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6

7
8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
9 **SAN FRANCISCO DIVISION**

10 Wilson Omar Paz Aguilera,

11 *Petitioner,*

12 v.

13 Sergio Albarran, Acting Field Office Director
14 of San Francisco Office of Detention and
Removal, U.S. Immigrations and Customs
15 Enforcements; U.S. Department of Homeland
Security;

17 Todd M. Lyons, Actin Director, Immigration
and Customs Enforcement, U.S. Department
18 of Homeland Security;

19 Kristi NOEM, in her Official Capacity,
20 Secretary, U.S. Department of Homeland
Security; and

21 Pam BONDI, in her Official Capacity,
22 Attorney General of the United States;

23 *Respondents - Defendants,*
24

No.

PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR A
DECLARATORY AND INJUNCTIVE
RELIEF

Challenge to Unlawful Incarceration Under
Color of Immigration Detention Statutes;
Request for Declaratory and Injunctive Relief

INTRODUCTION

1
2 1. Petitioner, Wilson Omar Paz Aguilera, ("Mr. Paz Aguilera"), by and through his
3 undersigned counsel, hereby files this petition for writ of habeas corpus to remedy Respondents-
4 Defendants' ("Respondents") unlawful re-detention of Mr. Paz Aguilera without any process, in
5 violation of the Fifth Amendment to the U.S. Constitution.

6 2. Mr. Paz Aguilera entered the United States on April 27, 2019 seeking asylum with his
7 daughter, [REDACTED] When Mr. Paz Aguilera arrived in the United States,
8 federal agents briefly detained him, determined that he was not a flight risk or danger to the
9 community, and released him on his own recognizance with a notice to appear for removal
10 proceedings in immigration court on April 30, 2019. Since then, Petitioner had done everything
11 the government asked him to do; he has diligently attended every immigration hearing and ICE
12 check-in.

13 3. After filing his U-Visa application, Mr. Paz Aguilera moved to have his case
14 administratively closed (removed from the immigration court calendar) for adjudication of his
15 U-Nonimmigrant Visa.

16 4. On January 24, 2025, the immigration Judge administratively closed Mr. Paz Aguilera's
17 matter based on his pending U-Visa. On July 30, 2025, the Department of Homeland Security
18 moved to re-calendar petitioner's removal proceedings however that motion was denied by the
19 immigration judge thus Mr. Paz Aguilera's case remains off calendar.

20 5. Over the last five years in which he has lived at liberty, Mr. Paz Aguilera has been the
21 sole caretaker for his wife and three daughters, one of whom is a U.S. citizen who was born on
22 [REDACTED] in Palo Alto, California. Petitioner's removal proceedings have since been
23 administratively closed and he continues to wait for the adjudication of his U-Visa application.

24 6. Mr. Paz Aguilera suffers from diabetes which requires him to take insulin and metformin.
25 On September 15, 2025, Petitioner was hospitalized because of his diabetes. Mr. Paz Aguilera
26 is now detained without any medication, putting him at risk of substantial harm and further
27 hospitalization.

28 7. On November 17, 2025, Mr. Paz Aguilera attended his last check-in appointment with
ICE. At that time, ICE detained him.

1 8. Mr. Paz Aguilera's arrest and detention have caused him tremendous and ongoing harm.
2 Every additional day Mr. Paz Aguilera spends in unlawful detention subjects him to further
3 irreparable harm.

4 9. The Constitution protects Mr. Paz Aguilera – and every other person present in this
5 country – from arbitrary deprivations of his liberty, and guarantees him due process of law. The
6 government's power over immigration is broad, but as the Supreme Court has declared, it
7 is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
8 "Freedom from bodily restraint has always been at the core of this liberty protected by the Due
9 Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

10 10. By status and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
11 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
12 change in circumstances since the individual's release, 8 U.S.C. § 236.1(c)(9); *Matter of Sugay*,
13 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any
14 change in circumstance must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D.
15 Cal. 2017). That authority, however, is proscribed by the Due Process Clause because it's well-
16 established that individuals released from incarceration have a liberty interest in their freedom.
17 In turn, to protect that interest, on the particular facts of Mr. Paz Aguilera's case, due process
18 requires notice and a hearing, prior to any revocation of his conditional release, at which he is
19 afforded the opportunity to advance his arguments as to why his release should not be revoked.

20 11. That basic principle – that individuals placed at liberty are entitled to due process before
21 the government imprisons them – has particular force here, where Mr. Paz Aguilera's detention
22 was already found to be unnecessary to serve its purpose.

23 12. Therefore, at a minimum, to lawfully re-arrest Mr. Paz Aguilera, the government must
24 first establish, by clear and convincing evidence and before a neutral decision maker, that he is a
25 danger to the community or a flight risk, such that his re-incarceration is necessary.

26 13. Mr. Paz Aguilera respectfully seeks a writ of habeas corpus ordering the government to
27 immediately release him from his ongoing, unlawful detention, and prohibit his re-arrest without
28 a hearing to contest that re-arrest before a neutral decision maker. In addition, to preserve this
Court's jurisdiction, Mr. Paz Aguilera also requests that this Court order the government not to
deport him for the duration of this proceeding.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, et seq., All Writs Act; 28 U.S.C. § 2241, et seq., habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, CL. 2 of the United States Constitution (the Suspension Clause); Art. 3 of the United States Constitution, and the common law, the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-7-6 (Administrative Procedure Act).

15. 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 Mr. Paz Aguilera was physically detained within this district by the San Francisco Office of Detention and Removal.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)(citation and quotation marks omitted)). Mr. Paz Aguilera asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm. Prudential exhaustion is not required here because it would be futile, and Mr. Paz Aguilera will “suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any attempt to exhaust his administrative remedies would be futile because an Immigration would deny his request for a bond hearing under the recent Bureau of Immigration Appeals (“BIA”) decisions *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Any further exhaustion requirements would be unreasonable.

17. Both *Yajure Hurtado* and *Q. Li* held that IJs do not have the authority to hold a bond hearing where the moving noncitizens entered the country without inspection. Because Mr. Paz Aguilera entered the country without inspection, if he were to move for a bond hearing, an IJ following these decisions would have to decline jurisdiction over the issue.

PARTIES

18. Petitioner, Wilson Omar Paz Aguilera is a 39-year-old man from Honduras. He has no criminal history anywhere in the world. He has a pending application for a U-Nonimmigrant Visa. He is presently in removal proceedings which have been administratively closed by the Immigration court for processing of the U-Visa. He is presently in civil immigration detention at California City Detention Facility.

19. Respondent, Sergio ALBARRAN is the Acting Field Office Director of the San Francisco ICE field Office and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to the immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Mr. Paz Aguilera. Mr. Albarran's field office made the decision to detain Mr. Paz Aguilera and his immigration case although administratively closed is pending in the San Francisco Immigration court.

20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official Capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. Paz Aguilera

21. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Paz Aguilera.

22. Respondent Pamela BONDI is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. She has the authority to interpret immigration laws and adjudicate removal cases.

LEGAL BACKGROUND

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

23. 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.

24. These protections extend to noncitizens facing detention, as “in 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, “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.

25. Substantive due process 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 of immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 53 U.S. at 690-92; see also *Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28 (2003).

26. The procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.

27. In Mr. Paz Aguilera’s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release in 2019, such that detention would now only be warranted on the basis that he is a danger or flight risk by clear and convincing evidence.

28. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond “at any time,” 9 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens. There, the BIA held that “where a previous bond determination has been made by an immigration

1 judge, no change should be made by the DHS absent a change of circumstance.” *Id.* In practice,
2 DHS “requires a showing of changed circumstances both where the prior bond determination
3 was made by an immigration judge and where the previous release decision was made by a DHS
4 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed
5 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
6 circumstances. *Panosyan v Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021)(“thus, absent
changed circumstances... ICE cannot detain Panosyan.”).

7 29. ICE has further limited its authority as described in *Sugay*, and ‘generally only re-arrests
8 (noncitizens) pursuant to § 1226(b) after a material change in circumstances.” *Saravia*, 280 F.
9 Supp. 3d at 1197, aff’d sub nom. *Saravia for A.H.*, 905 F.3d 1137 (quoting Defs. ‘ Second Supp.
10 Br. At 1, Dkt. No 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may
11 re-arrest a noncitizen who had previously released on bond only after a material change in
12 circumstances. See *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

13 30. ICE’s power to re-arrest a noncitizen who is at liberty following a release on bond is also
14 constrained by the demands of due process. See *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
15 Cir. 2017)(“the government’s discretion to incarcerate non-citizens is always constrained by the
16 requirements of due process”). In this case the guidance provided by *Matter of Sugay* – that ICE
17 should not re-arrest a noncitizen absent changed circumstances – is insufficient to protect Mr.
Paz Aguilera’ weighty interest in his freedom from detention.

18 31. Federal district courts in California have repeatedly recognized the demands of due
19 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
20 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
21 on bond, like Mr. Paz Aguilera, before ICE re-detains him. See e.g., *Meza v. Bonnar*, 2018 WL
22 2554572 (N.D. Cal. June 4, 2018); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL
23 1382859, at 3 (N.D. Cal. May 12, 2025)(temporary injunction warranted preventing re-arrest at
24 plaintiff’s ICE interview when he had been on bond for more than five years). See also *Doe v.*
25 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, 4 (E.D. Cal. Mar. 3, 2025)(holding
the Constitution requires a hearing before any re-arrest).

26 FACTUAL ALLEGATIONS

27 32. Mr. Paz Aguilera’s liberty from immigration custody is protected by the Due Process
28 Clause: “Freedom from imprisonment- from government custody, detention, or other forms of

1 physical restraint – lies at the heart of the liberty that (the Due Process) Clause protects.”
2 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 33. Since April 30, 2019, Mr. Paz Aguilera exercised that freedom when he was released on
4 his own recognizance along with his daughter. As a result, he retained a weighty liberty interest
5 under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. See *Young*
6 *v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
7 *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

8 34. Just as in *Morrissey*, Mr. Paz Aguilera’s release “enables him to do a wide range of things
9 open to persons” who have never been in custody or convicted of any crime, including to live at
10 home, work, go to the doctor, take his medication, care for his children, including his U.S. citizen
11 daughter for whom he is the sole caretaker, and “be with family and friends and to form the other
12 enduring attachments of normal life” *Morrissey*, 408 U.S. at 482.

13 35. Mr. Paz Aguilera is the sole caretaker for his wife and children. He has complied with
14 all conditions for release for over five years, as he litigates his removal proceedings. He has
15 meritorious applications for relief from removal.

16 **A. Mr. Paz Aguilera is Unlawfully Arrested and Detained Pursuant to**
17 **DHS’s New Policy.**

18 36. Deportation, like detention, constitutes a deprivation of liberty protected by the Due
19 Process Clause. As the Supreme Court has held, a noncitizen’s interest in deportation proceedings
20 “is, without question, a weighty one” because “[s]he stands to lose the right ‘to stay and live and
21 work in this land of freedom.’” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges v.*
22 *Wixon*, 326 U.S. 135, 154 (1945)).

23 37. Mr. Paz Aguilera asserts that, here, (1) where his detention would be civil, (2) where he
24 has been at liberty for five years, during which time he has complied with all conditions of release
25 and served as the sole caretaker for his wife and children including his U.S. citizen daughter, (3)
26 where he has a substantial application for a U-nonimmigrant visa pending before USCIS and his
27 immigration case has been administratively closed (4) where no change in circumstances exist
28 that would justify his detention, (5) where petitioner was recently hospitalized as a result of his
diabetes which requires continued medication and medical supervision and (6) 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 receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of a bond.

38. “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 Mr. Paz Aguilar’s liberty interest against the government’s interest in the efficient administer of” its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* 1at 1357.

39. Under the test set forth in *Mathias v. Eldridge*, this Court must consider these 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 process used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government’s interest, including the function involved and fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.3d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

38. Because, in this case, the provision for a pre-deprivation hearing is both possible and valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Mr. Paz Aguilera with notice and a hearing prior to any re-incarceration and revocation of his pre-trial release. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F2d at 1355-56; *Jones*, 393 F.3d at 932; 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 be constitutionally be held in jail pending the determination as to whether they can ultimately be committed). Under *Mathews*, “the balance weighs heavily in favor of Mr. Paz Aguilera” and requires a pre-deprivation hearing before a neutral adjudicator.

39. In 2019, Petitioner fled to the United States. He was initially arrested by DHS officers but was released on his own recognizance with a notice to appear three days later for removal proceedings. In granting his release, DHS determined that he posed little if any risk of flight or danger to the community.

40. The DHS filed a Notice to Appear with the immigration court on July 7, 2024. On August 2, 2024, the undersigned counsel filed a Notice of Entry of appearance as attorney of

1 record with the immigration court. On August 30, 2024, Petitioner filed for a U-Nonimmigrant
2 visa with USCIS. On January 13, 2025, Petitioner moved to administratively close removal
3 proceedings based on the pending U Nonimmigrant visa. On January 24, 2025, the Immigration
4 Judge administratively closed removal proceedings (removed case from calendar) for the
5 adjudication of the pending U-Nonimmigrant Visa. On July 30, 2025, the DHS moved to re-
6 calendar petitioner's matter however on July 30, 2025, the immigration judge denied the motion
7 to re-calendar and the case remains administratively closed.

8 41. Since arriving to the United States, Mr. Paz Aguilera has attended every immigration
9 appointment that he was required to attend. Mr. Paz Aguilera has no criminal history. Mr. Paz
10 Aguilera lives in East Palo Alto, California with his family. On information and belief, he
11 informed the immigration court about his change of address. He attended all check-ins with ICE.

12 42. Petitioner applied for a U-Nonimmigrant visa based on his cooperation with the United
13 States Government after being the victim of a crime in the United States.

14 43. Ever since Petitioner entered the country, he has fully complied with all court and
15 supervision requirements.

16 44. On November 18, 2025, Petitioner appeared at a regularly scheduled ICE check-in at the
17 ICE San Francisco Office at 630 Sansome Street in San Francisco, California.

18 45. The ICE agent falsely informed Mr. Paz Aguilera that he had a deportation order and that
19 he would be detained. Mr. Paz Aguilera called his attorney who informed the ICE agent that his
20 case was administratively closed and that he had a pending U-Nonimmigrant Visa. The ICE
21 agent informed the undersigned counsel that he had no authority over Mr. Paz Aguilera's
22 detention.

23 46. Undersigned counsel sent an email to the San Francisco ICE outreach to request
24 immediate release but received no response. On November 19, 2025, undersigned counsel
25 received a response that Petitioner was transferred to the California City detention center and to
26 contact the Bakersfield ICE office. Undersigned counsel wrote an email to the Bakersfield ICE
27 office which included Mr. Paz Aguilera's health issues and medications but has received no
28 response.

47. Petitioner remains in custody while his immigration case is administratively closed (off-
calendar). At this time, there are no new circumstances that would justify a re-arrest of petitioner.

1 48. Because Petitioner has never been determined to be a flight risk or danger to the
2 community, his detention is not related to either of the permissible justifications for civil
3 immigration litigation. His detention does not further any legitimate government interest.

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

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

9 50. None of that has changed. Petitioner has no criminal record, and there is no basis to believe
10 that he poses any public-safety risk. Nor is Petitioner, who was arrested while appearing for an
11 ICE check-in is conceivably a flight risk. To the contrary, Petitioner appeared for every
12 immigration appearance.

13 51. Petitioner is now separated from his family. He suffers from high blood pressure and
14 diabetes which led to his hospitalization in September of 2025 and requires a consistent drug
15 regime and medical monitoring.

16 52. Petitioner is the sole provider for his wife and three daughters.

17 53. Petitioner's wife is at stay-at-home mother providing for their three-year-old US citizen
18 daughter.

19 **CLAIMS FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF**

21 **Violation of the Fifth Amendment to the United States Constitution**

22 **(Substantive Due Process—Detention)**

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

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

56. Immigration detention is constitutionally permissible only when it furthers the
government's legitimate goals of ensuring the noncitizen's appearance during removal
proceedings and preventing danger to the community. See *id.*

57. Petitioner is not a flight risk or danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

58. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

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. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after his release. 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); see also *Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

61. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protection to ensure that the government's asserted Justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990; *Zinerman*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); see also *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

62. Petitioner's re-detention without a pre-deprivation hearing violated due process. Over five years after deciding to release Petitioner from custody on his own recognizance, Respondents re-detained Petitioner with no notice, no explanation of the justification of his re-detention, and no

1 opportunity to contest his re-detention before a neutral adjudicator before being taken into
2 custody.

3 63. Petitioner has a profound personal interest in his liberty. Because he received no procedural
4 protections, the risk of erroneous deprivation is high. And the government has no legitimate
5 interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of
6 course in immigration proceedings, and nothing in Petitioner's record suggested that he would
7 abscond or endanger the community before a bond hearing could be carried out. See,
8 e.g., *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v.*
9 *Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that
10 delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of
11 petitioner's strong family ties and his continued employment during the pandemic as an essential
12 agricultural worker").

12 **THIRD CLAIM FOR RELIEF**

13 **Violation of the Fourth Amendment to the United States Constitution** 14 **(Unlawful Arrest)**

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

17 65. The Fourth Amendment protects the right of persons present in the United States to be free
18 from unreasonable seizures by government officials.

19 66. As a corollary to that right, the Fourth Amendment prohibits government officials from
20 conducting repeated arrests on the same probable cause. It is axiomatic that seizures have
21 purposes. When those purposes are spent, further seizure is unreasonable. . . . [T]he primary
22 purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee
23 appears before the court, the purpose of the initial seizure has been accomplished. Further seizure
24 requires a court order or new cause; the original probable cause determination is no justification.
25 *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020); see also *United States v. Kordosky*, No. 88-
26 CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling
27 justification, the repeated seizure of a person on the same probable cause cannot, by any standard,
28 be regarded as reasonable under the Fourth Amendment.").

67. In the immigration context, this prohibition means that a person who immigration authorities released from initial custody cannot be re-arrested “solely on the ground that he is subject to removal proceedings” and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971). DHS agents arrested Petitioner in 2019 after he entered the United States, charged him with a violation of civil immigration law, and released him on his own recognizance with a notice to appear in immigration court. Petitioner appeared at his ICE check-in as instructed even though his removal case had been taken off calendar by the immigration judge.

68. DHS re-arrested Petitioner on November 18, 2025, based on nothing more than the 2019 civil charge of violating immigration law for which he was previously released. Petitioner had not engaged in any conduct in the intervening time that made him a flight risk or danger to the community. No material change in circumstances justified Petitioner’s re-arrest.

69. Petitioner’s re-arrest and detention by Respondents absent any material change in circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

PRAYER FOR RELIEF

Petitioner respectfully requests 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 violate the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the First Amendment, and the Administrative Procedure Act;
4. Enjoin Respondents from deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in 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

1 7. Grant such further relief as the Court deems just and proper.
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3 Date: November 21, 2025

Respectfully Submitted,

4
5 /s/ Emilio Parker

6 Emilio Parker

7 Attorney For Petitioner

8 Wilson Paz Aguilera
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on November 21, 2025, in Oakland, CA.

/s/ Emilio Parker
Emilio Parker
Attorney for Wilson Paz
Aguilera