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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 M.J.B.Z.,

12 Petitioner-Plaintiff,

13 v.

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

19 Sergio ALBARRAN, Acting Field Office
20 Director of the San Francisco Immigration
21 and Customs Enforcement Office;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;

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

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

Respondents-
Defendants.

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
2 1. Petitioner, M.J.B.Z., by and through his undersigned counsel, hereby files this petition for
3 writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S.
4 Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE)
5 from continuing to detain him in an immigration jail pending resolution of his removal case
6 without first providing him a due process hearing where the government bears the burden to
7 demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear
8 and convincing evidence.

9 2. M.J.B.Z. also seeks an order enjoining DHS from continuing to violate the undisturbed
10 conditional humanitarian parole that DHS issued on or about August 3, 2024.

11 3. M.J.B.Z. seeks his immediate release from detention in Mesa Verde ICE Processing
12 Center where ICE unlawfully re-detained and continues to imprison him without a hearing and
13 without demonstrating that he is a flight risk or danger to the community, as required by the Due
14 Process clause of the Fifth Amendment.

15 4. This arrest is part of a new, nationwide DHS strategy of sweeping up people who attend
16 their immigration court hearings or their ICE appointments, detaining them, and seeking to re-
17 route them to fast-track deportations. Since mid-May of this year, DHS has implemented a
18 coordinated practice of leveraging immigration detention to strip people like Petitioner of their
19 substantive and procedural rights and pressure them into deportation.

20 5. Immigration detention is civil and thus is permissible for only two reasons: to ensure a
21 noncitizen's appearance at immigration hearings and to prevent danger to the community.
22 However, DHS did not arrest and detain M.J.B.Z., who demonstrably poses no risk of absconding
23 from immigration proceedings or being a danger to the community, for either of these reasons.
24 Instead, as part of its broader enforcement campaign, DHS detained M.J.B.Z. to strip him of his
25 procedural rights, force him to forfeit his applications for relief, and pressure him into fast-track
26 removal.

27 6. M.J.B.Z. initially came into immigration custody when he entered the United States in or
28 around August 4, 2024, through San Ysidro, California, where immigration authorities detained

1 him upon arrival at the border. he was detained by immigration authorities at the border for
2 approximately ten hours, from 8:00 p.m. to 6:00 a.m. He received only one meal—a sandwich
3 and juice—and was unable to sleep because there was no place to lie down. The conditions of this
4 initial detention were inhumane; he was cold and uncomfortable. ICE officials asked him who he
5 planned to live with in the U.S. and what part of California he was going to but did not ask him
6 anything about his fears of returning to Mexico. He was later released under parole on August 4,
7 2024.

8 7. Upon his release, ICE officials gave him a single sheet of paper but no detailed
9 instructions about when, where, or how to report to ICE. After arriving in Porterville, California,
10 he searched online for the nearest ICE office and found one in Bakersfield. At the Bakersfield
11 ICE office, an officer instructed him to sign a document and directed him to report to another ICE
12 location in Bakersfield. When he arrived there, officials installed a supervision application on the
13 cell phone purchased for him by his fiancée. ICE did not provide him with a phone.

14 8. He fulfilled all his reporting obligations. Initially, he was instructed to report weekly, and
15 then the schedule was changed to twice a month. ICE never required him to post a bond. He was
16 also required to use a mobile phone app to confirm his location and identity by sending photos.

17 9. From August 2024 to September 2025, he consistently reported to ICE through the mobile
18 reporting app. He followed the instructions diligently, taking and sending photos from his home
19 whenever requested, and completing online forms as prompted.

20 10. He recalls that on one occasion, he sent his photo from his fiancée's brother's home,
21 which was located about five minutes away from his own residence. ICE notified him that the
22 photo was taken at a different location and instructed him to redo the check-in the next morning
23 from his home. He complied without issue. Officers later called him to confirm everything was
24 fine and explicitly told him that the incident would not count against him. He never received any
25 formal warning, written notice of non-compliance, or threat of arrest for this minor delay. After
26 that incident, he continued completing all forms and photo check-ins correctly and on time.

27 11. Upon entering the United States, he settled in Porterville, California, where he lived with
28 his fiancée and their three-year-old son, who are both U.S. citizens. Prior to his arrest, he was not

1 working because his work authorization (Form I-765) was denied, and his parole through CBP
2 One was cancelled. He served as his son's primary caretaker while his fiancée worked eight-hour
3 shifts in the fields. Their son is not in school and has no one else to care for him while his fiancée
4 works. As a result, his fiancée has been unable to work during his detention. She is financially
5 struggling to support herself and their son and is currently relying on government assistance and
6 some monetary help from her brother. He possesses a valid California driver's license, but ICE
7 confiscated it upon his detention on September 13, 2025. He dedicates his time to his family and
8 always looks out for the well-being of his son and fiancée. He is known for being hardworking
9 and responsible, with no history of criminal behavior in either the United States or Mexico.

10 12. He was previously kidnapped in Mexico by members of a cartel who specifically targeted
11 field workers like himself. He fears that if he returns to Mexico, he will be killed.

12 13. In early September 2025, ICE officials called him and told him he had an important
13 appointment to "renew his documents" because the ones from 2024 were expiring. He was
14 instructed to appear one week later, on Saturday, September 13, 2025. On September 12, 2025,
15 the day before the appointment, ICE officials called him again to remind him that he could not
16 miss the appointment, or he would receive an infraction. He asked whether there was any chance
17 he could be deported, and the officer told him "No."

18 14. On September 13, 2025, at approximately 9:00 a.m., he appeared at the Bakersfield ICE
19 office with his fiancée. They would not allow her to enter and locked the door. He waited inside
20 for about twenty minutes. The front desk officer told him everything was fine and instructed him
21 to wait. Without explanation, an officer then came out of a room and told him, "Put your hands on
22 the wall, you know what you did." He asked what was happening and told them he had done
23 nothing wrong. He demanded to see his order of arrest and detention, but they refused to answer.
24 His wallet and cell phone were taken, and he was placed under arrest without any written
25 explanation or notice.

26 15. Before his detention, M.J.B.Z. was an essential financial contributor to his household. He
27 served as his son's primary caretaker while his fiancée worked eight-hour shifts in the fields.
28 Their son is not in school and has no one else to care for him while his fiancée works. As a result,

1 his fiancée has been unable to work during his detention. She is financially struggling to support
2 herself and their son, and is currently relying on government assistance, including food stamps
3 and some monetary help from her brother.

4 16. M.J.B.Z. maintains that he poses no danger to the community and is not a flight risk. He
5 has no criminal record in the United States or Mexico, has complied with all immigration
6 reporting requirements and has demonstrated a consistent commitment to lawful behavior. His
7 detention has caused him significant emotional distress, physical exhaustion, and economic harm
8 to his household. His detention serves no legitimate purpose.

9 17. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
10 has the authority to re-arrest a noncitizen where there has been a material change in circumstances
11 since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17
12 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change
13 in circumstances must be "material." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
14 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
15 added). That authority, however, is proscribed by the Due Process Clause because it is well-
16 established that individuals released from incarceration have a liberty interest in their freedom. In
17 turn, to protect that interest, on the particular facts of M.J.B.Z.'s case, due process requires notice
18 and a hearing, *before any re-arrest*, at which he is afforded the opportunity to advance his
19 arguments as to why his release should not be revoked.

20 18. That basic principle—that individuals placed at liberty are entitled to process before the
21 government imprisons them—has particular meaning here. A DHS officer previously found that
22 M.J.B.Z. need not be incarcerated to prevent flight or to protect the community, and no material
23 circumstances have changed that would justify re-arrest. Therefore, at a minimum, to lawfully re-
24 arrest M.J.B.Z., the government must first establish, by clear and convincing evidence and before
25 a neutral decision maker, that he is a danger to the community or a flight risk, such that his
26 reincarceration is necessary. ICE's re-arrest of M.J.B.Z. on September 13, 2025, violated these
27 regulations, laws, and due process.

28 19. On November 24, 2025, the undersigned e-mailed the ICE San Francisco office requesting

1 the immediate release of M.J.B.Z., explaining that M.J.B.Z. should be released because he is not a
2 flight risk and not a danger to the community. To date, the undersigned has not received an
3 answer.

4 20. M.J.B.Z. respectfully seeks a writ of habeas corpus ordering the government to
5 immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest
6 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
7 this Court's jurisdiction, Petitioner also requests that this Court order the government not to
8 transfer him outside of the District or deport him for the duration of this proceeding.

9 **CUSTODY**

10 21. M.J.B.Z. is currently in the custody of ICE at the Mesa Verde ICE Processing Center in
11 Bakersfield, California. M.J.B.Z. is therefore in "'custody' of [the DHS] within the meaning of
12 the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

13 **JURISDICTION AND VENUE**

14 22. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
15 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.
16 § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the
17 Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative
18 Procedure Act).

19 23. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.
20 § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

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

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

27 25. Courts have long recognized the significance of the habeas statute in protecting
28 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most

1 important writ known to the constitutional law of England, affording as it does a swift and
 2 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
 3 (1963) (emphasis added).

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

10 EXHAUSTION OF ADMINISTRATIVE REMEDIES

11 27. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
 12 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential
 13 exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of
 14 administrative remedies would be a futile gesture, irreparable injury will result, or the
 15 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
 16 (9th Cir. 2004) (citation and quotation marks omitted)). M.J.B.Z. asserts that exhaustion should
 17 be waived because administrative remedies are (1) futile and (2) his continued detention results in
 18 irreparable harm.

19 28. It would be futile for M.J.B.Z. to seek a bond hearing from an Immigration Judge. His
 20 request would be summarily denied based on the current interpretation of the BIA’s recent
 21 decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of YAJURE HURTADO*,
 22 29 I&N Dec. 216 (BIA 2025).

23 29. Further, no statutory exhaustion requirements apply to M.J.B.Z.’s claim of unlawful
 24 custody in violation of his due process rights, and there are no administrative remedies that he
 25 needs to exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142
 26 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not have
 27 jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,
 28 1099 (C.D. Cal. 2000) (same).

PARTIES

30. M.J.B.Z. is a citizen and national of Mexico who entered the U.S. on August 3, 2024, and has remained in the country since. The DHS has deemed M.J.B.Z. neither a danger to his community nor a flight risk and released him on his recognizance on August 4, 2024. He established a life in Porterville, California. He is the primary caretaker of his son and spends his free time with his fiancée and son, whom are both U.S. citizens.

31. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde, Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In her official capacity, she is the legal custodian of M.J.B.Z.

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

33. 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 M.J.B.Z.

34. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency that encompasses ICE, which is responsible for administering and enforcing the INA and all other laws related 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 M.J.B.Z.

35. Respondent Pam BONDI is the Attorney General of the United States and the most senior

1 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
2 authority to interpret immigration laws and adjudicate removal cases. The Attorney General
3 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
4 administers the immigration courts and the BIA.

5 STATEMENT OF FACTS

6 36. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
7 targeting people who are in regular removal proceedings in immigration court, many of whom
8 have pending applications for asylum or other relief. This “coordinated operation” is “aimed at
9 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
10 and placing them into expedited removal.¹ The Trump administration implemented a policy to
11 drastically increase immigration arrests to a target of at least 3,000 per day. According to White
12 House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals’
13 criminal history, encouraging agents to conduct mass round-ups in public spaces rather than
14 targeted investigations.

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

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

25 39. The government’s new campaign is also a significant shift from the previous DHS

26 ¹ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s*
27 *Deportation Push*, Wash. Post, May 23, 2025,
<https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; see also Hamed
28 Aleaziz, Luis Ferré-Sadurni, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse*
Arrests, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

1 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
2 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
3 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

4 40. M.J.B.Z. initially came into immigration custody when he entered the United States in or
5 around August 4, 2024, through San Ysidro, California, where immigration authorities detained
6 him upon arrival at the border. he was detained by immigration authorities at the border for
7 approximately ten hours, from 8:00 p.m. to 6:00 a.m. He received only one meal—a sandwich
8 and juice—and was unable to sleep because there was no place to lie down. The conditions of this
9 initial detention were inhumane; he was cold and uncomfortable. ICE officials asked him who he
10 planned to live with in the U.S. and what part of California he was going to but did not ask him
11 anything about his fears of returning to Mexico. He was later released under parole on August 4,
12 2024.

13 41. Upon his release, ICE officials gave him a single sheet of paper but no detailed
14 instructions about when, where, or how to report to ICE. After arriving in Porterville, California,
15 he searched online for the nearest ICE office and found one in Bakersfield. At the Bakersfield
16 ICE office, an officer instructed him to sign a document and directed him to report to another ICE
17 location in Bakersfield. When he arrived there, officials installed a supervision application on the
18 cell phone purchased for him by his fiancée. ICE did not provide him with a phone.

19 42. He fulfilled all his reporting obligations. Initially, he was instructed to report weekly, and
20 then the schedule was changed to twice a month. ICE never required him to post a bond. He was
21 also required to use a mobile phone app to confirm his location and identity by sending photos.

22 43. From August 2024 to September 2025, he consistently reported to ICE through the mobile
23 reporting app. He followed the instructions diligently, taking and sending photos from his home
24 whenever requested, and completing online forms as prompted.

25 44. He recalls that on one occasion, he sent his photo from his fiancée's brother's home,
26 which was located about five minutes away from his own residence. ICE notified him that the
27 photo was taken at a different location and instructed him to redo the check-in the next morning
28 from his home. He complied without issue. Officers later called him to confirm everything was

1 fine and explicitly told him that the incident would not count against him. He never received any
2 formal warning, written notice of non-compliance, or threat of arrest for this minor delay. After
3 that incident, he continued completing all forms and photo check-ins correctly and on time.

4 45. Upon entering the United States, he settled in Porterville, California, where he lived with
5 his fiancée and their three-year-old son, who are both U.S. citizens. Prior to his arrest, he was not
6 working because his work authorization (Form I-765) was denied, and his parole through CBP
7 One was cancelled. He served as his son's primary caretaker while his fiancée worked eight-hour
8 shifts in the fields. Their son is not in school and has no one else to care for him while his fiancée
9 works. As a result, his fiancée has been unable to work during his detention. She is financially
10 struggling to support herself and their son and is currently relying on government assistance and
11 some monetary help from her brother. He possesses a valid California driver's license, but ICE
12 confiscated it upon his detention on September 13, 2025. He dedicates his time to his family and
13 always looks out for the well-being of his son and fiancée. He is known for being hardworking
14 and responsible, with no history of criminal behavior in either the United States or Mexico.²

15 46. M.J.B.Z. is deeply interested in pursuing his asylum petition as he fears for his safety if
16 returned to Mexico. He was previously kidnapped in Mexico by members of a cartel who
17 specifically targeted field workers like himself. He fears that if he returns to Mexico, he will be
18 killed.

19 47. In early September 2025, ICE officials called him and told him he had an important
20 appointment to "renew his documents" because the ones from 2024 were expiring. He was
21 instructed to appear one week later, on Saturday, September 13, 2025. On September 12, 2025,
22 the day before the appointment, ICE officials called him again to remind him that he could not
23 miss the appointment, or he would receive an infraction. He asked whether there was any chance
24 he could be deported, and the officer told him "No."

25 48. On September 13, 2025, at approximately 9:00 a.m., he appeared at the Bakersfield ICE
26 office with his fiancée. They would not allow her to enter and locked the door. He waited inside
27 for about twenty minutes. The front desk officer told him everything was fine and instructed him

28 ² A declaration is attached hereto, and support letters are attached hereto as Exhibit 1.

1 to wait. Without explanation, an officer then came out of a room and told him, "Put your hands on
2 the wall, you know what you did." He asked what was happening and told them he had done
3 nothing wrong. He demanded to see his order of arrest and detention, but they refused to answer.
4 Officers seized his phone, wallet, and documents, placed him in handcuffs, leg shackles, and a
5 waist chain, and transported him in a vehicle for about five minutes to another ICE building in
6 Bakersfield.

7 49. At that location, they asked him to sign documents. He refused until he could speak to an
8 attorney. He requested a phone call and was allowed to briefly call his fiancée to tell her what had
9 happened. After the call, they placed him in a small cell, still shackled. He was held there for
10 approximately three hours. He was only taken out briefly for fingerprinting and to confirm his
11 belongings. The cell had a stainless-steel bench and no privacy for the toilet, and it was cold. He
12 was not given a blanket and sat mostly on the floor. He was given a cold sandwich and chips—the
13 only food he received during those hours. After three hours detained in the second ICE office in
14 Bakersfield, officers placed the full restraints back on him and transported him in a van for about
15 five minutes to Mesa Verde ICE Processing Center.

16 50. Upon arrival at Mesa Verde, he was placed in a cell for approximately five hours. His
17 handcuffs were eventually removed. The cell had a toilet in the corner with no privacy and a
18 bench occupied by another detainee, so he sat on the floor. He was cold and exhausted. He was
19 fed bread and some fish about an hour after arrival. Three hours later, he was fed a second time
20 and given a single cup of water. During these hours, he was taken out once for fingerprinting,
21 document signatures, and a medical exam.

22 51. After medical processing, he was given uniforms and placed in the main dormitory. The
23 dormitory contains about 100 beds, and approximately 97 detainees are currently housed there.

24 52. Approximately seven hours after arriving at Mesa Verde—around 7:00 p.m. on September
25 13, 2025—he was finally assigned a bed and allowed to lie down, though he could not sleep.

26 53. Since being detained, he has been unable to rest. The food portions are small and not
27 filling. Unless he buys food from commissary, he remains hungry most days. Purchasing food
28 from commissary is not possible right now due to lack of financial resources.

1 54. He has developed bumps on his back resembling rashes and does not know whether they
2 are caused by the food, the cold, or other detention conditions. Medical staff gave him lotion, but
3 it did not work.

4 55. In his first month of detention, he had a fever and severe pain for about a week and was
5 given a pill by medical staff. He suffers from anxiety, which has significantly worsened during
6 detention, causing panic attacks and episodes of emotional distress.

7 56. He was previously issued a Notice to Appear (NTA) alleging that he was an alien present
8 in the U.S. without admission or parole, even though he entered through CBP One parole. He
9 initially had a court hearing scheduled for March 30, 2027, but that hearing was vacated. His next
10 hearing is now scheduled for December 11, 2025, at 1:30 p.m., where he intends to present his
11 asylum application. He appeared for court on October 13, 2025, via video while detained. The
12 Immigration Judge granted him time to obtain an attorney and gave him documents to complete,
13 which he is currently preparing to submit.

14 57. Since his detention, his fiancée has been forced to stop working to care for their son. Her
15 brother is loaning her money for basic expenses, and she has had to apply for food stamps for
16 herself and their child. His fiancée has stated in a written letter that his detention has caused her
17 significant emotional and financial hardship.

18 58. Their son's behavior has changed drastically since his detention. The child has become
19 aggressive, argumentative, and cries frequently because he misses his father. Before his detention,
20 the child was calm, affectionate, and happy.

21 59. Prior to his arrest, he complied with all reporting requirements, with only one minor
22 incident that was promptly corrected and which ICE confirmed would not be held against him.

23 60. M.J.B.Z. maintains that he poses no danger to the community and is not a flight risk. He
24 has no criminal record in the United States or Mexico, has complied with all immigration
25 reporting requirements and has demonstrated a consistent commitment to lawful behavior. His
26 detention has caused him significant emotional distress, physical exhaustion, and economic harm
27 to his household. His detention serves no legitimate purpose.

28 61. This case has substantial factual and legal support to be granted, resulting in M.J.B.Z.'s

1 release from custody, and enjoining DHS from detaining M.J.B.Z. pending a hearing before a
2 neutral adjudicator, to substantiate a material change in circumstances indicating that M.J.B.Z. is
3 either a flight risk or a danger to the community.

4 62. Intervention from this Court is therefore required to ensure that M.J.B.Z. is released from
5 his current custody based on his unlawful arrest, returned to his home in Porterville, California,
6 where ICE can then provide him with a hearing before determining to re-arrest him pursuant to
7 the Due Process Clause of the Fifth Amendment.

8 LEGAL ARGUMENTS

9 **Statutory Framework**

10 63. M.J.B.Z.'s removal proceedings before the San Francisco Immigration Judge are
11 governed by section 240 of the Immigration and Nationality Act ("section 240 proceedings").
12 Section 240 proceedings provide important statutory protections, including hearings before an
13 Immigration Judge. *See* 8 U.S.C. § 1229a(a)(1), (a)(4).

14 **Right to a Hearing Prior to Re-Incarceration**

15 64. In M.J.B.Z.'s particular circumstances, the Due Process Clause of the Constitution makes
16 it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing
17 before a neutral decision maker to determine whether circumstances have materially changed
18 since his release from custody on August 4, 2024, such that detention would now be warranted on
19 the basis that he is a danger or a flight risk by clear and convincing evidence.

20 65. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
21 immigration bond determination or parole, and re-arrest the noncitizen at any time. 8 U.S.C. §
22 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting
23 ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b). In *Matter of*
24 *Sugay*, 17 I&N Dec. at 640, the BIA has recognized an implicit limitation on ICE's authority to
25 re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been
26 made by an immigration judge, no change should be made by [the DHS] absent a change of
27 circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where
28 the prior bond determination was made by an immigration judge and where the previous release

1 decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The
 2 Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
 3 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
 4 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

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

11 67. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
 12 also constrained by the demands of due process. *See Hernandez* at 981 (“the government’s
 13 discretion to incarcerate non-citizens is always constrained by the requirements of due process”).
 14 *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-deprivation
 15 hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in
 16 parole context). Petitioner’s release from custody on August 4, 2024, and ties to his family and
 17 community provide him with a protected liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d
 18 963 (N.D. Cal. Nov. 22, 2019).

19 68. Federal district courts in California have repeatedly recognized that the demands of due
 20 process and the limitations on DHS’s authority to revoke a noncitizen’s release from custody set
 21 out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
 22 noncitizen on ICE’s supervision, like M.J.B.Z. before ICE re-detains him. *See, e.g., Meza v.*
 23 *Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963
 24 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal.
 25 Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D.
 26 Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D.
 27 Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice
 28 and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL

1 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at
2 plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v.*
3 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding
4 the Constitution requires a hearing before any re-arrest).

5 **M.J.B.Z.'s Protected Liberty Interest in His Conditional Release**

6 69. The Due Process Clause protects M.J.B.Z.'s liberty from immigration custody: "Freedom
7 from imprisonment—from government custody, detention, or other forms of physical restraint—
8 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533
9 U.S. 678, 690 (2001).

10 70. Since August 4, 2024, M.J.B.Z. exercised that freedom under ICE's order releasing him
11 from custody. As he was released from custody, he retains a weighty liberty interest under the
12 Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v.*
13 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-
14 483. Respondents created a reasonable expectation that M.J.B.Z. would be permitted to live and
15 work in the United States without being subject to arbitrary arrest and removal.

16 71. This reasonable expectation creates constitutionally protected liberty and property
17 interests. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on policies and practices
18 may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also*
19 *Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct.
20 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These
21 benefits are entitled to constitutional protections no matter how they may be characterized by
22 Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he
23 identification of property interests under constitutional law turns on the substance of the interest
24 recognized, not the name given that interest by the state or other independent source.") (internal
25 quotations omitted).

26 72. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has
27 in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of
28 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to

1 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
2 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
3 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
4 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
5 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
6 valuable and must be seen within the protection of the [Fifth] Amendment.” *Id.* at 482.

7 73. This basic principle—that individuals have a liberty interest in their conditional release—
8 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See,*
9 *e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to
10 reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process);
11 *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a
12 protected liberty interest requiring pre-deprivation process). As the First Circuit has explained,
13 when analyzing the issue of whether a specific conditional release rises to the level of a protected
14 liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in
15 the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
16 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation
17 omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a
18 person who is in fact free of physical confinement—even if that freedom is lawfully revocable—
19 has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”)
20 (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

21 74. In fact, it is well-established that an individual maintains a protectable liberty interest even
22 where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*,
23 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
24 considerations support the notion that an inmate released on parole by mistake, because he was
25 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
26 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
27 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
28 (internal quotation marks and citation omitted).

1 75. Here, when this Court “compar[es] the specific release in [M.J.B.Z.’s case], with the
2 liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly similar.
3 See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, M.J.B.Z.’s release “enables him to
4 do a wide range of things open to persons” who have never been in custody or convicted of any
5 crime, including to live at home, practice his faith, care for his grandmother, and “be with family
6 and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at
7 482.

8 **M.J.B.Z.’s Liberty Interest Mandates a Hearing Before any Re-Arrest and
Revocation of Release from Custody**

9 76. M.J.B.Z. asserts that, here, (1) where his detention would be civil; (2) where he has been
10 at liberty for over three years; (3) where no change in circumstances exist that would justify his
11 lawful detention; and (4) where the only circumstance was ICE’s move to arrest as many people
12 as possible because of the new administration, due process mandates that he be released from his
13 unlawful custody and receive notice and a hearing before a neutral adjudicator prior to any re-
14 arrest or revocation of his custody release.

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

1 similar cases, and found that those in Petitioner’s position, noncitizens granted the liberty of
 2 release pending removal proceedings, have due process rights. *See e.g., Calderon v. Kaiser*, No.
 3 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v.*
 4 *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v.*
 5 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez*
 6 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

7 78. The Supreme Court “usually has held that the Constitution requires some kind of a
 8 hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
 9 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
 10 are “the only remedies the State could be expected to provide” can post-deprivation process
 11 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
 12 of the variables in the Mathews equation—the value of predeprivation safeguards—is negligible
 13 in preventing the kind of deprivation at issue” such that “the State cannot be required
 14 constitutionally to do the impossible by providing predeprivation process,” can the government
 15 avoid providing pre-deprivation process. *Id.*

16 79. Because, in this case, ICE is required to release M.J.B.Z. from his unlawful custody and
 17 provide M.J.B.Z. with notice and a hearing prior to any re-incarceration and revocation of his
 18 liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at
 19 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982);
 20 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary
 21 civil commitment proceedings may not constitutionally be held in jail pending the determination
 22 as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily
 23 in favor of [M.J.B.Z.’s] liberty” and requires a pre-deprivation hearing before a neutral
 24 adjudicator.

25 **M.J.B.Z.’s Private Interest in His Liberty is Profound**

26 80. Under *Morrissey* and its progeny, individuals conditionally released from serving a
 27 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
 28 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 M.J.B.Z., 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, M.J.B.Z. retains a truly weighty liberty interest even though he is under conditional release.

81. What is at stake in this case for M.J.B.Z. 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).

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

The Government’s Interest in Re-Incarcerating M.J.B.Z. 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

83. The government’s interest in detaining M.J.B.Z. without a due process hearing is low, and when weighed against M.J.B.Z.’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents to release M.J.B.Z. from his unlawful custody and

1 refrain from re-arresting M.J.B.Z. unless and until the government demonstrates by clear and
2 convincing evidence that he is a flight risk or danger to the community. It becomes abundantly
3 clear that the Mathews test favors M.J.B.Z. when the Court considers that the process he seeks—
4 notice and a hearing regarding whether he has violated any conditions of his release, and, if so,
5 providing M.J.B.Z. with a hearing before this Court (or a neutral decisionmaker) to determine
6 whether there is clear and convincing evidence that M.J.B.Z. is a flight risk or danger to the
7 community would impose only a de minimis burden on the government, because the government
8 routinely provides this sort of hearing to individuals like M.J.B.Z.

9 84. As immigration detention is civil, it can have no punitive purpose. The government's only
10 interest in holding an individual in immigration detention can be to prevent danger to the
11 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
12 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
13 for detaining M.J.B.Z. has lived at liberty complying with the conditions of his release since
14 August 4, 2024.

15 85. ICE determined M.J.B.Z. not to be a danger to the community or a flight risk on August 4,
16 2024, and has done nothing to undermine that determination. To the contrary, he complied with
17 the terms of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater
18 importance to a person's justifiable reliance in maintaining his conditional freedom so long as he
19 abides by the conditions on his release, than to his mere anticipation or hope of freedom”)
20 (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir.
21 1971)).

22 86. It is difficult to see how the government's interest in ensuring his presence at the moment
23 of removal has materially changed since he was released on August 4, 2024., when he has
24 appeared at every ISAP and ICE appointment. The government's interest in detaining M.J.B.Z. at
25 this time is therefore low. That ICE has a new policy to make a minimum number of arrests each
26 day under the new administration does not constitute a material change in circumstances or
27 increase the government's interest in detaining him.

28 87. Moreover, the “fiscal and administrative burdens” that his immediate release and a lawful

1 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
 2 M.J.B.Z. does not seek a unique or expensive form of process, but rather a routine hearing
 3 regarding whether his order of release should be revoked and whether he should be re-
 4 incarcerated.

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

10 89. In addition, providing M.J.B.Z. with a hearing before this Court (or a neutral
 11 decisionmaker) regarding release from custody is a routine procedure that the government
 12 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
 13 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
 14 But there is no justifiable reason to re-incarcerate M.J.B.Z. prior to such a hearing taking place.
 15 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in
 16 being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
 17 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
 18 revoking parole without some informal procedural guarantees.” *Morrissey*, 408 U.S. at 483.

19 90. Releasing M.J.B.Z. from unlawful custody and enjoining his re-arrest until ICE (1) moves
 20 for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by clear
 21 and convincing evidence that M.J.B.Z. is a flight risk or danger to the community. *Hernandez*,
 22 872 F.3d at 996.

23 **Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**
 24 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally**
 25 **Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk**

26 91. Releasing M.J.B.Z. from unlawful custody and providing M.J.B.Z. a pre-deprivation
 27 hearing would decrease the risk of M.J.B.Z. being erroneously deprived of his liberty. Before
 28 M.J.B.Z. can be lawfully detained, he must be provided with a hearing before a neutral
 adjudicator at which the government is held to show that there has been sufficiently changed

1 circumstances such that ICE's August 4, 2024, release from custody determination should be
 2 altered or revoked because clear and convincing evidence exists to establish that M.J.B.Z. is a
 3 danger to the community or a flight risk.

4 92. On September 13, 2025, M.J.B.Z. did not receive this protection. Instead, he was detained
 5 by ICE, without notice, as he attended his appointment with ICE, demonstrating compliance, and
 6 there have been no material changes in his circumstances.

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

20 94. Due process also requires consideration of alternatives to detention at any custody
 21 determination hearing that may occur. The primary purpose of immigration detention is to ensure
 22 a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
 23 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
 24 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
 25 must be considered in determining whether M.J.B.Z.'s reincarceration is warranted.

26 **FIRST CAUSE OF ACTION**

27 **Procedural Due Process**

28 **U.S. Const. amend. V**

1 95. M.J.B.Z. re-alleges and incorporates herein by reference, as is set forth fully herein, the
2 allegations in all the preceding paragraphs.

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

5 97. M.J.B.Z. has a vested liberty interest in his lawful conditional release. Due Process does
6 not permit the government to strip him of that liberty without a hearing before this Court. *See*
7 *Morrissey*, 408 U.S. at 487-488.

8 98. The Court must therefore order that ICE release M.J.B.Z. from his current unlawful
9 custody.

10 99. Prior to any re-arrest, the government must provide him with a hearing before a neutral
11 adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether clear and
12 convincing evidence demonstrates, taking into consideration alternatives to detention, that
13 M.J.B.Z. is a danger to the community or a flight risk, such that his reincarceration is warranted.
14 During any custody determination hearing that occurs, this Court or, alternatively, a neutral
15 adjudicator must consider alternatives to detention when determining whether M.J.B.Z.’s re-
16 incarceration is warranted.

17 **SECOND CAUSE OF ACTION**

18 **Substantive Due Process**

19 **U.S. Const. amend. V**

20 100. M.J.B.Z. re-alleges and incorporates herein by reference, as is set forth fully herein, the
21 allegations in all the preceding paragraphs.

22 101. The Due Process Clause of the Fifth Amendment forbids the government from depriving
23 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

24 102. M.J.B.Z. has a vested liberty interest in his conditional release. Due Process does not
25 permit the government to strip him of that liberty without it being tethered to one of the two
26 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
27 community from danger. Since August 4, 2024, M.J.B.Z. has attended all his appointments, thus
28 demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be

1 punitive and violate his constitutional right to be free from the unjustified deprivation of his
2 liberty.

3 103. For these reasons, M.J.B.Z.'s continued unlawful custody and any subsequent re-arrest
4 without first being provided a pre-deprivation hearing would violate the Constitution.

5 104. The Court must therefore order that he be released from custody.

6 105. The Court must order the government to not re-arrest him in any subsequent action
7 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
8 evaluate, inter alia, whether clear and convincing evidence demonstrates, taking into
9 consideration alternatives to detention, that M.J.B.Z. is a danger to the community or a flight risk,
10 such that his reincarceration is warranted. During any custody determination hearing that occurs,
11 this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when
12 determining whether M.J.B.Z.'s reincarceration is warranted.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, M.J.B.Z. prays that this Court grant the following relief:

- 15 (1) Assume jurisdiction over this matter;
- 16 (2) Declare that ICE's September 13, 2025, apprehension and detention of
17 M.J.B.Z. was an unlawful exercise of authority because the ICE officer
18 provided no reason that he presents a danger to the community or is flight risk;
- 19 (3) Order ICE to immediately release M.J.B.Z. from his unlawful detention;
- 20 (4) Enjoin re-arresting M.J.B.Z. unless and until a hearing can be held before a
21 neutral adjudicator to determine whether his re-incarceration would be lawful
22 because the government has shown that he is a danger or a flight risk by clear
23 and convincing evidence;
- 24 (5) Declare that M.J.B.Z. cannot be re-arrested unless and until he is afforded a
25 hearing on the question of whether his re-incarceration would be lawful—i.e.,
26 whether the government has demonstrated to a neutral adjudicator that he is a
27 danger or a flight risk by clear and convincing evidence;
- 28 (6) Award reasonable costs and attorney fees; and

(7) Grant such further relief as the Court deems just and proper.

Dated: December 10, 2025

Respectfully submitted,
/s/ Natalia Santanna
Natalia Santanna
Attorney for M.J.B.Z.

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 10, 2025, in Oakland, CA.

/s/ Natalia Santanna
Natalia Vieira Santanna
Attorney for M.J.B.Z.