, 2026); *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026); *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (N.D. Cal. 2025); *Firas Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917 (W.D. Wash. 2019); *Matute v. Wofford,* 807 F. Supp. 3d 1120 (E.D. Cal. 2025); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021 (N.D. Cal. 2025).

49. Recent decisions confirm that this principle applies squarely to immigration re-detention. In *Meneses v. Santacruz*, 811 F. Supp. 3d 1158 (C.D. Cal. 2025), the Central District of California concluded that **the government's interest in re-detaining a petitioner without a hearing is minimal and does not outweigh the petitioner's liberty interest.** The court found that under *Mathews v. Eldridge*, 424 U.S. 319 (1976), and its balancing-of-interests framework, the petitioner should have been afforded a pre-detention hearing before being re-detained. The court further cited *Morrissey v. Brewer*, 408 U.S. 471 (1972), for the proposition that release on parole of a criminal defendant creates "at least an implicit promise" that liberty will not be revoked without due process, and analogized that principle to noncitizens, holding that individuals released on bond or other forms of supervision have a liberty interest in remaining free from custody. Meneses v. Santacruz, supra, at 1162.

50. Similarly, in *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210 (C.D. Cal. May 13, 2026), the Central District of California cited *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), to conclude that the government's decision to allow a noncitizen to remain free may create a constitutionally protected liberty interest in remaining at liberty absent a sufficient showing of danger or flight risk. The court in Nola concluded that **the government's decision to release the petitioner carried "an implicit promise," within the meaning of Morrissey, that re-detention would occur only upon a sufficient showing of danger or flight risk. In doing so, just as in Meneses, the Central District Court in Nola extended the liberty-interest principles recognized in Morrissey beyond the criminal parole context and applied them to immigration detention.** *See Nola*, 2026 U.S. Dist. LEXIS 106210, at *21.

51. Other courts have reached similar conclusions. *See Oli v. Andrews*, No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 2044, at *5 (E.D. Cal. Jan. 30, 2026) (recognizing that **"[e]ven when the government initially has the discretion to detain or release someone from custody, once the government decides to release them, that individual gains a constitutionally protected liberty interest in remaining out of custody,"** quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). In Oli, the court ordered immediate release and enjoined

future detention absent pre-deprivation notice and a hearing at which the government bears the burden of proving danger or flight risk by clear and convincing evidence.

52. Moreover, in *Nola* the court conducted a thorough analysis of the Ninth Circuit's prolonged-detention jurisprudence, addressing whether *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), had been abrogated by *Jennings v. Rodriguez*, 583 U.S. 513 (2018), and *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Although recognizing that portions of *Singh* had been undermined, the court concluded that Singh's due process requirement that the government justify detention by clear and convincing evidence remains viable and has continued to be applied by courts following *Jennings and Rodriguez Diaz. See Nola v. Dep't of Homeland Sec.*, 2026 U.S. Dist. LEXIS 106210, at 15–21. Applying that standard, the court required the government to establish by clear and convincing evidence that continued detention was necessary and ultimately granted habeas relief in the form of the petitioner's immediate release.

53. *M.B. v. Noem* is closely analogous to the facts here. There, the Eastern District of California held that a **noncitizen released on parole and later re-detained at a routine ISAP check-in possessed a protected liberty interest and was entitled to due process protections before re-detention. The court emphasized that release creates an expectation of continued liberty that**

cannot be revoked absent appropriate procedural safeguards. *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026). Petitioner, like the petitioner in *M.B.*, was seized at the very appointment that demonstrated his compliance.

54. Federal courts have further clarified that this **liberty interest is not limited to parole but extends equally to noncitizens released on their own recognizance**. In *Zapata v. Kaiser*, the Northern District of California held that noncitizens released on recognizance are likewise entitled to a pre-detention hearing before re-detention. **The court explained that re-detaining a noncitizen without evidence that they are flight risks or dangers to the community violates substantive due process, underscoring that the constitutional protection attaches to the fact of release itself, regardless of the statutory mechanism by which release occurred.** *Zapata v. Kaiser,* 801 F. Supp. 3d 919 (N.D. Cal. 2025). That principle is dispositive here: the precise label attached to Petitioner's release—recognizance, supervision, or parole—does not diminish the constitutional protection afforded to his liberty.

55. This rule has been applied consistently across cases involving re-detention after a period of community release. In *Matute v. Wofford*, the court held unequivocally that due process requires a pre-deprivation bond hearing

before the government may re-detain a noncitizen who was previously released. *Matute v. Wofford*, 807 F. Supp. 3d 1120 (E.D. Cal. 2025).

56. Likewise, in *Guillermo M.R. v. Kaiser,* the court granted habeas relief and enjoined ICE from re-detaining the petitioner without a pre-deprivation hearing before a neutral decisionmaker, even though the petitioner had a serious criminal history. *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021 (N.D. Cal. 2025).

57. The facts of *Guillermo M.R.* underscore the strength of Petitioner's claim. There, the petitioner had been convicted of a violent offense and served a lengthy prison sentence, yet an Immigration Judge determined that he did not pose a danger or flight risk and ordered his release. After more than two years of liberty in the community, during which he complied with conditions and established strong ties, ICE sought to re-detain him without a hearing and without identifying any material change in circumstances. The court held that such re-detention violated due process, emphasizing that the petitioner's extended period of liberty and compliance strengthened his protected interest and that ICE's internal procedures were insufficient because they lacked neutral adjudication. Petitioner here has no criminal history whatsoever, and ICE's procedures here were no more neutral than those the court rejected in *Guillermo M.R.*

58. Under these circumstances, the constitutional violation is clear. By re-detaining Petitioner without providing notice or a bond hearing, the government has violated his due process rights. **More specifically, by releasing Petitioner and supervising him in the community for approximately eighteen months, the government endowed Petitioner with a protected liberty interest.** *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (N.D. Cal. 2025); see also *Fernandez Lopez v. Wofford*, No. 1:25-cv-01226-KES-SKO, 2025 WL 2959319, at *5 (E.D. Cal. Oct. 17, 2025) (holding noncitizen paroled pursuant to 8 U.S.C. § 1182(d)(5)(A) had a protected liberty interest in remaining out of custody); *Garcia v. Andrews*, No. 1:25-cv-01006-JLT-SAB, 2025 WL 2420068, at *10 (E.D. Cal. Aug. 21, 2025) (holding noncitizen released on parole held a protected liberty interest in maintaining out-of-custody status); *J.E.H.G. v. Chesnut*, No. 1:25-cv-01673-JLT-SKO, 2025 WL 3523108, at *9 (E.D. Cal. Dec. 9, 2025) (same).

59. Neither the earlier bond denial nor Respondents' unadjudicated allegation of noncompliance diminishes that interest. **Petitioner does not seek an initial custody determination, and the liberty interest asserted here did not yet exist when prior counsel sought bond.** It was created by Respondents' own decision to release Petitioner, and it was reinforced by every month of supervised compliance that followed—every photograph submitted, every reporting

appointment kept, every home verification visit answered. That is precisely the accretion the court in *Guillermo M.R.* described when it held that an extended period of liberty and compliance strengthens the protected interest. *Guillermo M.R. v. Kaiser,* 791 F. Supp. 3d 1021 (N.D. Cal. 2025). Nor may Respondents extinguish that interest by asserting—without notice, without particulars, without evidence, and without any neutral adjudication—that Petitioner violated a condition of his release. An allegation is not a finding. Due process exists precisely to test allegations of that kind before liberty is taken, and Respondents afforded Petitioner no forum in which to answer this one.

60. Here, the government has deprived Petitioner of a protected liberty interest without affording the procedural safeguards required by due process. Courts applying the *Mathews* balancing framework have consistently recognized that the private interest in freedom from detention is substantial, the risk of erroneous deprivation is high absent a hearing, and the government's burden in providing such a hearing is minimal. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The risk of erroneous deprivation is especially acute here, where the only apparent basis for the re-detention is an unarticulated and disputed allegation of noncompliance that no neutral decisionmaker has ever examined.

61. This constitutional violation is not mitigated by the duration of Petitioner's detention; even detention within six months may be unconstitutional

where, as here, it is imposed without the procedural safeguards required by due process. *See Trinh v. Homan*, 333 F. Supp. 3d 984 (C.D. Cal. 2018). Accordingly, Petitioner's re-detention without a bond hearing violates due process and warrants habeas relief.

D. Rodriguez-Vazquez v. Bostock Resolves the Statutory Question in Petitioner's Favor and Leaves Only the Constitutional Question Presented Here

62. On July 30, 2026, the Ninth Circuit held that noncitizens apprehended in the interior of the United States are detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). *Rodriguez-Vazquez v. Bostock*, No. 25-6842, 2026 U.S. App. LEXIS 22798 (9th Cir. July 30, 2026). That holding is binding on this Court and disposes of the only statutory theory on which Respondents' refusal to afford Petitioner an individualized custody determination has ever rested.

63. Petitioner falls squarely within that rule. **He was not apprehended at the border on July 25, 2026, and he was not intercepted while presenting himself for admission. He was seized in the interior of the United States, at a scheduled ICE check-in he voluntarily attended, approximately eighteen months after Respondents released him and enrolled him in their own supervision program.** Whatever may be said of Petitioner's manner of entry in January 2024, the detention challenged in this Petition is § 1226(a) detention —

the same authority under which Respondents elected to release him and to supervise him in the community for a year and a half — and § 1226(a) detention carries with it the right to an individualized custody determination.

64. *Rodriguez-Vazquez* therefore forecloses the rationale that has made administrative relief unavailable to Petitioner. Under *Matter of Yajure Hurtado*, the Board treated every noncitizen who was not admitted as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and immigration judges have accordingly declined jurisdiction to conduct custody redeterminations. **The Ninth Circuit has now rejected the statutory interpretation upon which that practice depends. There is no remaining statutory dispute regarding the detention framework applicable to Petitioner's case.**

65. **What remains is the constitutional question, and *Rodriguez-Vazquez* does not answer it.** Petitioner's constitutional claim never turned on the statutory label. The injury occurred when Respondents revoked a liberty interest they themselves conferred — without notice, without particulars, without evidence, and without any finding by a neutral decisionmaker that Petitioner presented a danger to the community or a risk of flight. A decision clarifying which subsection authorizes his custody does not supply the process that was owed before that custody began, and it does not restore the liberty

already taken. **The remaining question before this Court is whether the denial of any individualized custody determination violated Petitioner's constitutional right to due process, and what remedy that violation requires.**

66. The analysis is unchanged if Respondents invoke 8 U.S.C. § 1231. As set forth in Section B above, the Immigration Judge's July 28, 2025 decision is not administratively final, its execution is stayed by operation of 8 C.F.R. § 1003.6(a), and the removal period has never begun. Petitioner's custody is therefore governed by the pre-final-order framework, and *Rodriguez-Vazquez* confirms which provision of that framework applies. In all events, the constitutional defect identified in this Petition is identical under either statute.

E. The *Mathews* Factors Establish That Petitioner Was Entitled to Notice and a Hearing Before a Neutral Decisionmaker Prior to His Re-Detention

67. Petitioner's protected liberty interest is established above by Respondents' own act of release and by the eighteen months of supervised compliance that followed. **It is independently established by the life Petitioner has built in the United States.** District courts have recognized that a noncitizen who builds a substantial life in this country after entering without inspection develops a constitutionally protected liberty interest in remaining out of custody. *See Reyes v. Santacruz*, No. ED CV 26-3394-E, at *3 (C.D. Cal. July 13, 2026);

Ramirez-Serna v. Mullin, 2026 U.S. Dist. LEXIS 118324, 2026 WL 1514337, at *6–7 (C.D. Cal. May 28, 2026); *Tinoco v. Noem*, 818 F. Supp. 3d 1141, 2025 WL 3567862, at *6 (E.D. Cal. 2025) ("The length of time and the connections Petitioner made with his community during that time create a powerful interest for Petitioner in his continued liberty."); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty."); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

68. **Petitioner's position is stronger than that of the petitioners in those cases.** Their liberty interests accrued through the passage of time while the government took no notice of them. Petitioner's interest accrued through the passage of time *and* through the government's own conduct: Respondents released him, enrolled him in an Alternative to Detention program, required him to submit biometric check-ins, verified his residence in person, authorized him to work, and — at every one of those contacts for eighteen months — examined his circumstances and permitted him to remain at liberty. **A liberty interest that the government conferred and then repeatedly renewed is entitled to no less protection than one that accrued while the government was not looking.**

69. Having established that Petitioner possesses a protected liberty interest, the Court applies the three-part test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), under which courts balance **(1) the private interest affected; (2) the risk of erroneous deprivation under the procedures employed; and (3) the Government's interest, including the administrative burden of additional safeguards.**

70. **First**, the private interest at stake is "the most elemental of liberty interests — the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) ("[A]n individual's private interest in freedom from prolonged detention is unquestionably substantial."). **Here, Petitioner's eighteen months of uninterrupted liberty, his unbroken compliance with every condition Respondents imposed, his work authorization, his household with his adult daughter and the United States citizen grandchild he helps to care for, and the complete absence of any criminal history make his interest in remaining free from physical detention especially compelling.**

71. **Second**, the risk of erroneous deprivation is extraordinarily high. The purpose of procedural due process is to ensure that governmental detention decisions rest upon individualized facts rather than categorical assumptions or unexamined assertions. Here, no neutral decisionmaker has ever evaluated

whether Petitioner's detention is necessary. **Respondents have never been required to identify, particularize, or prove the alleged noncompliance on which they apparently relied, and Petitioner has never been given any forum in which to answer it.** Nor has any adjudicator examined the supervision record Respondents themselves created and retain — the photographs submitted through the ICE application, the reporting appointments kept, the home verification visits answered — every item of which refutes the only interests that could justify confinement. **Where the government holds years of its own data refuting the basis for detention, and confines the individual without submitting that data to any neutral decisionmaker, the risk of erroneous deprivation is not theoretical. It has already been realized.** The prior bond denial does not fill that gap: it preceded the liberty interest asserted here, was entered in a different court and a different posture, and addressed neither the re-detention at issue nor the allegation Respondents now advance.

72. **Third**, the Government's interest does not justify dispensing with the minimal procedures due process requires. Respondents unquestionably possess a legitimate interest in ensuring Petitioner's appearance at future proceedings and in protecting the public, but those interests are served only where an individualized determination establishes that detention is actually necessary. As the Ninth Circuit has recognized, "[t]he government has no legitimate interest in detaining

individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by bond or alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Respondents made precisely that determination themselves, every month, for eighteen months. **Requiring notice and an individualized custody hearing imposes only a minimal administrative burden, yet substantially reduces the risk of erroneously depriving a person of physical liberty.**

73. Each *Mathews* factor therefore weighs decisively in Petitioner's favor. The private interest is at its zenith after eighteen months of supervised liberty and unbroken compliance. The risk of erroneous deprivation is extreme, because no neutral decisionmaker has ever considered the question, the allegation underlying the arrest has never been tested, and the evidence refuting it sits unexamined in Respondents' files. The governmental interest in avoiding a hearing is negligible, and Respondents' own conduct over eighteen months refutes any claim that detention is necessary. **Because Respondents deprived Petitioner of his protected liberty interest without constitutionally adequate procedures, his continued detention violates the Due Process Clause of the Fifth Amendment.**

F. Immediate Release Is the Appropriate Remedy Where the Government Has Failed to Provide Constitutionally Required Process Before Detention

74. "In habeas cases, federal courts have broad discretion in conditioning a judgment granting relief." *Lujan v. Garcia,* 734 F.3d 917, 933 (9th Cir. 2013). "Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of habeas corpus matters as law and justice require." Id. (quoting *Hilton v. Braunskill,* 481 U.S. 770, 775 (1987)). Likewise, federal courts retain "a fair amount of flexibility" in determining the appropriate remedy for unlawful detention. *Burnett v. Lampert,* 432 F.3d 996, 999 (9th Cir. 2005). The traditional remedy for unconstitutional detention is release. *Munaf v. Geren,* 553 U.S. 674, 693 (2008).

75. Immediate release—not a remand for a belated bond hearing—is the appropriate remedy where, as here, Respondents have failed to provide constitutionally required process. **This is particularly true in this case, where a request for a bond hearing is futile, as the Immigration Judge has to follow the erroneous legal precedent of Yajure Hurtado, where the Board found that every noncitizen is subject to mandatory detention, unless the noncitizen was admitted into the U.S.** Prior counsel's bond request was already denied, and Petitioner entered without inspection.

76. *Rodriguez-Vazquez v. Bostock* does not alter that analysis; it sharpens it. **Now that the Ninth Circuit has resolved the statutory question, nothing remains to be litigated in the immigration courts except a custody determination that should have preceded Petitioner's re-detention.** A remand

for a belated custody hearing would merely afford Respondents another opportunity to justify, after the fact, a deprivation of liberty that has already occurred in violation of the Fifth Amendment. **It cannot retroactively supply the procedural protections the Fifth Amendment required before Respondents deprived Petitioner of his liberty in the first instance.**

77. The Due Process Clause protects the most fundamental liberty interest—freedom from physical restraint. As the Supreme Court has made clear, "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. That interest weighs heavily in favor of immediate release where detention has been imposed without the procedural safeguards required by law.

78. Courts have recognized that a post-deprivation bond hearing cannot cure the constitutional injury caused by unlawful detention. *See Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, 2026 U.S. Dist. LEXIS 85165, at *18–19 (S.D. Cal. Apr. 16, 2026); *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210, at *29–30 (C.D. Cal. May 13, 2026); *Arturo Hernandez Arechiga v. Bowen*, No. EDCV 26-1516-AS, 2026 U.S. Dist. LEXIS 115840, at *11–12 (C.D. Cal. May 26, 2026). As the Central District of California explained in *Bajaj v. Cruz*, 2026 U.S. Dist. LEXIS 54771, at

*13 (C.D. Cal. Mar. 4, 2026), **the appropriate relief in such circumstances is not merely a new hearing, but release from custody.** Similarly, in *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025), the court held that **"such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."** Id.

79. The reasoning underlying those decisions applies with even greater force here. Petitioner is not requesting an initial custody determination. **Rather, Petitioner seeks restoration of the liberty interest that Respondents themselves created when they released him and allowed him to remain at liberty in the community, under their own active supervision, for approximately eighteen months. Respondents cannot extinguish that protected liberty interest simply by re-detaining Petitioner without constitutionally adequate procedures.** Allowing the government a second opportunity to justify detention now—after the unlawful re-detention—would effectively reward the initial constitutional violation and permit continued deprivation of liberty that due process is designed to prevent. The Constitution requires process before or at the time liberty is taken, not after the fact.

80. Habeas corpus exists precisely to remedy unlawful custody through immediate release. As the Supreme Court has explained, **"the essence of habeas**

corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

81. **Immediate release is especially appropriate because Petitioner's removal proceedings remain pending on administrative appeal. Release would neither terminate nor interfere with those proceedings.** Petitioner remains subject to the authority of the immigration courts, has every incentive to continue prosecuting the appeal he himself filed and briefed, and can comply with every reporting condition while living in the community under the same terms that existed before his unconstitutional detention—terms with which he complied for approximately eighteen months without a single missed appointment.

82. Restoring Petitioner to that status quo is precisely the equitable relief habeas corpus exists to provide. The federal habeas statute directs courts to dispose of cases "as law and justice require." 28 U.S.C. § 2243. Where Respondents have deprived an individual of physical liberty in violation of the Fifth Amendment, immediate release restores the parties to the last lawful status that existed before the constitutional violation.

83. Here, Petitioner has been re-detained without receiving notice or a bond hearing prior to the detention. Under these circumstances, where the government has failed to provide any constitutionally required process and has

never justified detention, the only adequate remedy is an order directing Petitioner's immediate release.

84. **Alternatively, should the Court decline to order immediate release and instead direct Respondents to provide an individualized custody hearing under 8 U.S.C. § 1226(a), Petitioner respectfully requests that the Court expressly prescribe the constitutional procedures governing that hearing**: sufficient advance notice; a meaningful opportunity to present evidence and argument; a neutral decisionmaker; an oral or written statement of reasons sufficient to permit meaningful review; and **placement upon Respondents of the burden of proving, by clear and convincing evidence, that Petitioner presently poses a danger to the community or a risk of flight.** *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210, at 15–21 (C.D. Cal. May 13, 2026). A hearing that does not allocate the burden of proof to Respondents would not remedy the constitutional injury alleged in this Petition.

VII. CAUSES OF ACTION

Count I – Fifth Amendment Due Process Violation (Denial of Constitutionally Required Bond Hearing Following Re-Detention)

Respondents are violating Petitioner's due process rights by re-detaining him after a prolonged period of release without providing any bond hearing or opportunity for an individualized determination of whether detention is justified.

Petitioner's prior release—whether characterized as recognizance, supervision, or parole—created a protected liberty interest in his continued freedom. *See Zadvydas v. Davis*. Courts have consistently held that this liberty interest cannot be revoked without meaningful procedural safeguards, including a hearing before a neutral decisionmaker at which the government bears the burden of proving danger or flight risk. *See Matute v. Wofford*; *Oli v. Andrews*; *M.B. v. Noem*.

This protection applies equally to noncitizens released on their own recognizance. *See Zapata v. Kaiser*. In addition, courts have granted habeas relief where the government seeks to re-detain individuals without a pre-deprivation hearing, even where the petitioner had a significant criminal history. *See Guillermo M.R. v. Kaiser*.

Here, Respondents re-detained Petitioner after approximately eighteen months of compliant release, without any bond hearing preceding the re-detention. As a result, Petitioner did not receive any individualized determination of whether he poses a danger to the community or a flight risk. This complete denial of process violates the Fifth Amendment. Due process requires a meaningful

opportunity to be heard before the government deprives an individual of liberty, and that requirement is not satisfied by categorical rules that foreclose any hearing.

Count II – Fifth Amendment Due Process Violation (Arbitrary and Punitive Re-Detention)

Respondents have also violated Petitioner's due process rights by subjecting him to arbitrary re-detention that is not justified by any individualized assessment and is therefore punitive in nature.

The Ninth Circuit's decision in *Rodriguez-Vazquez v. Bostock*, No. 25-6842, 2026 U.S. App. LEXIS 22798 (9th Cir. July 30, 2026), resolves any statutory dispute regarding the framework governing Petitioner's custody, holding that noncitizens apprehended in the interior of the United States are detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). That decision does not cure the constitutional violation alleged here. **The violation was complete when Respondents revoked Petitioner's liberty without notice, without a hearing, and without any finding of danger or flight risk, and it continues each day Petitioner remains detained pursuant to that unlawful re-detention.**

Petitioner was released from custody and remained in the community for approximately eighteen months while fully complying with all conditions imposed

by DHS. Petitioner submitted every required photograph through the ICE application, appeared for every scheduled reporting appointment, was present for ICE home verification visits, maintained contact with immigration authorities, and complied with all immigration obligations. Despite this history of compliance, Respondents detained Petitioner on July 25, 2026, at a scheduled check-in he attended voluntarily. Respondents have not identified any material change in circumstances, presented any evidence that Petitioner poses a danger to the community or a flight risk, or provided Petitioner with a meaningful individualized custody determination regarding the necessity of his continued detention.

Nor can the Immigration Judge's July 28, 2025 decision supply that justification. That decision is not final, is not executable while Petitioner's timely appeal is pending, and did not prompt Respondents to act for nearly a year. See 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. §§ 1003.6(a), 1241.1(a).

Such re-detention is arbitrary and inconsistent with due process. As recognized in *Zapata v. Kaiser*, re-detaining noncitizens without evidence that they pose a danger or flight risk violates substantive due process. Similarly, courts have emphasized that detention must remain tied to its regulatory purpose and may not become punitive. *See Zadvydas v. Davis*.

Because Respondents have failed to provide any justification for Petitioner's re-detention and have deprived him of his liberty through arbitrary governmental action, his continued detention violates due process and is unlawful.

VIII. PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order Respondents not to remove Petitioner outside the jurisdiction of this Court;

(3) Grant the writ of habeas corpus;

(4) Order Respondents to IMMEDIATELY RELEASE Petitioner on the same terms and conditions on which he was previously released;

(5) Make a finding that Respondents have acted contrary to law and have abused Petitioner's due process rights;

(6) Order that Respondents are permanently ENJOINED AND RESTRAINED from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include, at a minimum, pre-deprivation notice describing the change of circumstances necessitating Petitioner's arrest and detention, and a

timely hearing. At any such hearing, the Government shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight, and Petitioner shall be allowed to have his counsel present;

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Cesar O. Montoya (SBN: 320291)
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Dated: August 7, 2026

PROOF OF SERVICE

I hereby certify that on August 7, 2026, I served a copy of the attached PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS, by EMAIL DELIVERY to:

U.S. Attorney's Office:

USACAC.ImmHabeas@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

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