

1 BRENDON WOODS (CA SBN #189910)  
Public Defender

2 RAHA JORJANI (CA SBN #240941)  
3 Managing Immigration Attorney  
KELSEY MORALES (CA SBN #312362), *Designation of Counsel for Service*  
4 Immigration Attorney  
Office of the Alameda County Public Defender  
5 312 Clay Street, 2nd Floor  
Oakland, CA 94607  
6 Telephone: 510 268-7429  
Facsimile: 510 268-7462  
7 Email: [kelsey.morales@acgov.org](mailto:kelsey.morales@acgov.org)

8 *Pro Bono Attorneys for Petitioner*

9  
10 UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

11 ELMER JOEL MENDEZ CARRILLO,  
12  
Petitioner,

Case No. \_\_\_\_\_

13 v.

**VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS**

14 MINGA WOFFORD, in official capacity,  
Facility Administrator of Mesa Verde ICE  
15 Processing Center; SERGIO ALBARRAN, in  
official capacity, Acting Field Office Director  
16 of ICE's San Francisco Field Office; TODD M.  
LYONS, in official capacity, Acting Director of  
17 ICE, KRISTI NOEM, in official capacity,  
Secretary of the U.S. Department of Homeland  
18 Security; PAM BONDI, in official capacity,  
Attorney General of the United States,

Immigration Habeas Case

19  
20 Respondents.

## INTRODUCTION

1. Petitioner Elmer Joel Mendez Carrillo (“Mr. Mendez Carrillo”),<sup>1</sup> by and through undersigned counsel, hereby files this petition for writ of habeas corpus to compel his immediate release from the immigration jail where he has been held by the Department of Homeland Security (“DHS”) since being unlawfully re-detained on October 1, 2025 without first being provided a due process hearing to determine whether his re-incarceration is justified. Without the intervention of this Court, Mr. Mendez Carrillo faces continued unlawful detention without any review by a neutral arbiter because DHS and the Executive Office of Immigration Review (“EOIR”)—namely immigration prosecutors and Immigration Judges (“IJs”)—have, in coordination with each other, newly “revisited” their “legal position” regarding DHS’s detention authority and “newly” concluded that those similarly situated to Petitioner are subject to mandatory detention.

2. DHS initially detained Petitioner on approximately December 17, 2018, charging him as removable for being present in the United States without admission or parole, or for arriving at a time or place not designated by the Attorney General, 8 U.S.C. § 1182(a)(6)(A)(i). DHS determined Petitioner was not a danger or a flight risk and released him on his own recognizance pursuant to 8 U.S.C. § 1226(a) and implementing regulations on December 24, 2018. *See* 8 C.F.R. § 236.

3. Petitioner was released from DHS custody and spent the next nearly seven years at liberty, pursuing his asylum claim, living with his family and raising his children, developing community and church ties, and maintaining employment and work authorization to support his wife and three young children.

4. Meanwhile, on July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under §

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<sup>1</sup> Mr. Mendez Carrillo respectfully requests that the Court use his initials, rather than his full last name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy Concern Regarding Social Security & Immigration Opinions, May 1, 2018, *available at*: [https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion\\_cacm\\_0.pdf](https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion_cacm_0.pdf). *See also* *Walter A.T., v. Facility Administrator*, 2025 WL 1744133, at \*10 (E.D. Cal. June 24, 2025).

1 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to  
2 be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on  
3 bond.

4 5. Subsequently, on September 5, 2025, the Board of Immigration Appeals (“BIA” or  
5 “Board”) issued a precedent decision, binding on all immigration judges, holding that an  
6 immigration judge has no authority to consider bond requests for any person who entered the  
7 United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).  
8 The Board determined that such individuals are subject to detention under 8 U.S.C. §  
1225(b)(2)(A) and therefore ineligible to be released on bond.

9 6. Less than a month later, on October 1, 2025, Petitioner was arrested by several masked  
10 ICE agents—who he initially feared were assailants since their faces were covered—as he left  
11 his home in Oakland, California with his lunch to drive to work. Petitioner was not and has not  
12 yet been provided with an administrative warrant stating the reasons for his re-detention, despite  
13 requests by counsel to obtain any such documentation. Not that day or since has ICE provided  
Petitioner any information as to why they are detaining him.

14 7. In fact, it appears that ICE detained him as part of a national trend of community  
15 arrests. Petitioner’s arrest, as he lived his daily life as he had done for the past nearly seven years  
16 and in the presence of his young children, occurred amid the backdrop of ICE and the Trump  
administration’s goal of 3,000 daily ICE arrests.<sup>2</sup>

17 8. Petitioner now finds himself unlawfully re-detained with no access to prompt review  
18 before the agency. These actions by the Executive Branch violate Petitioner’s constitutional and  
19 statutory rights and effectively and unlawfully deny him review of his detention by a neutral  
arbiter.

20 9. First, it is well established that individuals released from incarceration have a  
21 significant liberty interest in their freedom. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482-  
22 483 (1972); *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at \*4

23 <sup>2</sup> See Brittany Gibson & Stef W. Kight, “Scoop: Stephen Miller, Noem tell ICE to supercharge  
24 immigrant arrests,” *Axios* (May 28, 2025) at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

1 (E.D. Cal. Aug. 4, 2025). To protect that interest in the particular facts of Petitioner's case, due  
2 process requires notice and a hearing, *prior* to any re-detention, at which he would be afforded  
3 the opportunity to advance his arguments as to why his release on his own recognizance should  
4 not be revoked.

5 10. Second, Petitioner's detention under § 1225(b)(2)(A) violates the plain language of  
6 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like  
7 Petitioner who were detained in the interior, released on their own recognizance and are now  
8 residing in the United States. Instead, such individuals are subject to a different statute, §  
9 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to  
10 people who, like Petitioner, are charged as inadmissible for having entered the United States  
11 without inspection.

12 11. Respondents' new legal interpretation is plainly contrary to the statutory framework  
13 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

14 12. Petitioner seeks immediate relief from this Court for these constitutional and statutory  
15 violations. Due process requires that any re-detention of Petitioner happen only *after* a neutral  
16 adjudicator has determined that he poses a present danger and unmitigable flight risk. Moreover,  
17 even if Petitioner had been lawfully re-detained, he has a statutory right to a bond hearing before  
18 an IJ. As such, this Court should order Petitioner's immediate release unless and until a neutral  
19 decisionmaker determines that DHS has met its burden of justifying his renewed incarceration by  
20 clear and convincing evidence, or, in the alternative, should order Petitioner released if not  
21 granted a bond hearing within seven days of an order from this Court.

### 22 CUSTODY

23 13. Petitioner is in the physical custody of Respondents. Petitioner is currently detained  
24 by DHS at the Mesa Verde ICE Processing Center in Bakersfield, California, where he was  
transferred after being arrested by ICE officers in the street outside his Oakland, California home  
on October 1, 2025. Since being arrested by DHS, Petitioner has not been provided with a  
constitutionally compliant hearing to determine whether his re-detention is justified.

**JURISDICTION**

14. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. § 500 et seq.

15. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C. § 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

16. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2241, 1651, 2201-02, and 5 U.S.C. § 702. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

**VENUE**

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner currently is detained.

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of California.

**REQUIREMENTS OF 28 U.S.C. § 2243**

19. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

20. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

1 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
2 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3 **PARTIES**

4 21. Petitioner ELMER JOEL MENDEZ CARRILLO was born in Guatemala and came  
5 to the United States with his eldest daughter in December 2018. He was initially detained by ICE  
6 for approximately one week, after which DHS released him on an Order of Release on  
7 Recognizance. On October 1, 2025, DHS, without prior notice or hearing, took Petitioner into  
8 custody in front of his wife and young children as he was leaving his Oakland, California home  
9 to drive to work. Since then, Petitioner has been detained at the Mesa Verde ICE Processing  
Center, located in Bakersfield, California.

10 22. Respondent MINGA WOFFORD is the facility administrator of Mesa Verde ICE  
11 Processing Center, a detention center run by GEO Group Inc., a private, for-profit company.  
12 Pursuant to the Ninth Circuit’s recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir.  
13 2024), Minga Wofford is the proper respondent because she is the *de facto* warden of the facility  
at which Petitioner is detained.

14 23. Respondent SERGIO ALBARRAN is the Acting Field Office Director of ICE for  
15 San Francisco. In his official capacity, he is the federal official most directly responsible for  
16 overseeing Golden State Annex. Accordingly, he has legal custody over Petitioner.

17 24. Respondent TODD M. LYONS (“Acting Director Lyons”) is the current Acting  
18 Director of ICE. As the head of ICE, an agency within the DHS that detains and removes certain  
19 noncitizens, Acting Director Lyons is a legal custodian of Petitioner, and is named in his official  
20 capacity.

21 25. Respondent, KRISTI NOEM (“Secretary Noem”), is the Secretary of the Department  
22 of Homeland Security. She has authority over the detention and departure of noncitizens, like  
23 Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the  
24 Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003). Given this authority,  
Secretary Noem is the legal custodian over Petitioner and is empowered to carry out any  
administrative order issued against him.

26. Respondent, PAM BONDI (“Attorney General Bondi”), is the Attorney General of the United States, and as such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the Board of Immigration Appeals (“BIA”). In her official capacity, Attorney General Bondi is the ultimate legal custodian of Petitioner.

## FACTS

27. Petitioner is currently detained at the Mesa Verde ICE Processing Center in Bakersfield, California. Declaration of Kathleen O’Leary (“O’Leary Decl.”) at ¶ 6.<sup>3</sup> He is a 40-year-old asylum seeker from Guatemala. *See* Exhibit (“Exh.”) A, Declaration of Mr. Mendez Carrillo (hereinafter “Mendez Carrillo Decl.”) at ¶ 1. Prior to his detention, Petitioner resided in Oakland, California with his wife, as well as his 15-year-old daughter, 11-year-old son, and seven-month-old United States citizen daughter. *See* Exh. F, Letters of support from family members.

### **Petitioner's Detention and Release by Immigration Authorities in 2018**

28. DHS first detained Petitioner and his daughter near Antelope Wells, New Mexico, on approximately December 17, 2018. Exh. C, Notice to Appear (“NTA”). Petitioner and his daughter were detained for approximately 8 days, until their release on December 24, 2018. Exh. B, Order of Release on Recognizance. On release, Petitioner was provided documents including a NTA and Order of Release on Recognizance. Exh. B and C. The Order of Release on Recognizance states that he was being released “[i]n accordance with Section 236 of the Immigration and Nationality Act.” Exh. B.

29. The NTA—DHS’s charging document, dated December 22, 2018—alleged that Petitioner was not a citizen of the United States and had not been admitted or paroled into the United States and charged him as removable on this basis under 8 U.S.C. § 1182(a)(6)(A)(i). Exh. C. The NTA has checkboxes near the top of the form. Here, the government did not check the box identifying Petitioner as an “arriving alien;” rather, it identified him as a noncitizen

<sup>3</sup> Exhibits referenced in this petition are attached to the O’Leary Declaration.

1 “present in the United States without being admitted or paroled.” *Id.* The NTA included a date  
2 for a subsequent court date—July 22, 2019, at the San Francisco Immigration Court. *Id.* While  
3 the NTA was dated December 22, 2018, and served on Petitioner on that date, it was not filed  
4 with EOIR until June 10, 2019, when it was filed with handwritten amendments and served by  
5 mail on Petitioner. *Id.*

6 30. Following their release from immigration detention, Petitioner traveled to Oakland,  
7 California with his young daughter to establish a life there, pursuing asylum and diligently  
8 complying with all requirements set by the immigration court and ICE. Mendez Carrillo Decl. at  
9 ¶¶ 5-14.

**Mr. Mendez Carrillo’s Period of Liberty from December 2018 to October 2025**

10 31. Petitioner continued to pursue his immigration case once released from DHS custody  
11 at the border. On November 4, 2019, he filed his petition for asylum, withholding of removal,  
12 and protection under the Convention Against Torture (“CAT”) based on his fear of return to his  
13 country of origin, well within the one-year filing deadline. O’Leary Decl. at ¶ 4. Petitioner  
14 sought and secured representation, attended numerous court hearings, and complied with the  
15 conditions of his release. Mendez Carrillo Decl. at ¶ 6. At various points during his period of  
16 liberty, Petitioner was required to wear an ankle monitor, which was later removed, and to  
17 comply with monitoring requirements, likely via the Intensive Supervision Appearance Program,  
18 or “ISAP.” Mendez Carrillo Decl. at ¶¶ 5, 14. He diligently complied with these reporting  
19 requirements. *Id.*

20 32. In the meantime, Petitioner established a life in Oakland, where he lives with his wife  
21 and three young children. He has been the exclusive financial provider for his family, working in  
22 construction, including for [REDACTED] where he has been employed for  
23 approximately three years. Mendez Carrillo Decl. at ¶ 8. On the basis of his pending asylum  
24 petition, Petitioner applied for and was granted an Employment Authorization Document. *Id.*  
Despite a lack of social support network on arrival, Petitioner sought out educational and  
extracurricular opportunities for his children, joined the Evangelical church where his family are  
now active members, and became part of a committee of Guatemalans who support members of

1 the community experiencing illness and loss. *Id.* at ¶¶ 10-11. Friends, family, and colleagues  
2 describe him as a “respectful, responsible, protective, [and] kind,” person who publicly  
3 demonstrates “his commitment not only to his children but to [... their] community as a whole.”  
4 Exh. F.

5 33. Petitioner suffered his first arrest anywhere in the world in March 2024 in Oakland,  
6 California. Mendez Carrillo Decl. at ¶ 13; *see also* O’Leary Decl. at ¶ 10. Oakland Police  
7 detained him for one night and he was released on bail the next day. Mendez Carrillo Decl. at ¶  
8 13; Exh. F at 1. He was subsequently ordered to appear for arraignment on March 20, 2024, at  
9 the Wiley W. Manual Courthouse. Mendez Carrillo Decl. at ¶ 13. However, when Petitioner did  
10 so, he was told that he did not have court. *Id.* He was told to call every three weeks to confirm  
11 that he still did not have court. *Id.* Ever diligent, he called weekly and was eventually informed  
12 in writing that charges were not filed for lack of cause and/or evidence on May 7, 2024. Exh. E,  
13 Superior Court of California, County of Alameda, Criminal Records Search dated June 3, 2024.  
14 Petitioner’s counsel, through both internal and publicly available court databases, has likewise  
15 confirmed that the charges related to Petitioner’s detention have not been filed, even more than a  
16 year and a half since his brief detention. *See* O’Leary Decl. at ¶ 11.

**Petitioner’s Re-Detention by ICE on October 1, 2025**

15 34. After filing his asylum petition, Petitioner sought representation and diligently  
16 prepared his family’s asylum case. Mendez Carrillo Decl. at ¶ 6. He was scheduled for various  
17 hearings before the San Francisco Immigration Court, which were continued presumably due in  
18 part to the COVID-19 pandemic. *Id.*; *see also* O’Leary Decl. at ¶ 5. After his wife and son were  
19 likewise forced to flee Guatemala, their cases were consolidated with Petitioner’s. Mendez  
20 Carrillo Decl. at ¶ 6. Before Petitioner’s detention, the family was scheduled for an Individual  
21 Hearing on February 11, 2026; while their cases are now severed due to his detention,  
22 Petitioner’s wife and children are still scheduled to go forward with their final hearing on that  
23 date. *Id.*; *see also* O’Leary Decl. at ¶ 5.

24 35. Meanwhile, soon after taking office, the Trump administration directed ICE

officials to increase their daily arrests to between 1,200 and 1,500.<sup>4</sup> To reach this quota, each ICE field office was expected to make at least 75 arrests per day.<sup>5</sup> In February, 2025, border czar Tom Homan expressed the administration's dissatisfaction with the number of ICE arrests thus far.<sup>6</sup> Arrests continued to surge in the months that followed,<sup>7</sup> but the numbers still fell short of the administration's benchmarks, totaling a rough average of 650 daily arrests in the first five months of Trump's second term.<sup>8</sup> In a May 21, 2025, meeting with ICE leaders, White House Deputy Chief of Staff Stephen Miller announced DHS's increased goal of 3,000 daily ICE arrests to reach the target of one million deportations per year.<sup>9</sup>

36. Amid this backdrop, on October 1, 2025, Petitioner left his family home in Oakland, California, locked the door, and approached his truck with his lunch bag to drive to work. Mendez Carrillo Decl. at ¶ 15. As he unlocked his truck, he was rushed by several masked men. *Id.* While they eventually identified themselves as ICE, their face coverings initially led Petitioner to believe he was being assaulted. *Id.*

37. Petitioner was not then and has still not been provided with an arrest warrant or any justification for his re-detention. *Id.* at ¶ 16.

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<sup>4</sup> Nick Miroff and Maria Sacchetti, "Trump officials issue quotas to ICE officers to ramp up arrests," The Washington Post (Jan. 26, 2025) at <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

<sup>5</sup> *Id.*

<sup>6</sup> Luis Pablo Beauregard, "Trump's border czar says deportations and arrests are not happening fast enough," El Pais (Feb. 12, 2025) at <https://english.elpais.com/usa/2025-02-12/trumps-border-czar-says-deportations-and-arrests-are-not-happening-fast-enough.html>.

<sup>7</sup> See TRAC Immigration at [https://tracreports.org/immigration/detentionstats/pop\\_agen\\_table.html](https://tracreports.org/immigration/detentionstats/pop_agen_table.html) (last visited on July 1, 2025).

<sup>8</sup> CBS News, "Trump directs immigration authorities to prioritize deportations in Democratic-run cities," (June 16, 2025) at <https://www.cbsnews.com/news/trump-directs-ice-deportations-democratic-run-cities/>.

<sup>9</sup> See *supra* n. 2; Jose Oliveras, "Trump administration sets quota to arrest 3,000 people a day in anti-immigration agenda," The Guardian (May 29, 2025) at <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>; Rebecca Beitsch, "Trump administration seeking to triple immigrant arrests: Stephen Miller," The Hill (May 29, 2025) at <https://thehill.com/homenews/administration/5323491-stephen-miller-trump-triple-arrests-deportations/>.

1 38. Following his arrest, which his children witnessed, Petitioner was transferred to ICE  
2 custody at Mesa Verde ICE Processing Center ("Mesa Verde"), where he remains detained. *Id.*  
3 Mesa Verde is a private detention center located in Bakersfield, California, owned and operated  
4 by GEO Group, Inc. ("GEO"). GEO is a private prison company that has facilities on three  
5 continents.<sup>10</sup> For years, immigrants detained at Mesa Verde have raised the alarm about  
6 unlivable and unsanitary housing conditions, as well as concerns regarding their treatment.<sup>11</sup>

7 39. As a result of DHS's policy to arrest asylum seekers as they go about their daily lives  
8 in their communities, Petitioner remains in detention. His immigration court case has been  
9 severed from that of his family, who are still scheduled to appear for their final merits hearing in  
10 February 2026 before the San Francisco Immigration Court. O'Leary Decl. at ¶ 5. Petitioner's  
11 next master calendar hearing, before the Adelanto Immigration Court as he is now detained, is  
12 currently scheduled for January 9, 2026. *Id.* at ¶ 7. It is unknown when Petitioner's case will be  
13 set for a final merits hearing, but the IJ noted that she was likely to schedule his individual  
14 hearing some 60-90 days from that next hearing date. *Id.* Moreover, Petitioner will likely require  
15 multiple hearings to have his asylum application heard, which can occur over as many months  
16 given the growing number of cases on the detained court docket. *Id.* at ¶ 8.

17 <sup>10</sup> The GEO Group, Inc., <https://www.geogroup.com/facilities/golden-state-annex/> (last visited  
18 June 18, 2025).

19 <sup>11</sup> See e.g., California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*  
20 *Proper Nutrition in Immigration Detention*, available at  
21 [https://www.ccijjustice.org/files/ugd/733055\\_c43b1cbbdda341b894045940622a6dc3.pdf](https://www.ccijjustice.org/files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf) at 21  
22 (highlighting a letter sent by individuals detained at Dorm C at Mesa Verde which stated, "The  
23 meal portions are still insufficient, unhealthy, and monotonous...Much of the food is so  
24 processed that it is difficult to identify...Everyone inside agrees that we ate better in prison than  
in detention in Mesa Verde."); CRCL Complaint: Retaliation Against Individuals in Immigration  
Detention at Mesa Verde Detention Facility and Golden State Annex, Sept. 12, 2022, available at  
<https://www.ccijjustice.org/laf-09-12-2022-mv-gsa> at 3 ("[I]ndividuals detained at Mesa Verde  
have faced retaliation for asserting their right to decline participation in the "voluntary" work  
program, as well as for filing formal complaints documenting unjust conditions...Since [labor  
strikes by Dorm C and A began] ICE and GEO have moved individuals to solitary confinement,  
restricted access to programming, and attempted to transfer at least one strike participant to an  
out-of-state facility,").

40. Petitioner's detention has caused him physical and emotional harm and has significantly impacted the wellbeing of his family. He has experienced suicidal ideation due to his separation from his wife and three young children, as well as from the fact that he cannot understand why he was arrested and detained despite diligently pursuing his asylum case and complying with all agency requirements. Mendez Carrillo Decl. at ¶¶ 16-19. He has also experienced physical pain and illness due to the cold temperatures and lack of adequate health care, which exacerbate the pain he experiences [REDACTED] *Id.* at ¶ 20. Petitioner fears for his family's wellbeing, as he is their exclusive economic support and they are unable to afford rent, diapers, and food while he is detained and unable to work. *Id.* at ¶ 22 ("I am not sure how much longer my family will have a home.").

### **LEGAL FRAMEWORK**

#### **I. Due Process Right to a Custody Redetermination Hearing Prior to Re-Detention**

41. In Petitioner'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 adjudicator as to the necessity of his detention.

42. While the statute and regulations grant DHS the ability to revoke a noncitizen's immigration bond and re-arrest the noncitizen, *see* 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9), DHS's power to re-arrest a noncitizen who is released is constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the statutory and regulatory authority, as interpreted by the agency,<sup>12</sup> are insufficient to protect Petitioner's weighty interest in his freedom from detention.

<sup>12</sup> In *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), 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 IJ, no change should be made by [DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th

43. Petitioner's conditional 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). "[T]he Due Process Clause applies to all 'persons' within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. Federal district courts in California have repeatedly recognized that noncitizens released from immigration custody retain a strong liberty interest in their release, and that DHS's authority to revoke a noncitizen's conditional liberty is subject to the constraints of due process.<sup>13</sup>

44. "Courts analyze procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at \*2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

Cir. 2018). DHS has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added).<sup>13</sup> See also *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at \*4 (E.D. Cal. Mar. 3, 2025); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at \*4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at \*4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at \*10 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at \*3 (E.D. Cal. June 30, 2025); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at \*10 (N.D. Cal. July 14, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025); *Zakzouk v. Becerra*, No. 3: 25-CV-06254 (RFL), 2025 WL 2097470, at \*4 (N.D. Cal. July 26, 2025); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at \*5 (E.D. Cal. July 11, 2025); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at \*7 (E.D. Cal. Aug. 8, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at \*6 (N.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at \*7 (E.D. Cal. Sept. 9, 2025).

1           **A. Petitioner Has a Protected Liberty Interest in His Conditional Release**

2           45. Since December 2018, Petitioner exercised the freedom accorded to him by DHS's  
3 order releasing him on his own recognizance. *See* Exh. B; 8 C.F.R. § 1236.1(c)(8). Although he  
4 was released on his own recognizance, Petitioner retained a weighty interest under the Due  
5 Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520  
6 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S.  
7 at 482-483.

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

18           47. This basic principle—that individuals have a liberty interest in their conditional  
19 release—has been reinforced by both the Supreme Court and the circuit courts on numerous  
20 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole  
21 program created to reduce prison overcrowding have a protected liberty interest requiring pre-  
22 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony  
23 probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit  
24 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); *ssee also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.

1 Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is  
2 lawfully revocable—has a liberty interest that entitles him to constitutional due process before he  
3 is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408  
4 U.S. at 482).

5 48. Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s  
6 case], with the liberty interest in parole as characterized by *Morrissey*,” they are strikingly  
7 similar. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release  
8 “enables him to do a wide range of things open to persons” who have never been in custody or  
9 convicted of any crime, including to live at home, work, and “be with family and friends and to  
10 form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Noncitizens  
11 released on a bond or parole have a similar liberty interest, which “grows over time.” *Guillermo*  
12 *M. R.*, 2025 WL 1983677, at \*5; *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921,  
13 at \*3 (N.D. Cal. July 24, 2025) (“[E]ven when ICE has the initial discretion to detain or release a  
14 noncitizen pending removal proceedings, after that individual is released from custody she has a  
15 protected liberty interest in remaining out of custody.”).

16 49. Since his release in December 2018, Petitioner has lived with his family in Oakland  
17 and established a life there. Mendez Carrillo Decl. at ¶¶ 7-14. He has secured work authorization  
18 and obtained employment in construction, as well as becoming an integral part of multiple  
19 community and religious organizations. *Id.* at ¶¶ 8, 10-11. He has diligently attended to his  
20 immigration case and is seeking asylum for himself and his family due to their fear of  
21 persecution in their country of origin. *Id.* at 6. While released, he was able to participate in the  
22 “attachments of normal life,” *Morrissey*, 408 U.S. at 482, and as such, he has a protected liberty  
23 interest and his continued detention without adequate process violates his due process rights.

24 **B. Petitioner’s Liberty Interest Mandated a Hearing Before any Revocation of Release**

50. Petitioner asserts that here, due process mandates that he was required to receive  
notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of his release  
on recognizance.

1           51. “Adequate, or due, process depends upon the nature of the interest affected. The  
2 more important the interest and the greater the effect of its impairment, the greater the procedural  
3 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769  
4 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*) (citing *Morrissey*, 408 U.S. at 481-82). This Court  
5 must “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient  
6 administration of” immigration laws to determine what process he is owed to ensure ICE does  
7 not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews*,  
8 this Court must consider three factors in conducting its balancing test: “first, the private interest  
9 that will be affected by the official action; second, the risk of an erroneous deprivation of such  
10 interest through the procedures used, and the probative value, if any, of additional or substitute  
11 procedural safeguards; and finally the government’s interest, including the function involved and  
12 the fiscal and administrative burdens that the additional or substitute procedural requirements  
13 would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

12           52. The Supreme Court “usually has held that the Constitution requires some kind of a  
13 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.  
14 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies  
15 are “the only remedies the State could be expected to provide” can post-deprivation process  
16 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one  
17 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible  
18 in preventing the kind of deprivation at issue” such that “the State cannot be required  
19 constitutionally to do the impossible by providing pre-deprivation process,” can the government  
20 avoid providing pre-deprivation process. *Id.*

19           53. Because, in this case, the provision of a pre-deprivation hearing was both possible  
20 and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide  
21 Petitioner with notice and a hearing *prior* to any re-incarceration. *See Morrissey*, 408 U.S. at  
22 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinerman*, 494 U.S. at 985. Under *Mathews*, the balance  
23 weighs heavily in favor of Petitioner’s liberty and required a pre-deprivation hearing before a  
24 neutral adjudicator, which ICE failed to provide.

**1. Petitioner's Private Interest in His Liberty is Profound**

54. 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.

55. 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 release on recognizance and be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). “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; *Cooper v. Oklahoma*, 517 U.S. 348 (1996). *See also Guillermo M. R.*, 2025 WL 1983677, at \*4 (recognizing that “the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause”).

56. Petitioner has been out of custody for nearly seven years, and during that time has begun a rich life in Oakland, living and caring for his family and community. *Supra*. His detention denies him that freedom. 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 Petitioner is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

**2. The Government's Interest in Keeping Petitioner in Detention Without a Hearing is Low, and the Burden on the Government to Release Him from Custody Unless and Until He is Provided a Hearing is Minimal**

57. The government's interest in keeping Petitioner in detention without a hearing is low; when weighed against Petitioner's significant private interest in his liberty, the scale tips

1 sharply in favor of releasing him from custody unless and until the government demonstrates by  
2 clear and convincing evidence that he is a flight risk or danger to the community. It becomes  
3 abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the  
4 process he seeks—release from custody pending notice and a hearing regarding whether he  
5 should be re-detained or a bond amount set—is a standard course of action for the government.  
6 Providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine  
7 whether there is clear and convincing evidence that he is a flight risk or danger to the community  
8 would impose only a *de minimis* burden on the government: the government routinely provides  
9 this sort of hearing to detained individuals like Petitioner.

10 58. As immigration detention is civil, it can have no punitive purpose. The  
11 government's only interest in holding an individual in immigration detention can be to prevent  
12 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*  
13 *Zadvydas*, 533 U.S. at 690. In releasing Petitioner in 2018, ICE made a determination that  
14 Petitioner was neither a danger or risk of flight. *See Pinchi*, 2025 WL 2084921, at \*4 (“Her  
15 release from ICE custody after her initial apprehension reflected a determination by the  
16 government that she was neither a flight risk nor a danger to the community, and Ms. Garro  
17 Pinchi has a strong interest in remaining at liberty unless she no longer meets those criteria.”);  
18 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for*  
19 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the  
20 government that the noncitizen is not a danger to the community or a flight risk.”).

21 59. Over a month-and-a-half since his unlawful detention, DHS has not provided  
22 Petitioner with any information about why he was re-detained without bond. The only possible  
23 justification for Petitioner's arrest is his one-day detention by local police in 2024, after which no  
24 charges were ever filed. *See Mendez Carrillo Decl.* at ¶ 13; *O'Leary Decl.* at ¶ 11. However, the  
government's interest in detaining an individual previously determined not to pose a danger is  
low when based on a one-day detention with no charges filed, especially where the court file  
indicates that no charges were filed because of lack of cause/evidence. Exh. E. Numerous courts  
in this district have found that a new arrest following release on bond or parole is insufficient to

1 detain a noncitizen without pre-deprivation process. *See Arzate v. Andrews*, No. 1:25-CV-00942-  
2 KES-SKO (HC), 2025 WL 2230521, at \*5-6 (E.D. Cal. Aug. 4, 2025) (concluding there are  
3 “numerous reasons to doubt” a noncitizen’s redetention “is justified” where the government’s  
4 “justification for detaining petitioner appears to be a misdemeanor arrest that occurred over one  
5 year ago in a matter in which petitioner was not charged”); *Garcia v. Andrews*, No. 2:25-CV-  
6 01884-TLN-SCR, 2025 WL 1927596, at \*5 (E.D. Cal. July 14, 2025) (determining that  
7 noncitizen with pending misdemeanor charges following his release on bond has “powerful  
8 interest” in his continued liberty); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL  
9 691664, at \*5 (E.D. Cal. Mar. 3, 2025) (explaining that an immigration judge’s prior  
10 determination that petitioner was not a flight risk or danger had “largely borne out” because  
11 petitioner had only been arrested for a misdemeanor in the interim). That is because “public  
12 safety is not jeopardized by someone who has only been arrested for a nonviolent misdemeanor  
13 and has never even been charged with a crime.” *Arzate*, 2025 WL 2230521, at \*5-6 *citing Doe v.*  
14 *Noem*, No. 2:25-cv-01103-DAD-AC, 2025 WL 1134977, at \*8 (E.D. Cal. Apr. 17, 2025).

15 60. Indeed, the limited record suggests that DHS arrested Petitioner as part of a national  
16 policy of detaining noncitizens in their communities as part of an effort to “supercharge” ICE  
17 detention and deportation numbers.<sup>14</sup>

18 61. The government’s interest in detaining Petitioner at this time is low. The “fiscal and  
19 administrative burdens” that release from custody, unless and until a pre-deprivation bond  
20 hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.  
21 Petitioner does not seek a unique or expensive form of process, but rather his release from  
22 custody until a routine hearing regarding whether his conditional release should be revoked and  
23 whether he should be re-incarcerated takes place. Indeed, this court has found the “effort and  
24 cost” required to provide such procedural safeguards “minimal,” particularly where, as here, it  
was previously provided. *Soto Garcia*, 2025 WL 1927596, at \*4.

62. Moreover, even if DHS believed that there had been a material change in  
circumstances that would justify revoking release, it should have provided Petitioner notice and a

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<sup>14</sup> *See infra* notes 3-8.

1 hearing before a neutral adjudicator before depriving him of his liberty. *See e.g., Guzman v.*  
2 *Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at \*1 (E.D. Cal. Sept. 9,  
3 2025); *Arzate*, 2025 WL 2230521, at \*6; *Soto Garcia*, 2025 WL 1927596, at \* 5. That is because  
4 Petitioner's interest in his conditional liberty established a right to a hearing prior to his detention  
5 where he could hear the government's evidence underlying its determination to re-arrest and  
6 present his argument as to why the revocation of his liberty is not justified. *Id.* Notice and an  
7 opportunity to respond are basic due process safeguards that have been denied to Petitioner here.

8 63. In the alternative, providing Petitioner with an immediate hearing before a neutral  
9 decisionmaker regarding bond is a similarly routine procedure that the government provides to  
10 those in immigration jails daily. *See Doe*, 2025 WL 691664, at \*6 ("The effort and cost required  
11 to provide Petitioner with procedural safeguards is minimal and indeed was previously provided  
12 in his case."). At that hearing, the neutral adjudicator would have the opportunity to determine  
13 whether there has been material change sufficient to shift the dangerousness and flight risk  
14 analyses such that additional conditions of release or the posting of a bond should be imposed—  
15 or if release should be revoked. But there is no justifiable reason to keep Petitioner detained. As  
16 the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in  
17 being able to return [a parolee] to imprisonment without the burden of a new adversary criminal  
18 trial if in fact he has failed to abide by the conditions of his parole ... [it] has no interest in  
19 revoking parole without some informal procedural guarantees." 408 U.S. at 483.

20 64. Release from custody until DHS (1) moves for a bond re-determination before a  
21 neutral adjudicator and (2) demonstrates by clear and convincing evidence that Petitioner is a  
22 flight risk or danger to the community is far *less* costly and burdensome for the government than  
23 keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs  
24 to the public of immigration detention are 'staggering'" *Hernandez*, 872 F.3d at 996. If, in the  
alternative, the Court chooses to order a hearing for Petitioner at which the government bears the  
burden of justifying his continued detention, the government would bear a *de minimis* additional  
cost.

**3. Risk of Erroneous Deprivation of Petitioner's Liberty Interest is High and the Proposed Process Would Decrease That Risk**

65. Releasing Petitioner from custody until he is provided with 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 must justify whether detention is warranted.

66. Petitioner has already been erroneously deprived of his liberty, and the risk that he will continue to be deprived is high if ICE is permitted to keep him in detention after making a unilateral decision to re-detain him. Petitioner was previously released on his own recognizance pursuant to ICE's authority under 8 U.S.C. § 1226. As explained in *Arzate*, 2025 WL 2230521, at \*5, "considering that petitioner was previously found to not be a danger or a flight risk, the risk of erroneous deprivation is particularly high if, as is the case now, no hearing has been provided."

67. Moreover, since then, the BIA has issued a decision that subjects individuals like Petitioner to mandatory detention. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see infra* Section II. As such, there is no longer any statutory mechanism that would provide Petitioner any process before a neutral adjudicator following his re-detention. As a result, under current procedures, the validity or necessity of Petitioner's re-detention and continued imprisonment by ICE would evade any review by the IJ or any other neutral arbiter.

68. By contrast, the procedure Petitioner seeks—release from custody and reinstatement of his prior release until he is provided a hearing in front of a neutral adjudicator at which the government proves by clear and convincing evidence that circumstances have changed to justify his re-detention, is much more likely to produce accurate determinations regarding factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at \*7 (E.D. Cal. July 11, 2025) ("[T]he risk of an erroneous deprivation of liberty is high where, as here, the petitioner has not received any bond or custody

1 redetermination hearing.”) (ordering release and placing the burden of proof on the government  
2 on any pre-deprivation hearing). The Ninth Circuit has noted that the risk of an erroneous  
3 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather  
4 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,  
5 1091-92 (9th Cir. 2011). The Supreme Court has emphasized the importance of *pre-deprivation*  
6 hearings where available, as here. *See Zinerman*, 494 U.S. at 985 (only in a “special case” where  
7 post-deprivation remedies are “the only remedies the State could be expected to provide” can  
8 post-deprivation process satisfy the requirements of due process).

## 9 **II. Alternative Grounds for Custody Hearing: Statutory Detention Authority**

10 69. In the alternative, Petitioner is, at the very least, statutorily entitled to a bond  
11 hearing before an IJ under 8 U.S.C. § 1226(a). Courts in this district have rejected the  
12 government’s arguments that individuals like Petitioner are subject to mandatory detention under  
13 8 U.S.C. § 1252(b)(2)(A), and the Court should likewise do so here. *See Lepe v. Andrews*, No.  
14 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4-9 (E.D. Cal. Sept. 23, 2025)  
15 (concluding that noncitizen detained by warrant pursuant to § 1226(a) was not detained under §  
16 1252(b)(2)(A), ordering release); *Polo v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL  
17 2959346, at \*11 (E.D. Cal. Oct. 17, 2025) (joining “the numerous other district courts that have  
18 rejected the government’s recent interpretation of the relationship between § 1225 and § 1226”  
19 for noncitizen released several days after her detention in accordance with § 1226);

20 70. The INA prescribes three basic forms of detention for the vast majority of  
21 noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of  
22 noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in §  
23 1226(a) detention are generally entitled to a bond hearing after their detention, *see* 8 C.F.R. §§  
24 1003.19(a), 1236.1(d), if they are not subject to mandatory detention based on certain criminal  
grounds provided for in the statute, *see* 8 U.S.C. § 1226(c). Second, the INA provides for  
mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1)  
and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last, the INA also

1 provides for detention of noncitizens who have been ordered removed, including individuals in  
2 withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

3 71. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Both  
4 provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform  
5 and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,  
6 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently  
7 amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

8 72. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
9 that, in general, people who entered the country without inspection were not considered detained  
10 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
11 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
12 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

13 73. Thus, in the decades that followed, most people who entered without inspection and  
14 were placed in standard removal proceedings, such as Petitioner, received bond hearings under §  
15 1226(a), unless their criminal history rendered them ineligible under § 1226(c). That practice  
16 was consistent with many more decades of prior practice, in which noncitizens who were not  
17 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8  
18 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104–469, pt. 1, at 229 (1996) (noting that §  
19 1226(a) simply “restates” the detention authority previously found at § 1252(a)). The BIA has  
20 long concurred with this statutory reading. *See Lepe*, 2025 WL 2716910, at \*8 (“The Court finds  
21 that the government’s longstanding practice, under which section 1225(b)(2)(A) would not have  
22 applied to petitioner’s circumstances, is consistent with the text and statutory scheme.”) (citing  
23 *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 n. 6 (BIA 2025) (“We acknowledge that for  
24 years Immigration Judges have conducted bond hearings for aliens who entered the United States  
without inspection.”)).

74. Indeed, DHS has treated Petitioner as subject to § 1226(a). Upon his initial  
detention in 2018, ICE released him from custody on his own recognizance pursuant to §  
1226(a). Exh. B (“In accordance with section 236 of the [INA] ...”). Moreover, the government

1 did not check the box on the NTA indicating, “You are an arriving alien.” *See* Exh. C. Instead,  
2 the government checked the box indicating that Petitioner was “in removal proceedings under  
3 section 240.” *Id.*

4 75. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
5 rejected well-established understanding of the statutory framework and reversed decades of  
6 practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
7 Applicants for Admission,”<sup>15</sup> claims that all persons who entered the United States without  
8 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). Exh. D.  
9 The policy applies regardless of when a person is apprehended and affects those who have  
resided in the United States for months, years, and even decades.

10 76. On September 5, 2025, the BIA adopted this same position in a published decision,  
11 *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United  
12 States without admission or parole are subject to detention under § 1225(b)(2)(A) and are  
ineligible for IJ bond hearings.

13 77. Since Respondents adopted their new policies, dozens of federal courts have  
14 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected  
15 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See infra.*

16 78. Even before ICE or the BIA introduced these nationwide policies, IJs in the  
17 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
18 entered the United States without inspection and who have since resided here. There, the U.S.  
19 District Court in the Western District of Washington found that such a reading of the INA is  
20 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not  
apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
1239 (W.D. Wash. 2025).

21 79. Subsequently, court after court has adopted the same reading of the INA’s detention  
22 authorities and rejected ICE and EOIR’s novel interpretation. *See, e.g., Gomes v. Hyde*, No.

23  
24 <sup>15</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same); *Beltran Barrera v. Olson*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at \*5 (W.D. Ky. Sept. 19, 2025) (“[B]ecause it is the ‘responsibility of the court to decide whether the law means what the agency says’ the Court disagrees with the holding of *Matter of Yajure* and declines to follow it.”).

1 80. Courts have uniformly rejected DHS's and EOIR's new interpretation because it  
2 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
3 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

4 81. Section 1226(a) applies by default to all persons "pending a decision on whether the  
5 [noncitizen] is to be removed from the United States." These removal hearings are held under §  
6 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

7 82. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
8 including those who, like Petitioner, have not been admitted or paroled. *See* 8 U.S.C. §  
9 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such  
10 people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court  
11 explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves'  
12 that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d  
13 at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400  
14 (2010)); *see also* *Gomes*, 2025 WL 1869299, at \*7; *Lepe*, 2025 WL 2716910, at \*6 ("The third  
15 problem with the government's argument is that application of section 1225(b)(2)(A) to  
16 noncitizens already in the country would render superfluous a recent amendment to section  
17 1226(c)."). Section 1226 therefore leaves no doubt that it applies to people who face charges of  
18 being inadmissible to the United States, including those who are present without admission or  
19 parole.

20 83. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
21 recently entered the United States. The statute's entire framework is premised on inspections at  
22 the border of people who are "seeking admission" to the United States. 8 U.S.C. §  
23 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
24 applies "at the Nation's borders and ports of entry, where the Government must determine  
whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583  
U.S. 281, 287 (2018).

1 84. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply  
2 to people like Petitioner, who have already entered and were residing in the United States at the  
3 time they were apprehended. As such, he should be entitled to a bond hearing under § 1226(a).

4 **CLAIMS FOR RELIEF**

5 **COUNT I**

6 **Violation of Procedural Due Process**

7 85. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
8 paragraphs.

9 86. The government may not deprive a person of life, liberty, or property without due  
10 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government  
11 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
12 Clause protects.” *Zadvydas*, 533 U.S. at 690.

13 87. Petitioner had a vested liberty interest in his conditional release. Due Process does  
14 not permit the government to strip him of that liberty without a hearing before a neutral  
15 adjudicator. *See Morrissey*, 408 U.S. at 487-488.

16 88. For these reasons, Petitioner’s re-arrest without a hearing violated the Constitution.  
17 The only remedy for this violation is his immediate release from immigration detention until  
18 DHS proves to a neutral adjudicator, by clear and convincing evidence, and taking into  
19 consideration alternatives to detention and ability to pay a bond, that he is a present danger to the  
20 community or an unmitigable flight risk, such that his re-incarceration is warranted.

21 **COUNT II**

22 **Violation of Substantive Due Process**

23 89. Petitioner incorporates by reference the allegations of the facts set forth in the  
24 preceding paragraph.

90. The Due Process Clause of the Fifth Amendment forbids the government from  
depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

1 91. The only valid purpose for civil immigration detention is to safeguard the  
2 community and prevent flight during removal proceedings. *Zadvydas*, 533 U.S. at 690.

3 92. Due Process prohibits the government from punishing people through civil  
4 detention. Civil detention becomes punitive when its duration or nature is unreasonable relative  
5 to the purpose for which the person is detained—in this case, protecting the community and  
6 preventing flight during removal proceedings. The government violates substantive due process  
7 when civil detention is excessive in relation to a governmental interest, or when the government  
8 could accomplish its interests through less restrictive means.

9 93. Petitioner's detention is excessive in relation to the government's interest in  
10 continuing to detain him. Petitioner was previously released on his own recognizance, meaning  
11 that the government had previously determined that he does not pose a risk of flight nor danger.  
12 His circumstances have not materially changed in the nearly seven years since his release;  
13 accordingly, his detention violates substantive due process. The government's interests could be  
14 satisfied by Petitioner's continued release on appropriate conditions.

15 94. For these reasons, Petitioner's civil detention violates substantive due process.

### 16 COUNT III

#### 17 **Violation of the INA**

18 95. Petitioner repeats, re-alleges, and incorporates by reference each and every  
19 allegation in the preceding paragraphs as if fully set forth herein.

20 96. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
21 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As  
22 relevant here, it does not apply to those who previously entered the country and have been in the  
23 United States prior to being re-apprehended and placed in removal proceedings by Respondents.  
24 Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), §  
1226(c), or § 1231.

97. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
detention and violates the INA.

**PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter;
- b. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Eastern District of California pending the resolution of this case;
- c. Order the immediate release of Petitioner from DHS custody on the conditions of his prior order of release and the reinstatement of that order unless and until DHS proves to a neutral adjudicator by clear and convincing evidence that he is a present danger or an unmitigable flight risk after taking into consideration alternatives to detention and his ability to pay a bond, such that his re-incarceration is warranted.
- d. In the alternative, order the release of Petitioner within 21 days, unless Respondents provide Petitioner with an individualized hearing before a neutral adjudicator to determine the necessity of his detention.
- e. Award reasonable costs and attorney fees; and
- f. Grant such further relief as the Court deems just and proper.

DATED this 21<sup>st</sup> day of November 2025.

Kelsey Morales  
Kelsey Morales  
Alameda County Public Defender's Office  
Attorney for Petitioner