

Beles and Beles Law Offices  
Robert J. Beles Bar No. 41993  
Emilio Parker Bar No. 276310  
1 Kaiser Plaza, Suite 2300  
Oakland, California 94612-3616  
Tel. No. (510) 836-0100  
Fax No. (510) 832-3690  
emiliotparker@gmail.com

Attorneys for *Petitioner* Josue Daniel Cruz Banos

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

Josue Daniel Cruz Banos,

*Petitioner,*

v.

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

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; and

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

*Respondents - Defendants,*

No.

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

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

**INTRODUCTION**

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

7 2. Mr. Cruz is a native and citizen of Cuba. Mr. Cruz entered the United States with  
8 inspection on April 2, 2022 seeking asylum. When Mr. Cruz arrived in the United States, federal  
9 agents briefly detained him, determined that he was not a flight risk or danger to the community,  
10 and released him on his own recognizance with a notice to appear for removal proceedings in  
11 immigration court on April 3, 2022. Since then, Petitioner had done everything the government  
12 asked him to do; he has diligently attended every Immigration and Customs Enforcement ("ICE")  
13 and United States Citizenship and Immigration Services ("USCIS") appointment and check-in.

14 3. On June 9, 2022, Mr. Cruz filed an asylum application with the asylum office. On  
15 December 13, 2022, Mr. Cruz attended his biometrics appointment with USCIS.

16 4. On December 5, 2022, Mr. Cruz filed an employment authorization application. On  
17 January 27, 2023, Mr. Cruz received his employment authorization granting him legal work  
18 authorization.

19 5. The Department of Homeland Security ("DHS") has not yet filed his Notice to Appear  
20 with the immigration court.

21 6. On August 2, 2022, he presented himself to a regularly scheduled ICE appointment. He  
22 then appeared at a second ICE appointment where he informed ICE that that he would be moving  
23 to Hayward, California. ICE gave him a date to check in with ICE in the San Francisco Field  
24 office. Upon arriving to Hayward, California, Mr. Cruz checked in with ICE in San Francisco,  
25 California.

26 7. Mr. Cruz was given a date to return to ICE one year later. On November 21, 2025, Mr.  
27 Cruz returned to the ICE office and appeared for his ICE interview. On that date, ICE detained  
28 him and informed him that he would be transferred to an ICE detention facility. ICE misinformed  
him that he had a deportation order.

8. Mr. Cruz does not have an order of deportation. When Mr. Cruz was released from ICE  
custody upon entering the United States, the immigration authorities gave him an I-220A Form  
and a copy of a Notice to Appear in Immigration Court. The authorities informed Mr. Cruz that

1 he would have to appear at all ICE appointments and court hearings. The I-220A also indicated  
2 that Mr. Cruz must not violate any local, State or Federal law or ordinances.

3 9. Over the last three and a half years in which he has lived at liberty, Mr. Cruz has complied  
4 with all obligations of the I-220A and ICE orders. Although the DHS never filed his Notice to  
5 Appear with the immigration court, Mr. Cruz has been able to file his asylum application with  
6 the asylum office.

7 10. Mr. Cruz has not committed any violation of any local, State or Federal law since being  
8 released. Mr. Cruz has been steadily employed since obtaining legal work authorization in the  
9 United States.

10 11. Mr. Cruz suffers from health issues which require antibiotics which he has not received  
11 since getting re-arrested by ICE, putting him at risk of substantial harm and/or hospitalization.

12 12. Mr. Cruz resides with his sister in Hayward, California.

13 13. Mr. Cruz arrest and detention have caused him tremendous and ongoing harm. Every  
14 additional day Mr. Cruz spends in unlawful detention subjects him to further irreparable harm.

15 14. The Constitution protects Mr. Cruz – and every other person present in this country –  
16 from arbitrary deprivations of his liberty and guarantees him due process of law. The  
17 government’s power over immigration is broad, but as the Supreme Court has declared, it  
18 is subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).  
19 “Freedom from bodily restraint has always been at the core of this liberty protected by the Due  
20 Process Clause from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

21 15. By status and regulation, as interpreted by the Board of Immigration Appeals (“BIA”),  
22 ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been  
23 a change in circumstances since the individual’s release, 8 U.S.C. § 236.1(c)(9); *Matter of Sugay*,  
24 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any  
25 change in circumstance must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D.  
26 Cal. 2017). That authority, however, is proscribed by the Due Process Clause because it’s well-  
27 established that individuals released from incarceration have a liberty interest in their freedom.  
28 In turn, to protect that interest, on the particular facts of Mr. Cruz’s case, due process requires  
notice and a hearing, prior to any revocation of his conditional release, at which he is afforded  
the opportunity to advance his arguments as to why his release should not be revoked.

1 16. That basic principle – that individuals placed at liberty are entitled to due process before  
2 the government imprisons them – has particular force here, where Mr. Cruz’s detention was  
3 already found to be unnecessary to serve its purpose.

4 17. Therefore, at a minimum, to lawfully re-arrest Mr. Cruz, the government must first  
5 establish, by clear and convincing evidence and before a neutral decision maker, that he is a  
6 danger to the community or a flight risk, such that his re-incarceration is necessary.

7 18. Mr. Cruz respectfully seeks a writ of habeas corpus ordering the government to  
8 immediately release him from his ongoing, unlawful detention, and prohibit his re-arrest without  
9 a hearing to contest that re-arrest before a neutral decision maker. In addition, to preserve this  
10 Court’s jurisdiction, Mr. Cruz also requests that this Court order the government not to deport  
11 him for the duration of this proceeding or transfer him outside of this Court’s jurisdiction.

#### 11 JURISDICTION AND VENUE

12 19. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general  
13 federal question jurisdiction; 5 U.S.C. § 701, et seq., All Writs Act; 28 U.S.C. § 2241, et seq.,  
14 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, CL. 2 of the United  
15 States Constitution (the Suspension Clause); Art. 3 of the United States Constitution, and the  
16 common law., the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-  
17 7-6 (Administrative Procedure Act).

18 20. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.  
19 § 1391(b)(2) and (e)(1) because Mr. Cruz is physically detained within this District at the  
20 California City Detention Center.

#### 20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 21. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.  
22 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if  
23 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies  
24 would be a futile gesture, irreparable injury will result, or the administrative proceedings would  
25 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9<sup>th</sup> Cir. 2004)(citation and quotation  
26 marks omitted)). Mr. Cruz asserts that exhaustion should be waived because administrative  
27 remedies are (1) futile and (2) his continued detention results in irreparable harm. Prudential  
28 exhaustion is not required here because it would be futile, and Mr. Cruz will “suffer irreparable  
harm if unable to secure immediate judicial consideration of his claim.” *McCarthy v. Madigan*,

1 503 U.S. 140, 147 (1992). Any attempt to exhaust his administrative remedies would be futile  
2 because an Immigration would deny his request for a bond hearing under the recent Bureau of  
3 Immigration Appeals (“BIA”) decisions *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025),  
4 and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Any further exhaustion requirements would  
5 be unreasonable.

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

#### 10 **PARTIES**

11 23. Petitioner, Mr. Cruz is a 29-year-old man from Cuba. He has no criminal history  
12 anywhere in the world. He has a pending application for Asylum, Withholding of Removal and  
13 relief under the Convention Against Torture with USCIS. He is presently in civil immigration  
14 detention at California City Detention Facility.

15 24. Respondent, Sergio ALBARRAN is the Acting Field Office Director of the San Francisco  
16 ICE field Office and is named in his official capacity. ICE is the component of the DHS that is  
17 responsible for detaining and removing noncitizens according to the immigration law and  
18 oversees custody determinations. In his official capacity, he is the legal custodian of Mr. Cruz.  
19 Mr. Albarran’s field office made the decision to detain Mr. Cruz.

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

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

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

7 **LEGAL BACKGROUND**

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

9 28. The Constitution Establishes due process rights for “all ‘persons’ within the United  
10 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or  
11 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9<sup>th</sup> Cir. 2017)(quoting *Zadvydas*, 533  
12 U.S. at 693). These due process rights are both substantive and procedural.

13 29. These protections extend to noncitizens facing detention, as “in our society liberty is the  
14 norm, and detention prior to trial or without trial is the carefully limited exception.” *United States*  
15 *v. Salerno*, 481 U.S. 739, 755, (1987). Accordingly, “freedom from imprisonment – from  
16 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty  
that (the Due Process) Clause protects.” *Zadvydas*, 533 U.S. at 690.

17 30. Substantive due process requires that all forms of civil detention – including immigration  
18 detention bear a “reasonable relation” to a non-punitive purpose. See *Jackson v. Indiana*, 406  
19 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive  
20 purposes of immigration detention: ensuring a noncitizen’s appearance at immigration  
21 proceedings and preventing danger to the community. *Zadvydas*, 53 U.S. at 690-92; see also  
*Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28 (2003).

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

24 32. In Mr. Cruz’s particular circumstances, the Due Process Clause of the Constitution makes  
25 it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing  
26 before a neutral decision maker to determine whether circumstances have materially changed  
27 since his release in 2022, such that detention would now only be warranted on the basis that he  
28 is a danger or flight risk by clear and convincing evidence.

1 33. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's  
2 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §  
3 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to  
4 revoke an immigration bond "at any time," 9 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.  
5 at 640, the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.  
6 There, the BIA held that "where a previous bond determination has been made by an immigration  
7 judge, no change should be made by the DHS absent a change of circumstance." *Id.* In practice,  
8 DHS "requires a showing of changed circumstances both where the prior bond determination  
9 was made by an immigration judge and where the previous release decision was made by a DHS  
10 officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed  
11 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed  
12 circumstances. *Panosyan v Mayorkas*, 854 F. App'x 787, 788 (9<sup>th</sup> Cir. 2021) ("thus, absent  
13 changed circumstances... ICE cannot detain Panosyan.").

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

20 35. ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also  
21 constrained by the demands of due process. See *Hernandez v. Sessions*, 872 F.3d 976, 981 (9<sup>th</sup>  
22 Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the  
23 requirements of due process"). In this case the guidance provided by *Matter of Sugay* – that ICE  
24 should not re-arrest a noncitizen absent changed circumstances – is insufficient to protect Mr.  
25 Cruz's weighty interest in his freedom from detention.

26 36. Federal district courts in California have repeatedly recognized the demands of due  
27 process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in  
28 DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen  
on bond, like Mr. Cruz, before ICE re-detains him. See e.g., *Meza v. Bonnar*, 2018 WL 2554572  
(N.D. Cal. June 4, 2018); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at  
3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's

1 ICE interview when he had been on bond for more than five years). See also *Doe v. Becerra*, No.  
2 2:25-cv-00647-DJC-DMC, 2025 WL 691664, 4 (E.D. Cal. Mar. 3, 2025)(holding the  
3 Constitution requires a hearing before any re-arrest).

4 **FACTUAL ALLEGATIONS**

5 37. Mr. Cruz's liberty from immigration custody is protected by the Due Process Clause:  
6 "Freedom from imprisonment- from government custody, detention, or other forms of physical  
7 restraint – lies at the heart of the liberty that (the Due Process) Clause protects." *Zadvydas v.*  
8 *Davis*, 533 U.S. 678, 690 (2001).

9 38. Since April 2, 2022, Mr. Cruz exercised that freedom when he was released on his own  
10 recognizance. As a result, he retained a weighty liberty interest under the Due Process Clause of  
11 the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146-47  
12 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,  
13 482-483 (1972).

14 39. Just as in *Morrissey*, Mr. Cruz's release "enables him to do a wide range of things open  
15 to persons" who have never been in custody or convicted of any crime, including to live at home,  
16 work, go to the doctor, take his medication, and "be with family and friends and to form the other  
17 enduring attachments of normal life" *Morrissey*, 408 U.S. at 482.

18 40. Mr. Cruz has complied with all conditions for release for well over three years, as he  
19 litigates his removal proceedings. He has meritorious applications for relief from removal.

20 **A. Mr. Cruz is Unlawfully Arrested and Detained Pursuant to DHS's**  
21 **New Policy.**

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

27 42. Mr. Cruz asserts that, here, (1) where his detention would be civil, (2) where he has been  
28 at liberty for three and half years, during which time he has complied with all conditions of  
release and has maintained steady employment, (3) where he has a substantial application for  
Asylum, withholding and CAT pending before USCIS (4) where no change in circumstances  
exist that would justify his detention, (5) where petitioner has health issues which require

1 continued medication and medical supervision and (6) where the only circumstance that has  
2 changed is ICE's move to arrest as many people as possible because of the new administration,  
3 due process mandates that he receive notice and a hearing before a neutral adjudicator prior to  
4 any re-arrest or revocation of a bond.

5 43. "Adequate, or due, process depends upon the nature of the interest affected. The more  
6 important the interest and the greater the effect of its impairment, the greater the procedural  
7 safeguards the government must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d  
8 1350, 1355-56 (9<sup>th</sup> Cir. 1985)(en banc)(citing *Morrissey*, 408 U.S. at 481-82). This Court must  
9 "balance Mr. Cruz's liberty interest against the government's interest in the efficient administer  
10 of" its immigration laws to determine what process he is owed to ensure that ICE does not  
11 unconstitutionally deprive him of his liberty. *Id.* 1at 1357.

12 44. Under the test set forth in *Mathias v. Eldridge*, this Court must consider these factors in  
13 conducting its balancing test: 'First, the private interest that will be affected by the official action;  
14 second, the risk of an erroneous deprivation of such interest through the process used, and the  
15 probative value, if any, of additional or substitute procedural safeguards; and finally the  
16 government's interest, including the function involved and fiscal and administrative burdens that  
17 the additional or substitute procedural requirements would entail." *Haygood*, 769 F.3d at 1357  
18 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

19 45. Because, in this case, the provision for a pre-deprivation hearing is both possible and  
20 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Mr. Cruz with  
21 notice and a hearing prior to any re-incarceration and revocation of his pre-trial release. See  
22 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F2d at 1355-56; *Jones*, 393 F.3d at 932; see also  
23 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11<sup>th</sup> Cir.  
24 1984)(holding that individuals awaiting involuntary civil commitment proceedings may be  
25 constitutionally be held in jail pending the determination as to whether they can ultimately be  
26 committed). Under *Mathews*, "the balance weighs heavily in favor of Mr. Cruz" and requires a  
27 pre-deprivation hearing before a neutral adjudicator.

28 46. In 2022, Petitioner fled to the United States. He was initially arrested by DHS officers  
but was released one day later on his own recognizance with a notice to appear for removal  
proceedings. In granting his release, DHS determined that he posed little if any risk of flight or  
danger to the community.

1 47. DHS has not yet filed Mr. Cruz's Notice to Appear with the immigration court. On June  
2 9, 2022, Mr. Cruz filed an asylum, withholding and CAT application with USCIS as his case has  
3 not been filed with the immigration court. On December 5, 2022, Mr. Cruz filed for work  
4 authorization with USCIS. On January 27, 2023, Mr. Cruz's work authorization was approved  
5 by USCIS.

6 48. Since arriving to the United States, Mr. Cruz has attended every immigration  
7 appointment that he was required to attend. Mr. Cruz has no criminal history. Mr. Cruz lives in  
8 Hayward, California with his family. Mr. Cruz has informed ICE about his change of address.  
9 Mr. Cruz has attended all check-ins with ICE.

10 49. Mr. Cruz has applied for asylum based on well-founded fear of persecution in Cuba.

11 50. Ever since Mr. Cruz entered the country, he has fully complied with all court and  
12 supervision requirements.

13 51. On November 21, 2025, Petitioner appeared at a regularly scheduled ICE check-in at the  
14 ICE San Francisco Office at 630 Sansome Street in San Francisco, California.

15 52. The ICE agent falsely informed Mr. Cruz that he had a deportation order and that he  
16 would be detained.

17 53. Petitioner immediately retained undersigned counsel to represent him in this habeas  
18 corpus proceeding. On November 23, 2025, counsel sent an email to the Bakersfield ICE office  
19 regarding release but received no response.

20 54. Mr. Cruz remains in custody. At this time, there are no new circumstances that would  
21 justify a re-arrest of petitioner.

22 55. Because Mr. Cruz has never been determined to be a flight risk or danger to the  
23 community, his detention is not related to either of the permissible justifications for civil  
24 immigration litigation. His detention does not further any legitimate government interest.

25 **B. As a Result of His Arrest and Detention, Mr. Cruz is Suffering**  
26 **Ongoing and Irreparable Harm.**

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

57. None of that has changed. Mr. Cruz has no criminal record, and there is no basis to believe  
that he poses any public-safety risk. Nor is Mr. Cruz, who was arrested while appearing for an

1 ICE check-in is conceivably a flight risk. To the contrary, Mr. Cruz appeared for every  
2 immigration appearance.

3 58. Mr. Cruz is now separated from his family and work. He suffers from health issues  
4 which require antibiotics.

5 59. Mr. Cruz's jobs require his presence.

6 60. Mr. Cruz is suffering from debilitating conditions at the California City Detention  
7 Facility.

### 8 **CLAIMS FOR RELIEF**

#### 9 **FIRST CLAIM FOR RELIEF**

##### 10 **Violation of the Fifth Amendment to the United States Constitution**

##### 11 **(Substantive Due Process—Detention)**

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

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

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

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

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

#### 9 **SECOND CLAIM FOR RELIEF**

##### 10 **Violation of the Fifth Amendment to the United States Constitution**

**(Procedural Due Process—Detention)**

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

67. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after his release. See *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); see also *Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s bond determination).

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

69. Petitioner’s re-detention without a pre-deprivation hearing violated due process. Over three years after deciding to release Petitioner from custody on his own recognizance, Respondents re-detained Petitioner with no notice, no explanation of the justification of his re-detention, and no opportunity to contest his re-detention before a neutral adjudicator before being taken into custody.

70. Petitioner has a profound personal interest in his liberty. Because he received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of course in immigration proceedings, and nothing in Petitioner’s record suggested that he would abscond or endanger the community before a bond hearing could be carried out. See, e.g., *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at \*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020) (“the government’s concern that

1 delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of  
2 petitioner's strong family ties and his continued employment during the pandemic as an essential  
3 agricultural worker").

4 **THIRD CLAIM FOR RELIEF**

5 **Violation of the Fourth Amendment to the United States Constitution**

6 **(Unlawful Arrest)**

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

9 72. The Fourth Amendment protects the right of persons present in the United States to be free  
10 from unreasonable seizures by government officials.

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

21 74. In the immigration context, this prohibition means that a person who immigration  
22 authorities released from initial custody cannot be re-arrested "solely on the ground that he is  
23 subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*,  
24 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom., Saravia for A.H. v. Sessions*, 905  
25 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result  
26 in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).  
27 DHS agents arrested Petitioner in 2022 after he entered the United States, charged him with a  
28 violation of civil immigration law, and released him on his own recognizance with a notice to  
appear in immigration court. Petitioner appeared at his ICE check-in as instructed even though  
his removal case had been taken off calendar by the immigration judge.

75. DHS re-arrested Petitioner on November 21, 2025, based on nothing more than the 2022 civil charge of violating immigration law for which he was previously released. Petitioner had not engaged in any conduct in the intervening time that made him a flight risk or danger to the community. No material change in circumstances justified Petitioner's re-arrest.

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

**PRAYER FOR RELIEF**

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the First Amendment, and the Administrative Procedure Act;
4. Enjoin Respondents from deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
7. Grant such further relief as the Court deems just and proper.

Date: November 24, 2025

Respectfully Submitted,

/s/ Emilio Parker  
Emilio Parker  
Attorney For Petitioner  
Josue Daniel Cruz Banos

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

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

Executed on November 24, 2025, in Oakland, CA.

/s/ Emilio Parker  
Emilio Parker  
Attorney for Josue Daniel  
Cruz Banos