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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

[redacted]

Petitioner,

v.

Ron MURRAY, Warden of Mesa Verde Detention Center; Todd LYONS, Acting Director for United States Immigration and Customs Enforcement; Polly KAISER, Acting Field Office Director of Enforcement and Removal Operations, San Francisco Field Office, Immigration and Customs Enforcement

Respondents.

CASE No.

[redacted]

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner [redacted] a compliant asylum seeker with no criminal record, was seized without warning or hearing when he attended his Immigration and Customs Enforcement (ICE) check-in in Bakersfield, California, shattering over four years of earned conditional liberty.

2. Petitioner fled persecution in [redacted]s, presented himself at the border, and complied with every condition of his release. Today, he languishes inside the Mesa Verde Detention Center, not because he committed a crime or received a removal order, but because the government simply changed its mind.

3. The government's abrupt revocation of Petitioner's liberty without notice, without process, and without a single changed circumstance strikes at the core of due process guaranteed by the Fifth Amendment. A growing consensus of EDCA precedent makes clear: the government cannot snatch a compliant noncitizen from his home and lock him away in secret. It must provide notice and a hearing first. Petitioner seeks immediate habeas release under 28 U.S.C. § 2241, prohibition on re-arrest absent procedural safeguards, and a stay of transfer and removal from this District during the course of these proceedings.

FACTUAL ALLEGATIONS

A. Petitioner is Unlawfully Arrested at His ICE Check-In

4. Petitioner [redacted] fled persecution in [redacted]s and arrived in the United States on June 14, 2021 along with his partner and their young son. *See* [redacted] Decl. ¶ 5.

5. Petitioner presented himself to immigration officials at the border. He received a Notice to Appear (NTA) dated the same day, charging removability as one present without being admitted or paroled under INA § 212(a)(6)(A)(i). Exh. A, NTA.

6. ICE released Petitioner on his own recognizance, pending his merits hearing. Exh. B, Order of

Release on Recognizance.

7. Petitioner settled in Bakersfield, California, and obtained work as an agricultural laborer. On June 14, 2022, Petitioner and his family filed a timely Form I-589 Application for Asylum, Withholding of Removal, and Protection Under the Convention Against Torture (CAT). *See* [redacted] n Decl. ¶¶ 6-7.

8. Petitioner's Form I-589 application was denied on September 5, 2025. He filed a timely appeal, which is currently pending at the Board of Immigration Appeals. *See* [redacted] n Decl. ¶ 8.

9. During his more than four years out of custody, Petitioner formed the "enduring attachments of normal life" that the Due Process Clause protects. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that a parolee's conditional liberty "includes many of the core values of unqualified liberty" and that termination of that liberty "inflicts a 'grievous loss'" entitled to due process protection). He obtained work, supported himself and his family, appeared at every immigration court hearing and ICE check-in, and filed a timely application for asylum. He has no criminal record. *See* [redacted] n Decl. ¶ 10.

10. Petitioner's interest in continued liberty is substantial and has grown with each month he remained free and compliant. *See Mendoza v. Warden*, No. 1:25-cv-2030 CSK, slip op. at 9-10 (E.D. Cal. Feb. 5, 2026) (holding that the duration of a noncitizen's conditional release—six years—"elevates and underscores his interest in liberty" under *Morrissey* and *Mathews*); *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, slip op. at 10-11 (E.D. Cal. Feb. 5, 2026) (holding that two years out of custody as exclusive financial provider for family, with work authorization and community ties, created a "powerful interest" in continued liberty).

11. Without advance notice or any opportunity to be heard, ICE arrested Petitioner at his regular check-in in early October 2025 and transferred him to the Mesa Verde Detention Center, where he remains detained. *See* [redacted] n Decl. ¶ 9.

12. Petitioner poses no threat to the community and no flight risk. He has never been ordered

removed, maintains a spotless criminal record, and has a demonstrable history of compliance: he has never absconded, never evaded arrest, and faithfully appeared for every check-in required of him. *See* [redacted]n Decl. ¶ 10 (stating no criminal record, no evasion, and attendance at all hearings and check-ins).

13. Petitioner was previously released on an Order of Release on Recognizance (OREC) pursuant to 8 U.S.C. § 1226(a). Exh. B. This release demonstrates that the government itself initially determined Petitioner was not subject to mandatory detention under § 1225(b)(2), but rather fell within the bond-eligible provisions of § 1226(a).

14. By granting Petitioner OREC, the government made an affirmative, individualized finding that he did not pose a danger to the community and was not a flight risk. 8 C.F.R. § 236.1(c)(8). This finding created a protected liberty interest. To now detain him, the government cannot simply ignore its prior determination. Due process requires it to bear the burden of proving that the facts underlying that initial finding have materially changed, justifying the 'grievous loss' of his liberty. The government must choose and it is bound by its first choice absent material changed circumstances.

15. Because Petitioner was previously released on recognizance pursuant to 8 U.S.C. § 1226(a)(2), requiring a finding of no security risk and no risk of absconding, see 8 C.F.R. § 236.1(c)(8), Respondents bear the threshold burden of demonstrating materially changed circumstances to justify re-detention. *See Prior v. Chestnut,* No. 1:25-cv-01131-JLT-EPG-HC, 2026 WL ___, at *15-16 (E.D. Cal. Feb. 5, 2026) (F&R) ("Respondents have not argued nor identified a change in circumstance"); *Mendoza v. Warden*, No. 1:25-cv-2030 CSK, slip op. at 2 n.3, 9 (E.D. Cal. Feb. 5, 2026) (emphasizing government's failure to contend petitioner violated release conditions or that circumstances had changed). Respondents have identified no such changed circumstances here.

B. As a Result of His Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable

Harm.

16. Petitioner is being deprived of his liberty without any permissible justification. The government previously released him on recognizance because he did not pose sufficient risk of flight or danger to the community to warrant detention.

17. None of that has changed. Upon information and belief, Petitioner has no criminal record, and there is no basis to believe that he poses any public-safety risk. Nor is Petitioner, who was arrested *at his ICE check-in,* a flight risk. To the contrary, Petitioner is actively seeking to comply with his ICE and immigration obligations. *See* [redacted] Decl. ¶ 9 (stating he voluntarily presented himself for a check-in when arrested); ¶ 10 (stating he never missed a check-in).

18. Furthermore, Petitioner is experiencing extreme emotional distress in detention. In addition, Petitioner's partner and their young son are suffering emotionally as well as financially in his absence. *See* [redacted]n Decl. ¶ 11.

19. The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

20. Immigration detention is civil and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner, who has no criminal history and was *arrested in the act of complying with the conditions of his release*, is not a flight risk or danger. His detention is thus not justified under the Constitution. *See id*.

21. Additionally, generally "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 added).

22. Consistent with these principles, a growing number of district courts, including many in this Circuit, have held that individuals who were previously released by DHS on parole or on an Order of Recognizance (OREC) are entitled to notice and pre-deprivation hearings before ICE can re-detain them.[1]

23. Petitioner respectfully seeks a writ of habeas corpus ordering the government to immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest without notice and a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this Court order the government not to transfer him outside of the District or deport him for the duration of this proceeding.

JURISDICTION AND VENUE

24. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

25. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district at the Mesa

[1] *See e.g.*, *Morales-Flores v. Lyons*, No. 1:25-CV-01640-TLN-EFB, 2025 WL 3552841 (E.D. Cal. Dec. 11, 2025); *Labrador-Prato v. Noem,* 1:25-cv-01598-DC-SCR, 2025 WL 3458802 (E.D. Cal. Dec. 2, 2025); *Selis Tinoco v. Noem*, 1:25-cv-01762-DC-JDP, 2025 WL 3567862 (E.D. Cal. Dec. 14, 2025), *D.L.C. v. Wofford,* 1:25-cv-01996-DC-JDP, 2026 WL 25511 (E.D. Cal. Jan. 5, 2026); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706 (E.D. Cal., Oct. 14, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300 (E.D. Cal., Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, (E.D. Cal. Oct. 24, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728 (E.D. Cal. Oct. 27, 2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO, 2025 U.S. Dist. LEXIS 222923 (E.D. Cal. Nov. 12, 2025)*; Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK, 2025 U.S. Dist. LEXIS 224966 (E.D. Cal., Nov. 14, 2025).

Verde Detention Center.

PARTIES

26. Petitioner [redacted] is a [redacted]d man from [redacted]s. Petitioner was released on recognizance when he entered the United States. He has a pending appeal of his application for asylum, withholding of removal, and protection under the Convention Against Torture. Petitioner is presently in civil immigration detention at the Mesa Verde Detention Center in Bakersfield, California.

27. Respondent Ron Murray is the Warden of the Mesa Verde Detention Center and an employee of the GEO Group, which owns the detention center where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

28. Respondent Todd Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

29. Respondent Polly Kaiser is the Director of the San Francisco Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Kaiser is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in her official capacity.

LEGAL BACKGROUND

A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.

30. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533

U.S. at 693). These due process rights are both substantive and procedural.

31. *First*, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

32. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom 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*, 533 U.S. at 690.

33. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28 (2003).

34. *Second*, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.

35. Generally, "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). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

36. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he 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.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id*.

37. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border, like Petitioner. After all, noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

38. As the Supreme Court held in *Morrissey*, and as this Court has repeatedly recognized, "[t]he 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." *Morrissey*, 408 U.S. at 482; *see Altin*, slip op. at 10 (quoting same); *S.L.,* slip op. at 5 (same); *Mendoza*, slip op. at 9 (same); *Prior*, slip op. at 11 (same). Petitioner relied on that same implicit promise when he complied with his ICE check-in requirements and attended his hearings in Immigration Court. Instead of honoring that promise, Respondents arrested him at his home based on an alleged minor technical violation.

B. Due process requires not only "changed circumstances" but also "evidence of urgent concerns," if Respondents seek to re-detain a person without a hearing.

39. DHS has the authority to release certain noncitizens on an Order of Recognizance (formally called "conditional parole") while their removal proceedings are pending before an immigration judge. 8 U.S.C. § 1226(a)(2); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase 'release on recognizance' as

another name for 'conditional parole' under § 1226(a).").

40. DHS may only release a noncitizen on an Order of Recognizance if "such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceedings." 8 C.F.R. § 236.1(c)(8). As such, release on an Order of Recognizance "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

41. After a determination has been made that an individual is not a flight risk or danger, DHS may not re-arrest them "absent a change of circumstance." *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F. Supp. 3d at 1176 ("O]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.").

42. In the past few months, ICE has started re-arresting individuals at routine ICE check-ins who were previously released on parole or an OREC. Many of these individuals had submitted asylum applications, appeared at ICE check-ins for years without issue, and were patiently waiting for their next immigration court date.

43. In some cases, Respondents make "half-hearted attempt[s]" to justify the re-arrest based on allegations of minor, technical violations of release conditions. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *15 (N.D. Cal. Nov. 25, 2025). However, Respondents typically do not argue that the individuals are flight risks or dangers to the community based on the purported violations. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025) ("Though [Respondents] point to minor, technical violations, they have not explained how those violations make Bernal

dangerous or a flight risk"); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12 ("Respondents do not argue that petitioner's two late check-ins mean that he is a flight risk or danger to the community."); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *12 (E.D. Cal. Nov. 6, 2025) ("While respondents assert that ICE arrested petitioner for those technical violations…they do not argue that a missed check-in or failure to seek advance approval to move means that petitioner is a flight risk or danger to the community.").

44. Instead, Respondents argue that the individuals are properly re-detained under the government's new and implausible interpretation of 8 U.S.C. § 1225(b)(2). However, Respondents arguments "fail to contend with the liberty interests created by the fact that [the noncitizens]…were released on recognizance *prior to the manifestation of this interpretation*. *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). Moreover, Respondents' mandatory detention theory has been uniformly rejected by courts because it contravenes core principles of statutory interpretation. *See Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *20-32 (Sept. 12, 2025).

45. As courts have evaluated Respondents' justifications for re-detaining noncitizens, it has become clear that due process requires not only "changed circumstances" but also "evidence of urgent concerns" to justify re-detention without a hearing. *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required..."). A pre-deprivation hearing is a crucial safeguard against pretextual or quota-driven arrests, especially in the current political climate, where ICE faces intense pressure to increase arrest numbers. *See E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 U.S. Dist. LEXIS 160809, at *10 (W.D. Wash. Aug. 19, 2025). Once the government has affirmatively decided to release an individual, that person acquires a protectable liberty interest

that cannot be stripped away without a hearing, unless a genuinely urgent, unanticipated change in circumstances makes such a hearing infeasible.

C. Petitioner Is Detained Under 8 U.S.C. § 1226(a), Not § 1225(b)(2)

46. Respondents detained Petitioner at his ICE check-in in October 2025. However, Petitioner is not an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). He was released on recognizance on June 14, 2021, and has resided in the United States' interior for over four years. He did not present himself at the border seeking admission in October 2025; he presented himself at the ICE office in Bakersfield, California.

47. Under the INA's text, structure, and implementing regulations, individuals in Petitioner's posture-noncitizens who entered without inspection, were placed into Section 240 removal proceedings, and have been living in the interior for an extended period-have historically been detained, if at all, under 8 U.S.C. 1226(a), not § 1225(b)(2). After IIRIRA, EOIR expressly explained that noncitizens "who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination" in Section 240 proceedings. Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

48. Consistent with that framework, the Supreme Court has distinguished between detention at the threshold of entry, governed by § 1225, and detention of people already inside the country, governed by § 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (section 1226 "generally governs the process of arresting and detaining" noncitizens "already in the country pending the outcome of removal proceedings," and "once inside the United States … the default rule is § 1226(a)"); *see also Clark v. Martinez*, 543 U.S. 371, 373 (2005) (describing § 1225(b)(2)(A) as applying to "alien[s] arriving in the United States").

49. Federal courts nationwide have "overwhelmingly rejected respondents' arguments and found

DHS's new policy unlawful." *See e.g. Morales-Flores v. Lyons*, 2025 WL 3552841, at *2 (E.D. Cal. Dec. 11, 2025); *see also Mendoza,* slip op. at 5-6 (collecting over thirty cases rejecting the government's interpretation); *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, slip op. at 8-9 (E.D. Cal. Feb. 5, 2026) (finding the overwhelming "weight of authority" rejects government's interpretation); *S.L. v. Wofford*, No. 1:26-cv-00522-TLN-EFB, slip op. at 6 n.2 (E.D. Cal. Feb. 5, 2026) (declining to reconsider court's prior rulings absent higher court precedent).

50. Petitioner was released on recognizance on June 14, 2021, has resided openly in Bakersfield, California for over four years, and has been in full § 240 removal proceedings the entire time. Treating him as a newly "arriving" applicant for admission under § 1225(b)(2) is at odds with the statutory text, nearly three decades of agency practice, and the substantial body of district-court authority holding that individuals in his circumstances fall under § 1226(a), with at least a presumptive entitlement to individualized custody review rather than categorical mandatory detention.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violation of the Fifth Amendment to the United States Constitution
(Substantive Due Process—Detention)

51. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

52. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

53. Immigration detention is civil, not punitive. It is constitutionally permissible only when it

reasonably furthers a legitimate regulatory purpose. The Supreme Court has recognized only two such purposes: (1) ensuring the noncitizen's appearance at removal proceedings, and (2) preventing danger to the community. *Zadvydas,* 533 U.S. at 690-92; *see also Demore v. Kim*, 538 U.S. 510, 519-20, 527-28 (2003).

54. Where the government cannot demonstrate that detention serves either purpose, the detention is arbitrary and violates substantive due process. *See S.L. v. Wofford*, No. 1:26-cv-00522-TLN-EFB, slip op. at 3-4 (E.D. Cal. Feb. 5, 2026) (holding that detention violates substantive due process where petitioner "is neither a danger nor a flight risk, which is evidenced by Respondents previously releasing him from custody").

55. Here, Petitioner was released on recognizance in June 2021. That release necessarily reflected Respondents' individualized determination that Petitioner was neither a danger to the community nor a flight risk. *See Gonzalez v. Bostock*, No. 2:25-cv-01404-JNW-GJL, slip op. at 8 (W.D. Wash. Oct. 7, 2025) ("By issuing the OREC, ICE necessarily determined that [petitioner] would not pose a danger and was likely to appear for future proceedings.")

56. Respondents have identified no changed circumstances since Petitioner's release. They do not-and cannot-contend that Petitioner has violated any condition of his release, committed any crime, failed to appear, or become a danger. His re-detention thus serves no legitimate government interest.

57. "[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 . . . alternative conditions." *S.L*. slip op. at 4 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 990, 994 (9th Cir. 2017)); *accord Prior*, slip op. at 7 (same); *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, slip op. at 12 (E.D. Cal. Feb. 5, 2026) (same).

58. Because Petitioner's detention does not serve the goals of ensuring appearance or preventing

danger, and because Respondents have shown no changed circumstances justifying re-detention, his continued custody is arbitrary, purposeless, and violates the substantive component of the Due Process Clause. *See S.L.*, slip op. at 4 ("The Court accordingly finds Respondents violated Petitioner's substantive due process rights."); *Prior*, slip op. at 7, 16 (finding substantive due process violation where petitioner released on parole, no changed circumstances, and detention did not serve legitimate interest).

SECOND CLAIM FOR RELIEF
Violation of the Fifth Amendment to the United States Constitution
(Procedural Due Process—Detention)

59. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

60. The Fifth Amendment's Due Process Clause guarantees all persons within the United States-including noncitizens-the right to notice and a meaningful hearing before the government deprives them of a protected liberty interest. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990); *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972).

A. Petitioner Possesses a Protected Liberty Interest

61. Petitioner was released on recognizance in June 2021 and resided in the United States for over four years. During this time, he worked, supported himself, complied with all conditions of release, and formed "enduring attachments of normal life." *Morrissey,* 408 U.S. at 482.

62. This release created an implicit promise that Petitioner's liberty "will be revoked only if [he] fail[s] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482; *see Altin*, slip op. at 10 (quoting same); *S.L.*, slip op. at 5 (same); *Mendoza v. Warden of the Golden Stateannex*, No. 1:25-cv-2030 CSK, slip op. at 9 (E.D. Cal. Feb. 5, 2026) (same); *Prior*, slip op. at 11 (same).

63. Courts in this District have uniformly held that noncitizens released from immigration custody possess a constitutionally protected liberty interest in remaining out of custody. *See*

Mendoza, slip op. at 9-10; *Altin*, slip op. at 10-11; *S.L.,* slip op. at 5-6; *Prior*, slip op. at 11-13 (collecting cases). Petitioner possesses that same protected interest.

B. Due Process Requires A Pre-Deprivation Hearing

64. To determine what process is due, the Court applies the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Ninth Circuit "has regularly applied Mathews to due process challenges to removal proceedings." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Under *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976), the Court considers: (1) the private interest affected; (2) the risk of erroneous deprivation; and (3) the government's interest.

65. First, Petitioner's private interest is substantial. "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,* 533 U.S. at 690. Petitioner spent two years out of custody, working, complying with all conditions, and building his life. His interest is at its apex. *See Mendoza*, slip op. at 9-10; *Altin,* slip op. at 10-11; S.*L.*, slip op. at 6-7; *Prio*r, slip op. at 13-14.

66. Second, the risk of erroneous deprivation is high. The "probable value" of a pre-deprivation hearing is extremely high, as it would allow a neutral adjudicator to evaluate whether detention is actually justified. *See Altin*, slip op. at 11-12 ("no neutral arbiter under § 1226 has determined whether those facts show that Petitioner is a flight risk or danger to the community"); *Mendoza*, slip op. at 9 ("The risk of an erroneous deprivation [of liberty] is high" when petitioner has not received a bond hearing); *S.L.*, slip op. at 7 (same). The risk is not just high in the abstract, but has already been realized here. This demonstrates precisely the kind of erroneous deprivation a pre-deprivation hearing with the proper allocation of proof is designed to prevent.

67. Third, the government's interest in detention without process is exceptionally low. Bond

hearings are routine, impose "minimal cost," and the government's interest in "detaining petitioner without a hearing is low." *Mendoza*, slip op. at 9 (quoting *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025)); *Altin*, slip op. at 12 (same); *S.L.*, slip op. at 7 (same). Not only did it previously deem Petitioner safe enough to release, but the alleged basis for re-detention—an un-warned, minor technical issue with his ICE-issued telephone—does not approach the level of an "urgent concern" that might justify summary action.

68. Moreover, the government previously determined Petitioner was neither a danger nor a flight risk—its interest in reversing that determination without any showing of changed circumstances is "even lower." *Mendoza*, slip op. at 9; *see Prior,* slip op. at 15-16 (government's interest "even lower" where petitioner previously released and no changed circumstances shown).

69. On balance, the *Mathews* factors compel the conclusion that due process requires a pre-deprivation hearing before Respondents may re-detain Petitioner. *See Mendoza*, slip op. at 9-10 ("An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.") (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)); *Altin*, slip op. at 12 ("a pre-deprivation hearing is required to satisfy due process"); *S.L.*, slip op. at 7-8 (same); *Prior*, slip op. at 14-15 (same).

C. At Any Such Hearing, the Government Bears the Burden of Proof By Clear and Convincing Evidence

70. At any such hearing, the government—not Petitioner—must bear the burden of proof. Because Petitioner's initial release reflected a determination that he posed no danger or flight risk, and because Respondents initiated re-detention, "it follows that the government should be required to bear the burden of providing a justification for the re-detention." *Prior*, slip op. at 14 (quoting *J.E.H.G. v. Chestnut*, 2025 WL 3523108, at *14 (E.D. Cal. Dec. 9, 2025));

accord Mendoza, slip op. at 10 (ordering hearing at which government must prove flight risk or danger).

71. The government must satisfy "clear and convincing evidence" —the standard this Court and others in this District have uniformly required. *See Mendoza*, slip op. at 10 (ordering hearing at which government must demonstrate flight risk or danger "by clear and convincing evidence"); *S.L.*, slip op. at 8 (same); *Prior*, slip op. at 14 (collecting cases requiring clear and convincing evidence); *see also Altin*, slip op. at 13 (ordering release and enjoining re-detention absent hearing with "clear and convincing evidence" standard).

72. The immigration judge's contrary requirement—that Petitioner bear the burden of proving he is not a danger or flight risk—is constitutionally insufficient. *Prior*, slip op. at 14 (finding procedures "not constitutionally sufficient because the IJ required Petitioner to bear the burden of establishing that he does not pose a danger to the community or a risk of flight").

73. Because Respondents re-detained Petitioner without any pre-deprivation hearing, and because they have never demonstrated that Petitioner poses a flight risk or danger to the community, his detention violates procedural due process. *See Mendoza*, slip op. at 10; *Altin,* slip op. at 12-13; *S.L.*, slip op. at 8; *Prior*, slip op. at 16-17.

THIRD CLAIM FOR RELIEF
Violation of the Administrative Procedure Act
(Arbitrary, Capricious, and Contrary to Law Agency Action)

74. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

75. This claim is brought under the Administrative Procedure Act, 5 U.S.C. § § 701-706. The APA waives sovereign immunity and authorizes judicial review of final agency action for which there is no other adequate remedy in court. 5 U.S.C. § 704.

76. Respondents' policy and practice of re-detaining noncitizens previously released on recognizance or parole, through the July 8, 2025 ICE policy memorandum and its

implementation, constitutes final agency action reviewable under the APA.

77. On June 14, 2021, DHS released Petitioner on his recognizance which reflected DHS's individualized determination that Petitioner presented neither "a security risk" nor "a risk of absconding." 8 C.F.R. § 1236.1(c)(8).

78. In October 2025, DHS re-detained Petitioner at his ICE check-in. Respondents have identified no changed circumstances since Petitioner's release. They do not contend that Petitioner violated any condition of his parole, committed any crime, failed to appear, or became a danger. An agency departing from a prior policy or individual determination must provide a reasoned explanation for its change in position. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Here, DHS has provided none.

79. Respondents' actions are "arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law" in violation of 5 U.S.C. § 706(2)(A) because:

    a. Respondents reversed decades of consistent agency practice applying 8 U.S.C. § 1226(a) to interior noncitizens, without reasoned explanation or acknowledgment of reliance interests;

    b. Respondents re-detained individuals based on the same facts that previously supported release determinations, without any showing of changed circumstances or new evidence of danger or flight risk;

    c. Respondents' actions are contrary to the unanimous weight of judicial authority rejecting their interpretation of 8 U.S.C. § 1225(b)(2).

80. Respondents' actions are "contrary to constitutional right" in violation of 5 U.S.C. § 706(2)(B) because they deprive Petitioner of liberty without the pre-deprivation hearing, burden of proof, and clear and convincing evidence standard required by the Fifth Amendment's Due Process Clause.

81. Respondents' actions are "in excess of statutory jurisdiction, authority, or limitations, or

short of statutory right" in violation of 5 U.S.C. § 706(2)(C) because Respondents lack statutory authority to detain Petitioner under 8 U.S.C. § 1225(b)(2), which applies only to noncitizens seeking admission at the border, not to those released into the interior.

82. Respondents' actions are taken "without observance of procedure required by law" in violation of 5 U.S.C. § 706(2)(D) because Respondents have failed to provide Petitioner with the procedural protections mandated by the INA and its implementing regulations, including 8 C.F.R. § 236.1(d)(1).

FOURTH CLAIM FOR RELIEF
Violation of the Immigration and Nationality Act — 8 U.S.C. § 1225(b)(2) Does Not Authorize Detention

83. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

84. Respondents detain Petitioner under the purported authority of 8 U.S.C. § 1225(b)(2). However, that provision applies only to noncitizens seeking admission at a port of entry. It does not authorize detention of noncitizens who have already been released into the interior and are appearing for routine check-ins. *See Mendoza*, slip op. at 5-6 (collecting 30+ cases rejecting government's interpretation); *Altin*, slip op. at 8-9 ("weight of authority" rejects government's position); *S.L.,* slip op. at 6 n.2 (declining to reconsider court's prior rulings rejecting § 1225(b)(2) applicability); *Prior,* slip op. at 5-7 (same).

85. Petitioner was released on recognizance in June 2021 and resided in the United States' interior for over four years. He is not an "applicant for admission" under Section 1225(b)(2). His detention is governed by 8 U.S.C. § 1226(a), the "default detention statute" for noncitizens in removal proceedings. *Prior,* slip op. at 5 (quoting *Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023)).

86. Accordingly, Petitioner's detention is without statutory authorization and violates the Immigration and Nationality Act.

FIFTH CLAIM FOR RELIEF
Violation of the Suspension Clause
U.S. CONST. ART. I, § 9, CL. 2

87. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

88. The Suspension Clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Clause guarantees the availability of judicial review to challenge the lawfulness of executive detention. *Boumediene v. Bush*, 553 U.S. 723, 745-46 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300-05 (2001).

89. Habeas corpus remains available to all persons in the United States who are detained by executive authority, including noncitizens in civil immigration custody. The Supreme Court has repeatedly held that Congress—and a fortiori the Executive—may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305-06; *Boumediene*, 553 U.S. at 779.

90. Petitioner is detained solely under civil immigration authority. He has no criminal convictions, no pending criminal charges, no history of violence, and his removal proceedings remain pending before an immigration judge.

91. In October 2025, ICE re-detained Petitioner at ICE check-in. He has never received any individualized custody determination. Respondents have never alleged or even established that Petitioner poses a danger or flight risk.

92. Because immigration judges and the Board of Immigration Appeals maintain that they lack jurisdiction to conduct bond hearings under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Petitioner has no administrative pathway to challenge the legality, duration, or necessity of his detention.

93. As a result, no adequate or effective substitute for habeas corpus exists through which

Petitioner may obtain judicial review of the legality of his confinement. Neither the Immigration Courts nor the Board of Immigration Appeals possesses jurisdiction to review custody challenges arising from DHS's classification decisions.

94. The Suspension Clause forbids the government from implementing a detention scheme that eliminates all meaningful opportunity for detainees to test the legality of their confinement. *Boumediene*, 553 U.S. at 779 ("The writ must be effective."). When no adequate and effective substitute exists, habeas review is constitutionally required. St. Cyr, 533 U.S. at 305.

95. Petitioner's detention implicates the core protections of the Suspension Clause. Without habeas corpus, Petitioner has no judicial or administrative forum in which to contest the legality of his ongoing confinement.

96. Accordingly, habeas corpus relief is constitutionally required. Petitioner respectfully requests that this Court grant the writ and order Petitioner's immediate release from ICE custody.

PRAYER FOR RELIEF

Petitioner respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to **immediately release** Petitioner from custody;
3. Declare that Petitioner's arrest and detention violates the INA, implementing regulations, and Due Process Clause of the Fifth Amendment.
4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless: (a) Respondents provide at least seven (7) days' advance written notice to Petitioner and his counsel; and

(b) Respondents first obtain an order authorizing detention at a pre-deprivation bond hearing before a neutral arbiter at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;

6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and

7. Grant such further relief as the Court deems just and proper.

Date: March 17, 2026

Respectfully Submitted,

/s/ Prerna P. Lal

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsels of record.

DATED this March 17, 2026 at Berkeley, California.

/s/ Prerna P. Lal

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