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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

F.V.A.V.,
Petitioner,

v.

Minga WOFFORD, Field Office Director,
Mesa Verde, Office of Detention and
Removal, U.S. Immigrations and Customs
Enforcement; U.S. Department of Homeland
Security;

Sergio ALBARRAN, Acting Field Office
Director of the San Francisco Immigration and
Customs Enforcement Office

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.

No.

**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

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INTRODUCTION

1. Petitioner, F.V.A.V., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) since approximately August 7, 2025, after having fully complied for nearly two years with the terms of his release from the custody of the Department of Homeland Security (DHS) following his initial apprehension on or about August 29, 2023. During this period, he appeared for his immigration hearings, timely filed his Form I-589 Application for Asylum and for Withholding of Removal, maintained a stable residence in Rochester, New York with his long-term partner and their children, and worked consistently in construction installing flooring to support his family. He was originally released from border custody without bond, ISAP, parole, or reporting requirements, reflecting DHS's determination that he was neither a danger to the community nor a flight risk.

2. F.V.A.V.'s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or a danger to the community, or that his removal is imminent. As a hardworking and loving parent with no criminal history, F.V.A.V. is not a flight risk or a danger. His asylum case remains pending before EOIR, and thus removal is not imminent. Accordingly, F.V.A.V.'s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

3. This Court should issue a writ of habeas corpus and determine that F.V.A.V. is entitled to immediate release under reasonable conditions and pending further order of the Court.

4. Alternatively, this Court should order F.V.A.V.'s release unless he receives a bond hearing before a neutral arbiter where: (1) to justify his continued detention, the government bears the burden to establish by clear and convincing evidence that F.V.A.V. is a danger or flight risk; and (2) if the government cannot meet its burden, F.V.A.V. must be ordered released on reasonable conditions, taking into account his ability to pay bond.

CUSTODY

5. F.V.A.V. is currently in the custody of ICE at the Mesa Verde ICE Processing Center in Bakersfield, California. F.V.A.V. is therefore in “custody” of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

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

VENUE

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

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

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EXHAUSTION

11. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). F.V.A.V. asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

12. It would be futile for F.V.A.V. to seek a bond hearing from an Immigration Judge. His request would be summarily denied based on the current interpretation of the BIA’s recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

13. Further, no statutory exhaustion requirements apply to F.V.A.V.’s claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (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

14. F.V.A.V. is a 32-year-old male citizen of Ecuador who entered the United States on or about August 29, 2023, and has remained in the country since. Exh. 1. *See* Affidavit of F.V.A.V. (“F.V.A.V. Aff.”). DHS detained him briefly in border custody and released him after approximately two days, without bond, ISAP, parole, or reporting requirements, thereby determining that he was neither a danger to the community nor a flight risk; *see also* Order of Release on Recognizance, *attached as* Exh. 5. He established a life in Rochester, New York, where he lives with his long-term partner and their children, works steadily in construction installing flooring, pays taxes, and spends his free time with his family and church community. F.V.A.V. Aff. ¶ 7.

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1 15. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
2 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
3 responsible for detaining and removing noncitizens according to immigration law and oversees
4 custody determinations. In her official capacity, she is the legal custodian of F.V.A.V.

5 16. Respondent Sergio ALBARRAN is the Acting Field Office Director of the San
6 Francisco ICE Field Office. In this capacity, he is responsible for the administration of
7 immigration laws and the execution of immigration enforcement and detention policy within
8 ICE's San Francisco Area of Responsibility, including the detention of Petitioner. Respondent
9 Albarran maintains an office and regularly conducts business in this district. Respondent Albarran
10 is sued in his official capacity.

11 17. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
12 official capacity. Among other things, ICE is responsible for the administration and enforcement
13 of the immigration laws, including the removal of noncitizens. In his official capacity as head of
14 ICE, he is the legal custodian of F.V.A.V.

15 18. Respondent Kristi NOEM is the Secretary of DHS and is named in her official
16 capacity. DHS is the federal agency that encompasses ICE, which is responsible for administering
17 and enforcing the INA and all other laws related to the immigration of noncitizens. In her capacity
18 as Secretary, Respondent Noem has responsibility for the administration and enforcement of the
19 immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of
20 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).
21 Respondent Noem is the ultimate legal custodian of F.V.A.V.

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

27 **FACTUAL ALLEGATIONS**

28 20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
targeting people who are in regular removal proceedings in immigration court, many of whom
have pending applications for asylum or other relief. This "coordinated operation" is "aimed at

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1 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
2 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
3 *Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23,
4 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
5 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
6 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
7 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
8 administration implemented a policy to drastically increase immigration arrests to a target of at
9 least 3,000 per day. According to White House officials like Stephen Miller, this directive
10 prioritized arrest numbers over the individuals’ criminal history, encouraging agents to conduct
11 mass round-ups in public spaces rather than targeted investigations.

12 21. As a result, arrests of non-citizens with no criminal record surged by over 800%,
13 and two-thirds of those deported had no criminal history. This focus on quantity over public safety
14 led to a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
15 appointments, regardless of the status of their legal cases. This has created a climate of fear,
16 discouraging people from attending their mandatory hearings or ICE appointments.

17 22. In addition, individuals are now held for extended periods, sometimes days, in
18 temporary holding cells that are not designed for overnight or prolonged detention, often under
19 inhumane conditions. Government officials have justified these harsh conditions not as a matter
20 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
21 detention.

22 23. The government’s new campaign is also a significant shift from the previous DHS
23 practice of re-detaining noncitizens only after a material change in circumstances. See *Saravia v.*
24 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff’d sub nom. *Saravia for A.H. v.*
25 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

26 24. F.V.A.V. fled Ecuador in 2023 because of violent extortion, death threats, and an
27 assault by [REDACTED] whose members repeatedly threatened him
28 and his family, demanded payments, and attacked him [REDACTED]

[REDACTED] see also Affidavit of F.V.A.V. (“F.V.A.V. Aff.”). On or about August 29, 2023, F.V.A.V.
crossed the border in Arizona with the intention of seeking protection in the United States.

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1 F.V.A.V. Aff. ¶6. DHS held him in border custody for approximately two days before
2 determining that he was not a danger to the community or a flight risk and releasing him under
3 an order of release with a Notice to Appear in removal proceedings under INA § 240. See Exh.
4 3; F.V.A.V. Aff. ¶ 6.

5 25. Upon his release, F.V.A.V. established a life with his long-term partner and their
6 children in Rochester, New York. ¶7. He has worked diligently in construction installing flooring
7 to support his household and pays taxes. He has never committed any crimes, nor been arrested
8 for any reason. Exh. 5; *see also* F.V.A.V Aff. ¶8. Letters and information gathered from his
9 partner, friends, and faith community attest to his reliability, strong work ethic, and good
10 character. See Exh. 2.

11 26. F.V.A.V. has diligently complied with all requirements of his removal
12 proceedings. Upon his entry into the country, he received a Notice to Appear scheduling his initial
13 Master Hearing for January 30, 2024. Exh. 4; Exh 6; F.V.A.V. Aff. ¶6. He complied with this
14 commitment and duly appeared before the Immigration Court. On August 14, 2024, F.V.A.V.
15 timely filed his Form I-589 (Application for Asylum and for Withholding of Removal), given his
16 fear of return to Ecuador because of the death threats he received, and he was awaiting further
17 hearings on his asylum application when he was arrested and detained again. Exh.6; F.V.A.V.
18 App. ¶9.

19 27. On August 7, 2025, at approximately 7:30 a.m., F.V.A.V. was detained by ICE
20 agents in Rochester while he was driving his partner to work. ¶10. Unmarked vehicles with dark
21 tinted windows followed and then surrounded his car at a traffic light. Several men, who did not
22 clearly identify themselves as law enforcement, approached and asked for his “documents.”
23 Despite his explanation that he was in asylum proceedings and showing on his phone the date of
24 his upcoming hearing, they handcuffed him and took him into custody without presenting a
25 judicial warrant or written authorization. He was transported first to an ICE office in New York
26 and then transferred to the Buffalo Federal Detention Facility in Batavia, before being moved
27 through additional facilities and ultimately transferred to Mesa Verde, where he is currently
28 detained. ¶ 11.

29 28. F.V.A.V.’s asylum case remains pending. Prior to his re-detention, he had already
30 appeared for his initial Master Hearing on January 30, 2024, and was preparing to continue

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litigating his asylum claim. ¶9 Following his arrest and subsequent transfer to California, his case was placed on the detained docket in this District. At a hearing on November 20, 2025, at which he appeared hjaccompanyed by counsel, the Immigration Court set his Individual Hearing for February 20, 2026.

LEGAL ARGUMENT

29. F.V.A.V.'s removal proceedings before the San Francisco Immigration Judge are governed by section 240 of the Immigration and Nationality Act ("section 240 proceedings"). Section 240 proceedings provide important statutory protections, including hearings before an Immigration Judge. See 8 U.S.C. § 1229a(a)(1), (a)(4).

30. In F.V.A.V.'s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release from custody in August of 2023, such that detention would now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

31. By statute and regulations, ICE has the ability to unilaterally revoke any noncitizen's immigration bond determination or parole, and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

32. ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*,

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280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

33. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release from custody in August of 2023 and ties to his family and community provide him with a protected liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019).

34. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's release from custody set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on ICE's supervision, like F.V.A.V. before ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *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 ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

I. Petitioner Has a Protected Liberty Interest in His Conditional Release

35. The Due Process Clause protects F.V.A.V.'s liberty from immigration custody: "Freedom from imprisonment – from government custody, detention, or other forms of physical

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

3 36. Since August 2023, F.V.A.V. has exercised that liberty under a DHS order
4 releasing him from custody. As he was released from custody, he retains a weighty liberty interest
5 under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See*
6 *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82
7 (1973); *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that
8 F.V.A.V. would be permitted to live and work in the United States without being subject to
9 arbitrary arrest and removal.

10 37. This reasonable expectation creates constitutionally-protected liberty and
11 property interests. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on policies and
12 practices may establish a legitimate claim of entitlement to a constitutionally-protected interest);
13 *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court,
14 136 S. Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants).
15 These benefits are entitled to constitutional protections no matter how they may be characterized
16 by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002)
17 (“[T]he identification of property interests under constitutional law turns on the substance of the
18 interest recognized, not the name given that interest by the state or other independent source.”)
19 (internal quotations omitted).

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

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39. This basic principle — that individuals have a liberty interest in their conditional Release — has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“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”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

40. 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).

41. Here, when this Court compares the specific release in F.V.A.V.’s case “with the liberty interest in parole as characterized by *Morrissey*”, they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, F.V.A.V.’s release “enables 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, practice his faith, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

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II. Petitioner's Liberty Interest Mandates a Hearing Before Any Re-Arrest or Revocation of Release from Custody

42. F.V.A.V. asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for almost two years; (3) where no material change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance was ICE's move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of his custody release.

43. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [F.V.A.V.'s] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the *Mathews* factors in similar cases, and found that those in Petitioner's position, noncitizens granted the liberty of release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

44. The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S.

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113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the only remedies the State could be expected to provide” can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally to do the impossible by providing predeprivation process,” can the government avoid providing pre-deprivation process. *Id.*

45. Because, in this case, ICE is required to release F.V.A.V. from his unlawful custody and provide F.V.A.V. with notice and a hearing prior to any re-incarceration and revocation of his liberty. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 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 F.V.A.V.’s liberty and requires a pre-deprivation hearing before a neutral adjudicator.

III. Petitioner’s Private Interest in His Liberty is Profound

46. 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 F.V.A.V., 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. Thus, F.V.A.V. retains a truly weighty liberty interest even though he is under conditional release.

47. What is at stake in this case for F.V.A.V. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing him from custody and to take away—without a lawful basis—his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

48. Thus, there is a clear profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

IV. The Government’s Interest in Re-Incarcerating Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

49. The government’s interest in detaining F.V.A.V. without a due process hearing is low, and when weighed against F.V.A.V.’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release him from unlawful custody and to refrain from re-arresting him unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or a danger to the community. The process he seeks—a notice and a hearing regarding whether he has violated any conditions of his release, and, if so, whether there is clear and convincing evidence that he is a flight risk or danger—would impose only a minimal burden on the government, because it routinely provides similar custody hearings in immigration cases.

50. As immigration detention is civil, it can have no punitive purpose. The government’s only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See*

1 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
2 lawful basis for detaining F.V.A.V. has lived at liberty complying with the conditions of his
3 release since August 2023.

4 51. ICE determined F.V.A.V. not to be a danger to the community or a flight risk in
5 August 2023 and has done nothing to undermine that determination. To the contrary, he complied
6 with the terms of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater
7 importance to a person’s justifiable reliance in maintaining his conditional freedom so long as he
8 abides by the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir.
9 1971)).
10

11 52. It is difficult to see how the government’s interest in detaining F.V.A.V. has
12 materially changed since he was released in August 2023, absent any new circumstances
13 indicating that he is a danger to the community or a flight risk. The government’s interest in
14 detaining F.V.A.V. at this time is extremely low. That ICE has a new policy to make a minimum
15 number of arrests each day under the new administration does not constitute a material change in
16 circumstances or increase the government’s interest in detaining him.

17 53. Moreover, the “fiscal and administrative burdens” that his immediate release and
18 a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S.
19 at 334-35. F.V.A.V. does not seek a unique or expensive form of process, but rather a routine
20 hearing regarding whether his order of release should be revoked and whether he should be re-
21 incarcerated.

22 54. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the
23 public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total
24 daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. ICE’s unlawful action of placing him in
25 custody is more of a financial burden than releasing him and providing a pre-custody hearing
26 before any future re-arrest occurs.

27 55. In addition, providing F.V.A.V. with a hearing before this Court (or a neutral
28 decisionmaker) regarding release from custody is a routine procedure that the government
provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.

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1 But there is no justifiable reason to re-incarcerate F.V.A.V. prior to such a hearing taking place.
2 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest
3 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
4 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
5 revoking parole without some informal procedural guarantees.” *Morrissey*, 408 U.S. at 483.

6 56. Releasing F.V.A.V. from unlawful custody and enjoining his re-arrest until ICE
7 (1) moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates
8 by clear and convincing evidence that F.V.A.V. is a flight risk or danger to the community.
9 *Hernandez*, 872 F.3d at 996.

10 **V. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an**
11 **Erroneous Deprivation of Liberty is High, and Process in the Form of a**
12 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would**
13 **Decrease That Risk**

14 57. Releasing F.V.A.V. from unlawful custody and providing a pre-deprivation
15 hearing would decrease the risk of F.V.A.V. being erroneously deprived of his liberty. Before
16 F.V.A.V. can be lawfully detained, he must be provided with a hearing before a neutral
17 adjudicator at which the government is held to show that there have been sufficiently changed
18 circumstances such that ICE’s August 2023 release from custody determination should be altered
19 or revoked because clear and convincing evidence exists to establish that F.V.A.V. is a danger to
20 the community or a flight risk.

21 58. On August 7, 2025, F.V.A.V. did not receive this protection. Instead, he was
22 detained by ICE, without notice, and there had been no material changes in his circumstances.

23 59. By contrast, the procedure F.V.A.V. seeks — a hearing in front of a neutral
24 adjudicator at which the government must prove by clear and convincing evidence that
25 circumstances have changed to justify his detention *before* any re-arrest — is much more likely
26 to produce accurate determinations regarding factual disputes, such as whether a particular
27 occurrence constitutes a “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375,
28 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses and
assessment of conditions not subject to measurement” are at issue, the “risk of error is
considerable when just determinations are made after hearing only one side”). “A neutral judge

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1 is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th
2 Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).
3 The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews*
4 can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
5 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

6 60. Due process also requires consideration of alternatives to detention at any custody
7 determination hearing that may occur. The primary purpose of immigration detention is to ensure
8 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
9 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
10 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
11 must be considered in determining whether F.V.A.V.’s reincarceration is warranted.

12 CLAIMS FOR RELIEF

13 **FIRST CLAIM FOR RELIEF**

14 **Violation of Procedural Due Process Under U.S. Const. Amend. V**

15
16 61. F.V.A.V. re-alleges and incorporates herein by reference, as is set forth fully
17 herein, the allegations in all the preceding paragraphs.

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

20 63. F.V.A.V. has a vested liberty interest in his lawful conditional release. Due
21 Process does not permit the government to strip him of that liberty without a hearing before this
22 Court. *See Morrissey*, 408 U.S. at 487-488.

23 64. The Court must therefore order that ICE release F.V.A.V. from his current
24 unlawful custody.

25 65. Prior to any re-arrest, the government must provide him with a hearing before a
26 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
27 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
28 that F.V.A.V. is a danger to the community or a flight risk, such that his reincarceration is
warranted. During any custody determination hearing that occurs, this Court or, alternatively, a

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1 neutral adjudicator must consider alternatives to detention when determining whether F.V.A.V.'s
2 re-incarceration is warranted.

3
4 **SECOND CLAIM FOR RELIEF**

5 **Violation of Substantive Due Process Under U.S. Const. Amend. V**

6
7 66. F.V.A.V. re-alleges and incorporates herein by reference, as is set forth fully
8 herein, the allegations in all the preceding paragraphs.

9 67. The Due Process Clause of the Fifth Amendment forbids the government from
10 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
11 amend. V.

12 68. F.V.A.V. has a vested liberty interest in his conditional release. Due Process does
13 not permit the government to strip him of that liberty without it being tethered to one of the two
14 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
15 community from danger. Since August of 2023, F.V.A.V. has attended all of his court hearings
16 thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be
17 punitive and violate his constitutional right to be free from the unjustified deprivation of his
18 liberty.

19 69. For these reasons, F.V.A.V.'s continued unlawful custody and any subsequent re-
20 arrest without first being provided a pre-deprivation hearing would violate the Constitution.

21 70. The Court must therefore order that he be released from custody.

22 71. The Court must order the government to not re-arrest him in any subsequent action
23 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
24 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into
25 consideration alternatives to detention, that F.V.A.V. is a danger to the community or a flight risk,
26 such that his reincarceration is warranted. During any custody determination hearing that occurs,
27 this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when
28 determining whether F.V.A.V.'s reincarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, F.V.A.V. prays that this Court grant the following relief:

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- (1) Assume jurisdiction over this matter;
- (2) Declare that ICE's August 7, 2025, apprehension and detention of F.V.A.V. was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;
- (3) Order ICE to immediately release F.V.A.V. from his unlawful detention;
- (4) Enjoin re-arresting F.V.A.V. unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that he is a danger or a flight risk by clear and convincing evidence;
- (5) Declare that F.V.A.V. cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful — i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;
- (6) Award reasonable costs and attorney fees; and
- (7) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 7th day of December, 2025.

By counsel,

/s/ Natalia Santanna

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed 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 December 7, 2025, in Oakland, CA.

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna
Attorney for Petitioner

/s/ Otavio Haverroth Silva

Otavio Haverroth Silva
Attorney for Petitioner