UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

JERSSON JOSSUE RODRIGUEZ Petitioner, v. WARDEN OF IRWIN COUNTY DETENTION CENTER *in his official capacity,* KRISTEN SULLIVAN, *Field Office Director ICE Atlanta Field Office,* DAVID VENTURELLA *in his official capacity as Acting Director of Immigration and Customs Enforcement* and MARKWAYNE MULLIN, *Secretary of Homeland Security,* Respondents.	)	Case No. 7:26-cv-243 **PETITION FOR WRIT OF HABEAS CORPUS** A# [redacted]

I. INTRODUCTION

1. Petitioner Jersson Jossue Rodriguez ("Petitioner") is a citizen of Nicaragua who is presently in the custody of the Department of Homeland Security ("DHS"). Petitioner entered the United States near Veterans International Bridge, Texas, on November 16, 2022. DHS records reflect that he was paroled on November 17, 2022, pursuant to 8 U.S.C. § 1182(d)(5)A), through November 16, 2023. He was later placed in removal proceedings under 8 U.S.C. § 1229a and has a pending application for asylum and withholding of removal.

2. After his release, Petitioner complied with ICE reporting and supervision requirements. The records provided show ICE/ERO reporting appointments in

Charlotte, North Carolina, including a yearly reporting appointment on September 18, 2024, and an appointment scheduled for August 11, 2026 at 9:00 a.m. at the Charlotte ERO Office. He was detained on August 11, 2026. He was presenting for his ICE check-in. He was detained because he was told his court date to appear before a judge was too far out and believed that, by being detained, he could obtain an earlier court date.

3. Petitioner seeks a writ of habeas corpus directing Respondents to release him from unlawful immigration detention or, in the alternative, to provide a constitutionally adequate bond hearing before a neutral adjudicator.

II. VENUE AND JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331 and Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause). Habeas relief is available to challenge the legality of civil immigration detention and to compel a bond hearing or release.

5. Venue lies in the Middle District of Georgia because Petitioner is confined at the Irwin County Detention Center within this Division and Respondent Warden is his immediate custodian. See 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

6. Petitioner is a 32-year-old citizen of Nicaragua, born [redacted] He entered the United States on November 16, 2022, has resided in North Carolina, and is in removal proceedings before the Charlotte Immigration Court. He is presently detained at the Irwin County Detention Center in Ocilla, Georgia.

7. Respondent Warden is the warden of Irwin County Detention Center.

As such, Respondent is responsible for the operation of the Detention Center where Petitioner is detained. Because ICE contracts with private prisons such as Irwin to house immigration detainees such as Petitioner, Respondent Warden has immediate physical custody of the Petitioner.

8. Respondent Kristen Sullivan is the Atlanta Field Office Director ("FOD") for ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Sullivan is responsible for the oversight of ICE operations at the Irwin County Detention Center. Respondent Sullivan is being sued in her official capacity.

9. Respondent David Venturella is the Acting Director of Immigration and Customs Enforcement ("ICE"). As such, Respondent he is responsible for the oversight of ICE operations. Respondent Venturella is being sued in his official capacity.

10. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (hereinafter "DIIS"). As Secretary of DIIS, Secretary Mullin is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Mullin is being sued in his official capacity.

IV. RXHAUSTION

11. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

12. Petitioner's constitutional challenge to indefinite detention is exempt from administrative exhaustion requirements. *See Woodford v. Ngo*, 548 U.S. 81, 103

(Breyer, J. concurring) (constitutional claims are exempt from administrative exhaustion); *see also Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal alterations and quotations removed) ("[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues."); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) ("'[T]he BIA does not have jurisdiction to adjudicate constitutional issues . . . .'" (quoting *Vargas v. U.S. Dep't of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987)).

13. As the Eleventh Circuit has held "It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding." *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75, n.5 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir.2001)).

14. Further, there is no statutory exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Cf.* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final order of removal). "'[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.'" *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should therefore be waived "(1) where prejudice to the prisoner's subsequent court action 'may result, for example, from an unreasonable or indefinite timeframe for administrative action'; (2) where the administrative agency may not have the authority 'to grant effective relief';

or (3) 'where the administrative body is shown to be biased or has otherwise predetermined the issue before it.'" *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). *See also Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting "well-established exceptions to exhaustion" that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

15. In making its discretionary decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing . . . In this context the need for habeas corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

V. STATEMENT OF FACTS

16. Petitioner Jersson Jossue Rodriguez is a citizen of Nicaragua, born [redacted]. DHS records state that he entered the United States at or near Veterans International Bridge, Texas, on November 16, 2022. (**Exhibit A, Notice to Appear**).

17. On November 17, 2022, DHS paroled Petitioner pursuant to INA § 212(d)(5). The parole documentation reflects parole through November 16, 2023. His release was also conditioned on reporting to ICE and participation in Alternatives to Detention ("ATD"). **(Exhibit B, Parole and ATD Documents).**

18. Petitioner thereafter complied with ICE's supervision and reporting requirements. ICE records reflect his enrollment in ATD and subsequent reporting appointments with the Charlotte ERO Office. **(Exhibit C, ICE Reporting and**

Check-In Records).

19. On September 7, 2023, DHS issued Petitioner a Notice to Appear, placing him in removal proceedings under § 240 of the Immigration and Nationality Act. His proceedings are pending before the Charlotte Immigration Court, with a hearing scheduled for December 9, 2027. **(Exhibit A, Notice to Appear).**

20. Petitioner timely applied for asylum, withholding of removal, and protection under the Convention Against Torture by filing Form I-589 with the Immigration Court on November 12, 2023. **(Exhibit D, Form I-589, confirming submission on time).**

21. Petitioner continued to comply with ICE's reporting requirements. On August 11, 2026, he appeared for his scheduled 9:00 a.m. appointment at the Charlotte ERO Office. During that scheduled appearance, ICE detained Petitioner. **(Exhibit E, August 11, 2026 ICE Appointment Confirmation).**

22. At the time of his detention, Petitioner was informed that he was being detained because his Immigration Court hearing was scheduled too far in the future and that detention could result in an earlier court date. At that time, Petitioner's Immigration Court hearing was scheduled for December 9, 2027. **(Exhibit F, Automated Case Information)**

23. Petitioner has remained in ICE custody since August 11, 2026, and is currently detained at the Irwin County Detention Center in Ocilla, Georgia. **(Exhibit G, ICE Locator)**

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

24. Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

25. Following his November 17, 2022 release from DHS custody, Petitioner lived in the community subject to immigration proceedings and ICE supervision. That history of release and compliance gives rise to a substantial liberty interest in avoiding arbitrary re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972).

26. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

27. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement – even if that freedom is lawfully revocable – has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

28. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; Gonzalez-*Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did

not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

29. Here, when this Court "compar[es] the specific release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

30. Petitioner asserts that, here, (1) where his detention would be civil; (2) where he had been at liberty for several years, during which time he has complied with all conditions of release; (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

31. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due

process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

32. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the

government avoid providing pre-deprivation process. *Id.*

33. In this case, ICE is required to release Petitioner from her unlawful custody where there is, at the time of detention, no legal authority to detain. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

34. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due

process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest even though he is under conditional release.

35. What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing her from custody and to take away—without any lawful basis—her physical freedom, i.e., her "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("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."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

36. Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process she is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

37. The government's interest in detaining Petitioner is nonexistent, and when weighed against Petitioner's significant private interest in her liberty, the scale tips sharply in favor of enjoining Respondents to release Petitioner from her unlawful custody and refrain from re-arresting Petitioner unless and until the government

demonstrates by clear and convincing evidence that they have a lawful basis to do so, and that she is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process she seeks is not to be detained with no pending process or charges whatsoever. Post facto justifications cannot be used to render an unlawful detention a lawful one.

38. As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis for detaining Petitioner. There is absolutely no possible "danger to the community" posed by this 59-year-old grandmother, and there are as of the time of this Petition no immigration proceedings for her to appear at.

39. The government has no interest in detaining Petitioner at this time. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[1]

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[1] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

40. Moreover, the "fiscal and administrative burdens" that her immediate release would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather a recognition that Respondents had no justification or authority to detain her at all.

41. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. ICE's unlawful action of placing her in custody is more of a financial burden than releasing her.

42. Releasing Petitioner from unlawful custody and enjoining his re-arrest until ICE has lawful authority to do so, and demonstrates by clear and convincing evidence that Petitioner is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping her detained.

43 Releasing Petitioner from unlawful custody and providing him a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE's earlier release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Deprivation of Liberty Without Due Process of Law – Fifth Amendment)

44. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 43 as though fully set forth herein.

45. The statutory provision under which Petitioner was paroled into the United States, 8 U.S.C. § 1182(d)(5), currently provides:

> The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A).

46. On information and belief, neither the Secretary of Homeland Security (Respondent Mullin) nor any authorized delegate of his made an individualized determination that the purposes of the parole of Petitioner had been served, prior to DHS taking Petitioner back into custody.

47. To the extent Respondents rely on Petitioner's prior parole or release history to justify his present detention, the detention must still comply with the governing immigration statutes and the Fifth Amendment. The supplied records show that Petitioner's 2022 parole was time-limited through November 16, 2023; accordingly, this Petition does not allege that DHS terminated an unexpired 2026

parole without notice. Petitioner instead challenges his present redetention as lacking adequate individualized process.

SECOND CLAIM FOR RELIEF

(Deprivation of Liberty Without Due Process of Law – Fifth Amendment – Detention Without Bond Hearing Pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(A))

48. Petitioner restates and re alleges the allegations contained in paragraphs 1 through 43 as though fully set forth herein.

49. As a long-term resident of the United States, Petitioner should not be deprived of liberty without receiving the due process of a hearing before a neutral adjudicator to determine whether he should be released on bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Petitioner, respectfully prays that the Court:

a) Order that Respondents release Petitioner from custody;
b) Enjoin Respondents from continuing or re-imposing detention without the individualized process required by the governing statute and the Fifth Amendment, including notice and a meaningful opportunity to be heard;
c) Declare that Petitioner's legal and constitutional rights were violated by her detention in the absence of any immigration court proceedings against her;
d) In the alternative, declare that, if she is not released, Petitioner is at least entitled to a bond hearing before a neutral adjudicator, and hold a bond hearing before the Court and order Petitioner released upon a reasonable bond;
e) Grant such other and further relief at law and in equity as justice may require; and
f) Grant attorneys' fees and costs of Court to Petitioner under the Equal Access to Justice Act.

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

Respectfully submitted this 24th day of August, 2026.

/s/ Helen L Parsonage
Elliot Morgan Parsonage, PLLC
328 N Spring St.
Winston-Salem, NC 27101
NC Bar #35492
GA Bar # 435330
hparsonage@emplawfirm.com
Attorney for Petitioner