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**Application for PHV forthcoming*

Attorneys for Petitioner-Plaintiff
Sanjiv KAKKAR

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Sanjiv KAKKAR,

Petitioner-Plaintiff,

v.

Christopher CHESTNUT, Facility Warden at
California City Detention Facility, California City,
California;

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

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

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

U.S. Customs and Border Protection;

Respondents-Defendants.

Case No. 25-1625

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

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

INTRODUCTION

1. Petitioner, Sanjiv Kakkar (“Mr. Kakkar” or “Petitioner”), by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (“DHS”) since being unlawfully detained on August 20, 2025, without first being provided a due process hearing to determine whether his incarceration is justified. Mr. Kakkar must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, that he is a flight risk or a danger to the community.

2. Mr. Kakkar is a 64-year-old, longtime lawful permanent resident of the United States who first began living in the country as a permanent resident in 1992. He has been married to his U.S. citizen wife for many years, and together the couple shares four U.S. citizen children.

3. Mr. Kakkar sustained convictions in 2017 for conduct dating back to 2008 and was sentenced to 48 months in federal prison.¹ While incarcerated, U.S. Immigration and Customs Enforcement (“ICE”) encountered Mr. Kakkar at Taft Correctional Facility. ICE interviewed Mr. Kakkar, who readily cooperated with ICE and informed them of his immigration status and his convictions. In 2018, DHS issued him a Notice to Appear (“NTA”) and placed him in removal proceedings before the Immigration Court under the Institutional Hearing Program—which allows noncitizens to undergo removal proceedings while serving time in certain correctional facilities. *Declaration of Zachary Nightingale* (“ZN Decl.”) at Exhibit (“Exh.”) A (Notice to Appear). Mr. Kakkar began attending his removal proceedings while incarcerated.

4. In April 2021, Mr. Kakkar was released from incarceration. He was *not* detained by ICE at this time. Instead, his removal proceedings were transferred to the San Francisco Immigration Court (which has jurisdiction over his place of residence), and he has continued to attend his removal proceedings in a non-detained setting.

5. Mr. Kakkar completed his sentence, and paid all restitution in connection with his convictions. Since his release from incarceration, he has worked on rebuilding his life free from

¹ Mr. Kakkar was convicted of 18 U.S.C. §§ 1343, 1014, and 2.

1 custody, including by reconnecting with his U.S. citizen wife and their four citizen children. Mr.
2 Kakkar has no further criminal history.

3 6. On August 20, 2025, upon returning to the United States from a trip abroad to visit his
4 elderly and ill mother-in-law, U.S. Customs and Border Protection (“CBP”) detained Mr. Kakkar
5 at the San Francisco International Airport without notice or the opportunity for a due process
6 hearing. Mr. Kakkar was kept at the airport for approximately one week. On August 21, 2025,
7 counsel for Mr. Kakkar made a request to CBP to release him from custody on his own
8 recognizance, or on the payment of a bond. However, CBP never responded to this request.

9 7. On August 26, 2025, CBP transferred Mr. Kakkar to ICE custody. Mr. Kakkar is now
10 currently detained at California City Detention Facility, in California City, California.

11 8. Mr. Kakkar was scheduled for a hearing before the detained immigration court on
12 September 25, 2025. However, that hearing did not go forward because (1) staff at the detention
13 facility did not bring Mr. Kakkar to the hearing and (2) the immigration court mistakenly
14 assigned an immigration judge who does not preside over cases at the California City Detention
15 Center. Mr. Kakkar was then scheduled for a hearing on November 12, 2025. At that hearing, the
16 immigration judge informed Mr. Kakkar and counsel that court staff would reach out to schedule
17 the merits hearing, which would occur in 2026, based on the judge’s docket.

18 9. To be clear, ICE has known about Mr. Kakkar’s conviction since approximately 2018,
19 and specifically interviewed him while incarcerated, and issued him an NTA to place him in
20 removal proceedings. ICE then declined to detain him when he was released from federal prison
21 in 2021. This means that, at this time, the agency *necessarily* found that he did not constitute a
22 danger or a flight risk under 8 U.S.C. § 1236(a) (the statute authorizing conditional parole of
23 noncitizens); *see also* 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest
24 may, in the officer’s discretion, release an alien...provided that the alien must demonstrate to the
25 satisfaction of the officer that such release would not pose a danger to property or persons, and
26 that the alien is likely to appear for any future proceeding.”).

27 10. For the last four years since Mr. Kakkar’s release from federal incarceration, nothing has
28 changed regarding his flight risk or dangerousness; he has attended all immigration court

1 hearings as required, and he has no further criminal history. His brief travel to the United
2 Kingdom to visit his wife's ill mother was lawful, as his immigration status remains that of
3 lawful permanent resident and as such he has the right to travel and return to the United States,
4 and it has no bearing on either flight risk or dangerousness.

5 11. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
6 has the authority to revoke a non-citizen's conditional parole and arrest them, but only where
7 there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8
8 C.F.R. § 236.1(c)(9); *see Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus,
9 absent changed circumstances . . . ICE cannot redetain Panosyan."); *Matter of Sugay*, 17 I&N
10 Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in
11 circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
12 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
13 added). That authority, however, is proscribed by the Due Process Clause because it is well-
14 established that individuals released from incarceration have a liberty interest in their freedom. In
15 turn, to protect that interest, on the particular facts of Mr. Kakkar's case, due process required
16 notice and a hearing, *prior to any revocation of his release*, at which he was afforded the
17 opportunity to advance his arguments as to why he should not be detained.

18 12. That basic principle—that individuals placed at liberty are entitled to process before the
19 government imprisons them—has particular force here, where Mr. Kakkar's detention was
20 *already* found to be unnecessary to serve its purpose.

21 13. Under these circumstances, DHS was required to afford Mr. Kakkar the opportunity to
22 advance arguments in favor of his freedom before it robbed him of his liberty. He must therefore
23 be released from custody unless and until DHS proves to a neutral decisionmaker by clear and
24 convincing evidence that he is a flight risk or a danger to the community. During any custody
25 redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu
26 of incarceration, alternatives to detention exist to mitigate any risk that DHS may establish.

27 14. Each day that Mr. Kakkar is detained, he and his family suffer irreparable harm including
28 deprivation of his constitutional rights, emotional distress, and economic hardship. He will suffer

1 even more devastating harms if he remains in custody, including the loss of his ability to support
2 his wife and children. Mr. Kakkar thus respectfully requests that the Court order his release so
3 that he may continue his removal proceedings in a non-detained setting—as he has for many
4 years.

5 **CUSTODY**

6 15. Petitioner is currently detained by DHS at the California City ICE Detention Center in
7 California City, California. Prior to being detained, Petitioner was not provided with a
8 constitutionally compliant hearing to assess whether his detention is warranted.

9 **JURISDICTION**

10 16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
11 federal question jurisdiction; 5 U.S.C. § 701 et seq., All Writs Act; 28 U.S.C. § 2241 *et seq.*,
12 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United
13 States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the
14 common law, as Petitioner is detained under color of the authority of the United States, and such
15 custody is in violation of the Constitution, laws, regulations, and, or treaties of the United States.

16 17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
17 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights
18 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
19 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
20 a writ of habeas corpus for their immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
21 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

22 **REQUIREMENTS OF 28 U.S.C. § 2243**

23 18. The Court must grant the petition for writ of habeas corpus or issue an order to show
24 cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28
25 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within
26 *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.*
27 (emphasis added).
28

1 19. Courts have long recognized the significance of the habeas statute in protecting
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
3 important writ known to the constitutional law of England, affording as it does a *swift* and
4 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
5 400 (1963) (emphasis added).

6 20. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts
7 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
8 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
9 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
10 more concerned with efficient trial management than with the vindication of constitutional
11 rights.” *Id.*

12 VENUE

13 21. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
14 Respondents are employees or officers of the United States, acting in their official capacity;
15 because a substantial part of the events or omissions giving rise to the claim occurred in the
16 Eastern District of California; because Petitioner is currently detained in the Eastern District of
17 California; and because there is no real property involved in this action.

18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 22. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
20 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
21 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
22 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
23 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
24 quotation marks omitted)). Petitioner asserts that exhaustion should be waived because
25 administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

26 23. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful custody in
27 violation of his due process rights, and there are no administrative remedies that he needs to
28 exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)

(finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

24. Petitioner Sanjiv KAKKAR was born in India in 1961. He became a lawful permanent resident of the United States in 1992, and he has resided in the country since this time.

25. Respondent Christopher CHESTNUT is the Facility Warden at California City Detention Facility where Petitioner is being held. Respondent Chestnut oversees the day-to-day operations of California City Detention Facility and acts at the Direction of Respondents Vitello, Noem, and Becerra. He is a custodian of Petitioner and is named in his official capacity.

26. 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 Petitioner.

27. Respondent Kristi NOEM is the Secretary of the 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 Petitioner.

28. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

1 29. Respondent U.S. CUSTOMS AND BORDER PROTECTION is a federal agency
2 encompassed by DHS which is responsible for, among other things, making admissibility
3 determinations for noncitizens at U.S. ports of entry

4 **STATEMENT OF FACTS**

5 30. Mr. Kakkar was born in India and has lived in the United States as a lawful permanent
6 resident since 1992. Since obtaining lawful permanent residence, Mr. Kakkar married his wife,
7 who is a U.S. citizen. Together, they raised four U.S. citizen children in the United States who
8 are each successful and productive members of their community. Mr. Kakkar is a highly
9 educated individual who committed a mistake but has worked diligently to rehabilitate,
10 contribute to his community, and provide for his family.

11 31. In 2017, Mr. Kakkar sustained convictions for conduct dating back to 2008. He was
12 sentenced to 48 months in federal prison.²

13 32. While incarcerated, ICE encountered Mr. Kakkar at Taft Correctional Facility. ICE
14 interviewed Mr. Kakkar, who readily cooperated with ICE and informed them of his immigration
15 status and his convictions. In 2018, DHS issued him an NTA and placed him in removal
16 proceedings before the Immigration Court under the Institutional Hearing Program—which
17 allows noncitizens to undergo removal proceedings while serving time in certain correctional
18 facilities. *ZN Decl.* at Exh. A. Mr. Kakkar began attending his removal proceedings while
19 incarcerated.

20 33. In April 2021, Mr. Kakkar was released from incarceration. He was *not* detained by ICE
21 at this time. Instead, his removal proceedings were transferred to the San Francisco Immigration
22 Court (which has jurisdiction over his place of residence), and he has continued to attend his
23 removal proceedings in a non-detained setting. Prior to his current detention, he had a scheduled
24 merits hearing before the San Francisco Immigration Court.

25 34. Mr. Kakkar completed his sentence, and paid all restitution in connection with his
26 convictions. For the past four years, Mr. Kakkar has been living at liberty, during which time he
27

28

² See *supra* n.1.

1 has worked on rebuilding his life, including by reconnecting with his U.S. citizen wife and their
2 four citizen children. Mr. Kakkar has no further criminal history.

3 35. On August 20, 2025, after returning to the United States from a brief trip abroad to visit
4 his elderly and ill mother-in-law, CBP detained Mr. Kakkar at the San Francisco International
5 Airport without notice or the opportunity for a due process hearing. Mr. Kakkar was kept at the
6 airport for approximately one week.

7 36. On August 21, 2025, counsel for Mr. Kakkar made a request to CBP to release him from
8 custody on his own recognizance, or on the payment of a bond. However, CBP never responded
9 to this request.

10 37. On August 26, CBP transferred Mr. Kakkar to ICE custody. Mr. Kakkar is now currently
11 detained at California City Detention Facility, in California City, California.

12 38. Neither CBP nor ICE provided any due process to Mr. Kakkar regarding his detention
13 status.

14 39. At no time did DHS allege that his travel to the United Kingdom was not lawful or not
15 permitted. At no time did DHS allege any criminal activity or violation that indicated a failure to
16 follow any legal requirements, or any change that relates to his removal case.

17 40. Mr. Kakkar was scheduled for a hearing before the detained immigration court on
18 September 25, 2025. However, that hearing did not go forward because (1) staff at the detention
19 facility did not bring Mr. Kakkar to the hearing and (2) the immigration court mistakenly
20 assigned an immigration judge who does not preside over cases at the California City Detention
21 Center. Mr. Kakkar was then scheduled for a hearing on November 12, 2025. At that hearing, the
22 immigration judge informed Mr. Kakkar and counsel that court staff would reach out to schedule
23 the merits hearing, which would occur in 2026, based on the judge's docket.

24 41. Mr. Kakkar has remained unlawfully detained without having been provided a due
25 process hearing.

26 42. In addition to being unlawfully detained, Mr. Kakkar's detention is highly problematic
27 given the conditions at California City Detention Facility. Mr. Kakkar is 64 years old, and
28 detention conditions at California City have been described as inhumane, with staff failing "to

1 provide access to critical medical and mental health care” and otherwise failing “to meet
 2 people’s basic needs, including adequate food, water, and clothing.”³ On September 13, 2025,
 3 only weeks after the detention facility started to receive immigration detainees, a detainee died
 4 after staff did not properly respond to his medical emergency. *ZN Decl.* at Exh. B (Declaration of
 5 Lydia Sinkus). In addition, detainees “report interruptions to sleep during the night . . . and very
 6 poor treatment by staff at the facility who lack experience and training. One client reported a
 7 conversation with facility staff, where the guard told him he had been hired to paint and clean the
 8 facility and then was made a guard when detainees were transferred there.” *Id.* Detainees also
 9 report “aggressive and overbearing treatment by the guards, different from what [was]
 10 experienced at [Golden State Annex].” *Id.*

11 43. Intervention from this Court is therefore required to ensure that Mr. Kakkar does not
 12 continue to suffer irreparable harm in the form of unjustified detention (which if left unaddressed
 13 would also become unlawfully prolonged).

14 LEGAL BACKGROUND

15 **Right to a Hearing Prior to Revocation of Release**

16 44. Civil detention in United States law is the exception, not the rule, and even where
 17 permitted by law or regulation, must comport with fundamental constitutional limitations. By
 18 statute and regulation, ICE has the ability to unilaterally revoke any noncitizen’s conditional
 19 parole and arrest the noncitizen at any time. 8 U.S.C. § 1225(b) 8 C.F.R. § 236.1(c)(9).
 20 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
 21 immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the
 22 BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens absent a change
 23 of circumstance. *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no
 24 authority to re-detain an individual absent changed circumstances. *Panosyan*, 854 F. App’x at
 25 788 (“Thus, absent changed circumstances . . . ICE cannot redetain Panosyan.”). Any change in
 26

27 ³ “Newly Opened California City ICE Detention Facility: Dangerous for Disabled People,”
 28 Disability Rights California (Nov. 3, 2025), available at:
<https://www.disabilityrightscalifornia.org/reports/california-city-ice-processing-center-a-dangerous-expansion-of-immigration-detention-in>.

1 circumstances must be “*material*.” *Saravia*, 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for*
2 *A.H.*, 905 F.3d 1137 (emphasis added).

3 45. The Government’s authority to make the unilateral decision to arrest a noncitizen
4 previously released is proscribed by the Due Process Clause because “it is well established that
5 the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Reno v.*
6 *Flores*, 507 U.S. 292, 306 (1993). It is equally undisputed that “[f]reedom from imprisonment—
7 from government custody, detention, or other forms of physical restraint—lies at the heart of the
8 liberty that [the Fifth Amendment’s Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S.
9 678, 690 (2001). Noncitizens on pre-parole, parole, or probation status have a protected liberty
10 interest in remaining out of custody. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
11 (CDB), 2025 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025) (internal citations omitted).

12 46. To protect that interest, federal district courts in California and beyond have repeatedly
13 recognized that the demands of due process and the limitations on DHS’s authority to revoke a
14 noncitizen’s release set out in DHS’s stated practice and *Matter of Sugay* both require a pre-
15 deprivation hearing for a noncitizen on bond or parole, *before* ICE re-detains him. *See, e.g.,*
16 *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d
17 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D.
18 Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2
19 (N.D. Cal. Mar. 1, 2021); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL
20 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-
21 arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F.
22 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312,
23 at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
24 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
25 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-
26 detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No.
27 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction
28

1 warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more
2 than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

3 47. This extends to situations where, as here, the noncitizen is de facto conditionally paroled
4 or released on recognizance based on ICE's decision *not* to detain them when released from
5 incarceration during removal proceedings. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
6 (CDB), 2025 WL 2337099, at *6 (D. Ariz. Aug. 11, 2025) (continued non-detention after the
7 issuance of an NTA can only be construed a "'discretionary' release [which] 'must be construed
8 as conditional parole, or release on recognizance.'"). *Id.*

9 48. Here, DHS came across Mr. Kakkar while he was in federal prison, and initiated removal
10 proceeding against him. When Mr. Kakkar was released from incarceration, the agency made the
11 decision not to arrest him. This means that, at this time, the agency *necessarily* found that he did
12 not constitute a danger or a flight risk under 8 U.S.C. § 1236(a) (the statute authorizing
13 conditional parole of noncitizens); *see also* 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to
14 issue a warrant of arrest may, in the officer's discretion, release an alien...provided that the alien
15 must demonstrate to the satisfaction of the officer that such release would not pose a danger to
16 property or persons, and that the alien is likely to appear for any future proceeding.").

17 49. This discretionary decision not to detain Mr. Kakkar after his release from incarceration,
18 and instead to allow him to remain non-detained for four years following his release from prison
19 in April 2021, must be construed as release on recognizance or conditional parole. Therefore, the
20 government violated his Due Process Clause of the Constitution when it decided to arbitrarily
21 revoke his release and arrest him in August 2025 without first providing him with a pre-
22 deprivation hearing before a neutral adjudicator to determine whether circumstances had
23 materially changed since April 2021.

24 **Petitioner's Protected Liberty Interest in His Release**

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

1 51. For over four years preceding his detention on August 20, 2025, Mr. Kakkar exercised
2 that freedom when ICE decided not to arrest him following his release from federal prison. He
3 thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in
4 avoiding detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411
5 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

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

process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

54. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal quotation marks and citation omitted).

55. Here, when this Court ““compar[es] the specific conditional release in [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,”” it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Kakkar’s detention was already found, in 2021, to be unnecessary, which “enable[d] him to do a wide range of things open to persons”” who have never been in custody or convicted of any crime, including to live at home, work, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

56. Since his release from incarceration in 2021, Mr. Kakkar has been focused on spending time with his family, contributing to his community, and has paid in full the restitution that the sentencing court ordered him to pay. Mr. Kakkar is a very educated and accomplished businessman, and during his release, he has continued to work hard support himself and his family, while devoting his time and efforts to rehabilitate and give back to his community in the United States. Moreover, at the time of his arrest, Mr. Kakkar was assisting in providing care to elderly his mother-in-law. His freedom from immigration detention is “valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

Petitioner’s Liberty Interest Mandated a Hearing Before any Arrest and Revocation of Release

57. Mr. Kakkar asserts that, here, (1) where his detention is civil, (2) where he has diligently

1 complied with attending his hearings at immigration court, (3) where ICE cannot point to any
2 changed circumstances warranting arrest, and (4) where ICE has been aware, since 2018, that he
3 had a criminal conviction yet they determined not to arrest him, due process mandates that he
4 was required to receive notice and a hearing before a neutral adjudicator prior to any arrest or
5 revocation of release.

6 58. “Adequate, or due, process depends upon the nature of the interest affected. The more
7 important the interest and the greater the effect of its impairment, the greater the procedural
8 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769
9 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court
10 must “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
11 administration of” its immigration laws in order to determine what process he is owed to ensure
12 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set
13 forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing
14 test: “first, the private interest that will be affected by the official action; second, the risk of an
15 erroneous deprivation of such interest through the procedures used, and the probative value, if
16 any, of additional or substitute procedural safeguards; and finally the government’s interest,
17 including the function involved and the fiscal and administrative burdens that the additional or
18 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
19 *Eldridge*, 424 U.S. 319, 335 (1976)).

20 59. The Supreme Court “usually has held that the Constitution requires some kind of a
21 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
22 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
23 are “the only remedies the State could be expected to provide” can post-deprivation process
24 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
25 of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible
26 in preventing the kind of deprivation at issue” such that “the State cannot be required
27 constitutionally to do the impossible by providing predeprivation process,” can the government
28 avoid providing pre-deprivation process. *Id.*

60. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Mr. Kakkar with notice and a hearing *prior* to any incarceration and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

Petitioner’s Private Interest in His Liberty is Profound

61. 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 Mr. Kakkar, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. “This most basic American principle—that individuals placed at liberty are entitled to process before the government reimprisons them—has particular meaning,” especially where the government has already found Mr. Kakkar’s detention to be unnecessary. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (holding that a noncitizen released

1 from custody after being placed in removal proceedings, and was released and continued to be
2 non-detained after their Notice to Appear hearing, constituted a de facto conditional parole or
3 release on recognizance pursuant to 8 U.S.C. § 1226). Thus, Mr. Kakkar retains a truly weighty
4 liberty interest even though he was under conditional release prior to his arrest.

5 62. What is at stake in this case for Mr. Kakkar is one of the most profound individual
6 interests recognized by our legal system: whether ICE may unilaterally nullify a prior parole
7 decision and be able to take away his physical freedom, i.e., his “constitutionally protected
8 interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
9 (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the
10 liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see*
11 *also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
12 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
13 Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

14 63. Thus, it is clear that Mr. Kakkar has a profound private interest at stake in this case,
15 which must be weighed heavily when determining what process he is owed under the
16 Constitution. *See Mathews*, 424 U.S. at 334-35.

17 **The Government’s Interest in Keeping Petitioner in Detention Without a Hearing is Low**
18 **and the Burden on the Government to Release Him from Custody Unless and Until He is**
19 **Provided a Hearing is Minimal**

20 64. The government’s interest in keeping Mr. Kakkar in detention without a due process
21 hearing is low, and when weighed against his significant private interest in his liberty, the scale
22 tips sharply in favor of releasing him from custody unless and until the government demonstrates
23 by clear and convincing evidence that he is a flight risk or danger to the community. It becomes
24 abundantly clear that the *Mathews* test favors Mr. Kakkar when the Court considers that the
25 process Mr. Kakkar seeks—release from custody pending notice and a hearing regarding
26 whether his release should be revoked and he should be arrested—is a standard course of action
27 for the government. In the alternative, providing Mr. Kakkar with a hearing before a neutral
28 decisionmaker to determine whether there is clear and convincing evidence that he is a flight risk

1 or danger to the community would impose only a *de minimis* burden on the government, because
2 the government routinely provides this sort of hearing to detained individuals like Mr. Kakkar.

3 65. As immigration detention is civil, it can have no punitive purpose. *See Zadvydas*, 533
4 U.S. at 690. The government's only interest in holding an individual in immigration detention
5 can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration
6 proceedings.

7 66. In this case, the government had no lawful basis to detain Mr. Kakkar on August 20,
8 2025, and has no lawful basis to keep him detained now. The government cannot plausibly assert
9 that it had a sudden interest in detaining him in August 2025 where there are no changed
10 circumstances, and certainly not based on his criminal conviction, which the government has
11 been aware of since at least 2018—seven years before his arrest.

12 67. First, as discussed above, Mr. Kakkar has worked hard to rehabilitate himself since his
13 release from prison in April 2021. He completed his court-ordered supervision in April 2024. In
14 addition, he fully paid the court-ordered restitution. Second, Mr. Kakkar has had no further
15 criminal history, not even a traffic ticket. Third, Mr. Kakkar has diligently attended every
16 hearing before the immigration court.

17 68. In sum, Mr. Kakkar's arrest constitutes a violation of due process because there was no
18 material change in circumstances that establishes he is a danger to the community here in the
19 United States where he has otherwise lived a law-abiding life and has been fighting his case
20 before the immigration court in a non-detained setting for the past four years. Under the BIA and
21 ICE's own stated policies, any revocation of parole and arrest pursuant to § 1226(b) requires "a
22 material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for*
23 *A.H.*, 905 F.3d 1137. If DHS believed that there was a material change in circumstances that
24 would justify revoking Mr. Kakkar's release, ICE would have moved to detain him (subject to
25 the demands of due process) at any point during his several hearings before the San Francisco
26 Immigration Court. That ICE did not move to arrest Mr. Kakkar or revoke his parole at his
27 immigration court hearings between 2021 and 2025 illustrates the absurdity of any potential
28 claim that there is a material change in circumstances that allows the government to revoke Mr.

1 Kakkar's release and detain him without affording him due process. At the very least, Mr.
2 Kakkar had the right to a hearing prior to his detention where he could present his argument as to
3 why there was no justification for the revocation of his release,

4 69. Further, ICE determined that Mr. Kakkar should not be arrested at the time of his release
5 from prison in April 2021, which *necessarily* required the determination that he was not to be a
6 danger to the community nor a flight risk. Mr. Kakkar has done nothing to undermine that
7 determination since his release. In fact, he has continued to appear before the immigration court
8 for each and every hearing that has been scheduled. *See Morrissey*, 408 U.S. at 482 ("It is not
9 sophistic to attach greater importance to a person's justifiable reliance in maintaining his
10 conditional freedom so long as he abides by the conditions on his release, than to his mere
11 anticipation or hope of freedom") (quoting *United States ex rel. Bey v. Connecticut Board of*
12 *Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

13 70. Moreover, the "fiscal and administrative burdens" that release from custody unless and
14 until a pre-deprivation bond hearing is provided would impose are nonexistent in this case. *See*
15 *Mathews*, 424 U.S. at 334-35. Mr. Kakkar does not seek a unique or expensive form of process,
16 but rather his release from custody until a routine hearing regarding whether his bond should be
17 revoked and whether he should be re-incarcerated takes place.

18 71. Release from custody until ICE (1) moves for a parole re-determination before a neutral
19 adjudicator and (2) demonstrates by clear and convincing evidence that Mr. Kakkar is a flight
20 risk or danger to the community is far *less* costly and burdensome for the government than
21 keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs
22 to the public of immigration detention are 'staggering': \$158 each day per detainee, amounting
23 to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

24 **Without Release from Custody until the Government Provides a Due Process Hearing, the**
25 **Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a**
26 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk**

27 72. Releasing Mr. Kakkar from custody until he is provided a pre-deprivation hearing would
28 decrease the risk of him being erroneously deprived of his liberty. Before Mr. Kakkar can be

1 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the
2 government is held to show that there has been sufficiently changed material circumstances such
3 that the April 2021 determination not to arrest him should be altered or revoked because clear
4 and convincing evidence exists to establish that Mr. Kakkar is a danger to the community or a
5 flight risk.

6 73. Under the process that ICE maintains is lawful—which affords Mr. Kakkar no process
7 whatsoever—ICE can simply detain him at any point if the agency desires to do so, as ICE did
8 on August 20, 2025. Mr. Kakkar has already been erroneously deprived of his liberty, and the
9 risk he will continue to be deprived is high if ICE is permitted to keep him detention after
10 making a unilateral decision to detain him.

11 74. Accordingly, Mr. Kakkar seeks release from custody until he is provided a hearing in
12 front of a neutral adjudicator at which the government proves by clear and convincing evidence
13 that circumstances have changed to justify his detention. This procedure is much more likely to
14 produce accurate determinations regarding factual disputes, such as whether a certain occurrence
15 constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th
16 Cir.1989) (when “delicate judgments depending on credibility of witnesses and assessment of
17 conditions not subject to measurement” are at issue, the “risk of error is considerable when just
18 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
19 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
20 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
21 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
22 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
23 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

24 75. Due process also requires consideration of alternatives to detention at any custody
25 redetermination hearing that may occur. The primary purpose of immigration detention is to
26 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
27 Detention is not reasonably related to this purpose if there are alternatives to detention that could
28

mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Kakkar’s incarceration is warranted.

Petitioner’s Due Process Rights Continue to Provide Him a Liberty Interest Even After His Brief Travel Outside of the United States

76. Mr. Kakkar’s due process rights continue to provide him a liberty interest after his brief travel outside of the United States, just as they did before such travel, as nothing about his fundamental rights changed simply due to that travel.

77. Pursuant to 8 U.S.C. § 1225, a noncitizen “who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(a)(1). Any applicant for admission “must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Id.* at 287 (quoting 8 U.S.C. § 1225(a)(3)). Generally speaking, applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Id.* at 837. Noncitizens “arriving in the United States” and “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation” fall under the provisions at 8 U.S.C. § 1225(b)(1). *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i). Such individuals (which does not include Mr. Kakkar here) are ordered removed “without further hearing or review” unless they “indicate[] either an intention to apply for asylum . . . or a fear of persecution[,]” in which case they are referred for further proceedings regarding their claim to asylum. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235; 8 C.F.R. § 208.30; *see also Jennings*, 583 U.S. at 287. All applicants for admission “not covered by § 1225(b)(1)[,]” fall under the “broader . . . catchall provisions” at 8 U.S.C. § 1225(b)(2). *Jennings*, 583 U.S. at 287. If an “examining immigration officer” determines an individual under § 1225(b)(2)(A) “is not clearly and beyond a doubt entitled to be admitted” to the United States, they are referred for full removal proceedings before an immigration judge. 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.6(a)(i); *see also* 8 U.S.C. § 1229a; *Jennings*, 583 U.S. at 287.

78. Regardless of whether § 1225(b)(1) or § 1225(b)(2) applies, the statutory text “mandate[s] detention of aliens throughout the completion of applicable proceedings[.]”

1 *Jennings*, 583 U.S. at 301; 8 U.S.C. §§ 1225(b)(1)(B)(1)(B)(ii); § 1225(b)(2)(A) (stating that,
 2 upon determination that an individual “is not clearly and beyond a doubt entitled to be admitted,
 3 the alien *shall be detained* for a proceeding under [8 U.S.C. §] 1229a”). Release in the form of
 4 parole is only allowed “for urgent humanitarian reasons or significant public health benefit,” 8
 5 U.S.C. 1182(d)(5)(A), and parole determinations fall exclusively within DHS’s exercise of
 6 discretion. *Id.*; 8 C.F.R. §§ 235.3(b)(2)(iii), § 235.3(c); *see also id.* at § 212.5(b); *Jennings*, 583
 7 U.S. at 287. As such, immigration judges are fully divested of jurisdiction to grant bond to
 8 detainees held under § 1225(b) or to review DHS’s decision to deny or terminate parole.

9 79. However, neither § 1225(b)(1) or § 1225(b)(2) apply to Mr. Kakkar, who is a longtime
 10 lawful permanent resident. Even if this statute did apply, Mr. Kakkar has now been detained
 11 since August 20, 2025—over three months. Seeking release on humanitarian parole from ICE is
 12 an inadequate remedy and functionally unavailable, and Mr. Kakkar has no procedural
 13 protections outside of this Court. *See Matter of M-S-*, 27 I. & N. Dec. at 515-17. The only
 14 available remedy for Mr. Kakkar’s unconstitutional detention is through this writ of habeas
 15 corpus.

16 80. As a lawful permanent resident of 33 years, Mr. Kakkar has long and deep ties to the
 17 United States, and concomitant due process rights that he did not and cannot lose due to his brief
 18 trip outside of the United States. *See Pablo Sequen v. Albarran*, --- F.Supp.3d ----, 2025 WL
 19 2935630 (N.D.Cal. Oct. 15, 2025) (“Although merely ‘set[ting] foot on U.S. soil’ may not be
 20 sufficient to ‘effect[] an entry’ and trigger due-process protections for admissions decisions if a
 21 noncitizen is detained shortly thereafter,” *Dep’t of Homeland Security v. Thuraissigiam*, 591
 22 U.S. 103, 104 (2020) “if a noncitizen ‘gain[s a] foothold in the United States,’” *Kaplan v. Tod*,
 23 267 U.S. 228, 230 (1925), “or ‘begins to develop ... ties’ in this country, ‘h[er] constitutional
 24 status changes accordingly,’ and she ‘has a right to due process.’” *Landon v. Plasencia*, 459 U.S.
 25 21, 32–33, 103 S.Ct. 321 (1982)). That is: noncitizens “who have established connections in this
 26 country have due process rights.” *Thuraissigiam*, 591 U.S. at 107 (2020).

27 81. As a longtime lawful permanent resident of the United States, Mr. Kakkar has the same
 28 due process rights now that he did before he departed the United States for a brief trip abroad. To

1 be clear, his trip was lawful, as he is still a lawful permanent resident even while in removal
 2 proceedings, until such time as there is a final order of removal against him. No such order
 3 exists. The trip was a valid purpose, to visit his wife's mother, and it was brief. Immigration law
 4 has long held that such trips that are brief, casual and innocent do not alter the immigration rights
 5 of a lawful permanent resident, and even if the statutory scheme differs, the trip certainly should
 6 not alter a permanent resident's constitutional rights constitutional rights. *Rosenberg v. Fleuti*,
 7 374 U.S. 449, 462 (1963) (“[A]n innocent, casual, and brief excursion by a resident alien outside
 8 this country's borders may not have been ‘intended’ as a departure disruptive of his resident alien
 9 status and therefore may not subject him to the consequences of an ‘entry’ into the country on his
 10 return.”). These constitutional rights should, and indeed must, trump any statutory or regulatory
 11 scheme that otherwise might strip him of these rights entirely—such as 8 U.S.C. § 1225(b).
 12 Thus, the particular position that DHS found him in—at a port of entry returning as a lawful
 13 permanent resident from a brief trip abroad—does not change or lessen any of his inherent
 14 constitutional due process rights. This is because, in Mr. Kakkar's particular circumstances, his
 15 due process rights do not depend on where he is encountered or whether he is inside or outside of
 16 the United States. If his liberty could not be arbitrarily restricted without notice and an
 17 opportunity to be heard on the day before his brief and lawful trip abroad—which indeed it could
 18 not—it remains true that it cannot be arbitrarily restricted upon his return.

19 FIRST CAUSE OF ACTION

20 **Violation of Fifth Amendment Due Process Clause – Challenge to Revocation of Release**

21 82. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the
 22 allegations in all the preceding paragraphs.

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

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

85. For these reasons, Petitioner's arrest and revocation of release without a hearing violated the Constitution. The only remedy of this violation is his immediate release from immigration detention unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, and taking into consideration alternatives to detention, that he is a danger to the community or a flight risk, such that his re-detention is warranted. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

SECOND CAUSE OF ACTION

Violation of Fifth Amendment Due Process Clause – As Applied Challenge to Mandatory Detention

86. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

87. "[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The two permissible purposes of civil immigration detention are to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690.

88. Here, however, Petitioner's detention serves neither purpose. Given his deep family connections to the United States and his lack of dangerousness or flight risk, there is no legitimate justification for his detention, rendering his detention punitive and unconstitutional. The Due Process Clause therefore requires Petitioner's immediate release.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Eastern District of California pending the resolution of this case;
- (3) Enjoin Respondents from continuing to detain Petitioner and order the immediate release of Petitioner from DHS custody on the conditions of his prior release;

- (4) Order that, prior to any future re-detention, Petitioner is provided a hearing before a neutral adjudicator at which DHS must prove by clear and convincing evidence that he is a danger or a flight risk;
- (5) Order the immediate release of Petitioner from custody on any other basis that this Court finds proper;
- (6) Declare that Mr. Kakkar's detention by ICE violates the Due Process Clause of the Fifth Amendment;
- (7) Award reasonable costs and attorney fees; and
- (8) Grant such further relief as the Court deems just and proper.

Dated: November 24, 2025

Respectfully submitted,
s/Zachary Nightingale
Zachary Nightingale
Christine Raymond
Attorneys for Petitioner

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 with the Petitioner the events described in the Petition.
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 this November 24, 2025, in San Francisco, California.

/s/Zachary Nightingale
Zachary Nightingale
Attorney for Petitioner