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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALEJANDRO JOSE TORREALBA PEREZ,

Petitioner-Plaintiff,

v.

Jeremy CASEY, Warden, Imperial Regional Detention Center, San Diego, California; Daniel A. BRIGHTMAN, Acting Field Office Director, San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Sirce OWEN, Acting Director for Executive Office for Immigration Review; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pam BONDI, Attorney General of the United States;

Respondents-Defendants.

Case No.: '26CV1095 JES MMP

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

Agency File No.: [redacted]

Petitioner ALEJANDRO JOSE TORREALBA PEREZ petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner, ALEJANDRO JOSE TORREALBA PEREZ ("Mr. Torrealba Perez" or "Petitioner"), is a Venezuelan man detained at the Imperial Regional Detention Center in San Diego, California. Petitioner, by and through his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from immigration detention where he have been held by the U.S. Department of Homeland Security (DHS) since being unlawfully detained on February 9, 2026, without first being provided notice of the individualized reasons for the revocation of his humanitarian parole and/or a pre-deprivation hearing. After crossing the border, the Petitioner was detained for a few weeks but then issued humanitarian parole on November 22, 2021.

2. Mr. Torrealba Perez further submits this habeas petition under 28 U.S.C. § 2241 for a judicial check on Respondents' administrative decisions to detain him under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioner is not an applicant for admission nor is he currently seeking admission. And because the government purports to hold him under § 1225(b)(2), it has not provided him with an individualized bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a), contravening his rights under the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

3. Mr. Torrealba Perez seeks declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by the U.S. Department of Homeland Security (DHS) since being unlawfully detained on February 9, 2026, without first being provided a due process hearing to determine whether his incarceration is justified.

4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's plight: Respondents will continue to detain him in violation of the law essentially indefinitely. Petitioner thus urges this Court to review the lawfulness of his detention; declare that his detention is unlawful; and order his immediate release.

5. Mr. Torrealba Perez must be released from custody because the arbitrary and capricious detention of Petitioner without being provided with any individualized reasons/change in circumstances that would justify the revocation of Petitioner's humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A) constitutes an unlawful agency action in violation of the Administrative Procedures Act ("APA").

6. Moreover, the Due Process clause of the Fifth Amendment, as well as statutory and regulatory authorities, require the government to provide noncitizens with a pre-deprivation hearing, or, at a minimum, notice of the individualized reasons for the revocation of humanitarian parole.

STATEMENT OF FACTS

7. Mr. Torrealba Perez came to the United States from Venezuela, fleeing political persecution.

8. Mr. Torrealba Perez holds anti-corruption and anti-Maduro political opinions and exercised these opinions in political protests. Specifically, he participated in the infamous social movement and protests of 2019 against the Maduro regime, during which the Venezuelan government brutally cracked down on peaceful demonstrations. As a result, he suffered physical and verbal abuse as well as death threats from Maduro's regime—the [redacted]

9. Because the regime's threats are often carried out by [redacted] against real or even perceived opposition figures, and Mr. Torrealba Perez is a part of the opposition and a defender of freedom and democracy in Venezuela, he fled Venezuela. He presented himself at the border in Yuma, Arizona, on October 18, 2021, and was taken into custody for approximately 36 days.

10. After a determination was made by border officials that humanitarian factors existed, Mr. Torrealba Perez was granted humanitarian parole. Specifically, on November 23, 2021, ICE issued Mr. Torrealba Perez an "Interim Notice Authorizing Parole," which served to "parole [him] from [ICE's] custody to its authority under section 212(d)(5)(A)" of the INA and was issued "in lieu of Form I-94."

11. The "Interim Notice Authorizing Parole" provided that Mr. Torrealba Perez was to appear at the Phoenix, Arizona on December 15, 2021 at 9:00 a.m. When Mr. Torrealba Perez to the office that day, however, and arrived there early there were numerous people in line and an ICE official was telling everyone to send an email to a designated email

address. Mr. Torrealba Perez did so, but never received any response, even after going to the ICE office to physically follow up.

12. When he was released from custody with the humanitarian parole on November 23, 2021, Mr. Torrealba Perez was also served with a Notice to Appear ("NTA") stating that he should appear at 2035 N. Central Ave. Phoenix, AZ 85004 on December 15, 2021, at 9:00 a.m. Yet it appears that the NTA was never filed with the court as the hearing never went forward on that date.

13. Since being paroled into the U.S., Mr. Torrealba Perez has complied with the conditions of his parole and all laws of the United States. Mr. Torrealba Perez attempted to file his asylum application with USCIS, filed an application for TPS and received an employment authorization.

14. Mr. Torrealba Perez attempted to file his I 589 application for asylum with USCIS in 2023 but USCIS rejected it stating that they had taken "final action" in his case already. USCIS stated that the "final action" was that Mr. Torrealba Perez had been issued an expedited removal order, yet Mr. Torrealba Perez was never issued an expedited removal order or given a credible fear interview.

15. Mr. Torrealba Perez requested TPS in February 2023. On October 31, 2023, Mr. Torrealba Perez received an Approval Notice regarding his TPS application and an I-94 from USCIS. Mr. Torrealba Perez's had active TPS status from February 2024 through April 2025. Mr. Torrealba Perez requested a renewal of the TPS in April 2025, but a response was never received by USCIS and the 2023 Venezuelan TPS designations were ultimately terminated on October 3, 2025.

16. Upon Mr. Torrealba Perez's TPS approval in February 2024, the USCIS either realized their mistake (namely that Mr. Torrealba Perez had never been issued an expedited removal order) or determined to issue him a discretionary Notice to Appear for other reasons. It is unknown whether this NTA was ever filed with the court in that Mr. Torrealba Perez only just had his first court hearing after recently being re-detained.

17. On February 9, 2026, Mr. Torrealba Perez was arrested by ICE while he was driving to Los Angeles, California, from Phoenix, Arizona. No reason was provided for the arrest, nor was any individualized analysis terminating Petitioner's humanitarian parole made.

18. Mr. Torrealba Perez was detained after having lived in the United States for four years, while complying with the law and his obligations as an individual lawfully present with humanitarian parole and an asylum seeker. Petitioner has also developed significant community ties here in the United States and has obeyed all laws of the United States.

19. Nothing has materially changed since Mr. Torrealba Perez was granted humanitarian parole and paroled into the United States on November 23, 2021, that would justify his current detention. Moreover, Mr. Torrealba Perez was never given any individualized notice of the reasons for the revocation of his humanitarian parole. As such, Mr. Torrealba Perez's humanitarian parole is still in effect, and he is unlawfully detained.

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CUSTODY

20. Mr. Torrealba Perez is currently in the Respondents' legal and physical custody. They are detaining him at the Imperial Regional Detention Center in Imperial, California. Management and Training Corporation (MTC), a Utah corporation, operates that facility. The Petitioner is under the Respondents' and their agents' direct control.

JURISDICTION

21. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the United States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), 2241 (habeas corpus).

22. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's arbitrary and capricious re-detention without being provided an individualized hearing prior to his re-detention and without the individualized analysis required to terminate Petitioner's humanitarian parole. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. §

2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

23. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, this petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh,* 638 F.3d at 1211-12). And no court has ruled on the legality of Petitioner's detention.

REQUIREMENTS OF 28 U.S.C. § 2243

24. 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).

25. 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).

26. 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.*

VENUE

27. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occur in Imperial County in the Southern District of California where Petitioner is currently detained, and because there is no real property involved in this action.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

28. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 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)).

29. Immigration Judges in this district claim to have no jurisdiction to conduct a custody redetermination hearing as to individuals procedurally situated like Mr. Torrealba Perez. Indeed, in contravention to the INA and long-standing precedent and

practice, the Board of Immigration Appeals and the Attorney General have deemed no noncitizen eligible for bond before an immigration judge (except for noncitizens who entered the U.S. on a visa).

30. Exhausting administrative remedies by requesting release from ICE is also futile because Respondents contend Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). As such, no request to release Petitioner from custody would be considered by ICE.

31. Moreover, no statutory exhaustion requirements apply to Petitioner's claims of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

32. Every day Petitioner remains detained causes him harm that cannot be repaired. His continued detention puts his physical and mental health at great risk, further warranting a finding of irreparable harm and waiver of the prudential exhaustion requirement. The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner "continues to suffer significant psychological effects from his detention, including

anxiety caused by the threats of other inmates and two suicide attempts," in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

PARTIES

33. Petitioner ALEJANDRO JOSE TORREALBA PEREZ is a Venezuelan man who has lived in the United States after fleeing Venezuela due to political persecution in 2021, when he was paroled into the U.S. after being granted humanitarian parole on November 23, 2021. Despite satisfying the conditions of his humanitarian parole and filing his asylum and TPS applications, Mr. Torrealba Perez was arbitrarily detained on February 9, 2026.

34. Mr. Torrealba Perez is currently in the Respondents' legal and physical custody at the Imperial Regional Detention Facility in Imperial, California. Management and Training Corporation (MTC), a Utah corporation, operates that facility.

35. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in San Diego, California, and is named in his official capacity. ICE is the component of DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

36. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

37. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. The Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. She is sued in her official capacity.

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

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

40. Respondent Jeremy CASEY is the Warden of the Imperial Regional Detention Facility where Mr. Torrealba Perez is being held. Respondent Jeremy Casey oversees the day-to-day operations of the Imperial Regional Detention Facility and acts at the

Direction of Respondents Brightman, Lyons, and Noem. Respondent Jeremy Casey is a custodian of Petitioner and is named in his official capacity.

LEGAL FRAMEWORK AND ANALYSIS

Statutory and Regulatory Framework – Humanitarian Parole

41. The INA provides that DHS "may . . . in [the Secretary's] discretion parole" an arriving asylum seeker into the United States on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

42. If the Department exercises the option of paroling the noncitizen into the U.S. under 8 U.S.C. § 1182(d)(5), said parole may not be terminated arbitrarily but rather "upon accomplishment of the purpose for which parole was authorized or when…neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States…." 8 C.F.R. § 212.5(e)(2)(i).

43. Release on parole is an "express exception" to detention and is a "specific provision authorizing release." *Jennings v. Rodriguez*, 583 U.S. 231, 300 (2018). The plain language of the statute establishes that parole must be both granted and revoked on an individual, case-by-case basis: 8 U.S.C. § 1182(d)(5)(A) directs that parole may be granted "only on a case-by-case basis" and may be terminated "when the purposes of such parole shall . . . have been served." See also *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (observing that "[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis" and pointing to individualized statutory language of § 1182(d)(5)).

44. Moreover, under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

Mr. Torrealba Perez's Due Process Rights

45. The government cannot deprive any person of "life, liberty, or property, without due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

A. Petitioner Has a Significant Liberty Interest as a Parolee

46. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

47. Parolees in particular have a weighty liberty interest under the Due Process Clause. The Supreme Court has noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

48. The parolee relies "on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); see also *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process); see also *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).

49. "[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Even where "a decision-making process involves discretion," it "does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970; *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

50. The protected liberty interest is even more substantial when balancing the nonpunitive purpose of immigration detention against the "irreparable harms imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

51. Mr. Torrealba Perez has a substantial liberty interest in not being detained. At the time of his unlawful detention on February 9, 2026, he had been living in the United States for over four years, had properly filed his asylum and TPS applications, and had developed extensive community ties.

B. Petitioner's Liberty Interest Mandated a Hearing Before Any Revocation of Parole

52. "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 [Petitioner'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.

53. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps the Court assess adequate safeguards: "[F]irst, 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." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

54. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) ("Due process always requires, at a minimum, notice and an opportunity to respond."). Post-deprivation remedies may satisfy the requirements of due process only in a "special case" where they are "the only remedies the State could be expected to provide" and where "one of the variables in the *Mathews* equation—the value of post deprivation 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 post deprivation process." *Zinermon*, 494 U.S. at 985.

1. Petitioner has a substantial liberty interest in remaining out of detention

55. An individual's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578

(2004). "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). This liberty interest also exists where ICE decides to unilaterally nullify its own prior parole decision and take away his physical freedom, *i.e.*, his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). Courts have routinely agreed that "a petitioner's interest in remaining out of custody is 'substantial.'" *Rodriguez-Flores v. Semaia*, No. 2:25-CV-06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

2. There is a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against.

56. Even if the Government believes "it has a valid reason" to detain noncitizens, it "does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Guillermo M.R. v. Kaiser*, —— F. Supp. 3d ——, ——, No. 25-cv-05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding "undeniably stark" risk of erroneous deprivation where the Government contends that "notwithstanding a neutral arbiter's determination that Petitioner should be released, ICE is entitled to unilaterally terminate the IJ's order by re-detaining Petitioner without a hearing for at least six months, based on ICE's own determination in its sole discretion

that additional conditions of release unilaterally set by ICE had been violated"); *see also Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

57. Where the petitioner "has not received any bond or custody … hearing, the risk of an erroneous deprivation [of liberty] is high because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi v. Noem*, — F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing significantly decreases that risk because the government has to prove to a neutral adjudicator by clear and convincing evidence that circumstances have materially changed to justify re-detention, and a hearing is likelier to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side").

58. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process protections.")

59. Any argument that noncitizens can request a custody determination hearing after having been detained goes against the due process safeguards envisioned in the Constitution, because such a hearing happens after the fact and cannot prevent an erroneous deprivation of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner-Plaintiff received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion: that is, his potentially erroneous detention."). Further, custody determination hearings are routinely conducted in immigration court and this is not a "special case" that warrants post-deprivation remedies because other remedies are impractical the way it was in *Zinermon*.

60. Consequently, ICE was required to provide Mr. Torrealba Perez with notice and a hearing *prior* to any revocation of his parole and incarceration. *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 [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

61. Further, immigration detention is civil (as opposed to criminal), and its primary purpose is to ensure a noncitizen's appearance during removal proceedings and protect

against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690, 697 (2001). Due process thus also requires consideration of alternatives to detention at any custody redetermination hearing that may occur, and where alternatives to detention that could mitigate the risk of flight exist, detention is not warranted. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

3. The government's interest in detaining Petitioner is minimal, and in fact, the procedural requirements of a hearing would promote judicial and administrative efficiency, given the government's limited resources

62. The efficient allocation of the government's limited fiscal resources further supports holding a hearing prior to detaining previously paroled noncitizens. The "fiscal and administrative burdens" as a result of the due process safeguard are nonexistent. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long recognized that "[t]he costs to the public of immigration detention are 'staggering,'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz*, 2025 WL 1676854, at *3. In 2017, immigration detention cost "$158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. With inflation, numbers are likely higher today. On the other hand, "[i]n immigration court, custody hearings are routine and impose a minimal cost." *Pinchi v. Noem*, — F. Supp. 3d ——, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)). The cost of detaining an immigrant who was previously paroled "pending any bond hearing

would significantly exceed the cost of providing [the immigrant] with a pre-detention hearing." *Pinchi*, 2025 WL 2084921, at *10.

63. ICE's new policy to make a minimum number of arrests each day under the new administration[1] does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Even if the government "ultimately demonstrates to a neutral decisionmaker by clear and convincing evidence that her detention is necessary to prevent danger to the community or flight," then the only potential injury the government faces is a short delay in detaining" Petitioner. *Pinchi*, 2025 WL 2084921, at *12. "Faced with … a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff['s] favor." (internal citations omitted). *Id.*

64. Consequently, the government's interest in keeping Mr. Torrealba Perez in detention without a due process hearing is outweighed by his significant private interest in his liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test

[1] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

favors Mr. Torrealba Perez when the Court considers that the process he seeks—release from custody pending notice and a hearing regarding whether his parole should be revoked—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to detained individuals like Mr. Torrealba Perez.

Statutory Framework Regarding Detention – Section 1225 and Section 1226

65. The INA authorizes different forms of detention of non-citizens.

66. The INA at 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

67. The INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

68. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are

held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

69. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

70. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that "the phrase 'at the time of application for admission'…refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." 976 F.3d at 924. The Ninth Circuit held that "inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only makes an application for admission when they seek permission to physically enter the United States. Id. at 924.

71. In short, *Torres* clarified that there is a temporal limitation to the classification of an applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (stating that "Torres merely rejected the view that an alien remains in a perpetual state of applying for admission").

72. Accordingly, the Petitioner already sought admission in 2021, and was paroled into the United States for the purpose of fighting his asylum cases (which are about to be appealed to the BIA and still pending). As of his February 9, 2026, detention, Petitioner

had been living within the United States for four years. As such, Mr. Torrealba Perez is no longer an "applicant for admission" nor is he "seeking admission" at the border. Rather, he is a noncitizen residing in the interior of the U.S. and, as such, is subject to Section 1226(a), not Section 1225(b).

FIRST CLAIM FOR RELIEF
Due Process
U.S. Const. amend. V

73. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

74. Mr. Torrealba Perez's continued detention without any pre-deprivation hearing violates his right to due process under the Fifth Amendment.

75. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

76. Mr. Torrealba Perez has a vested liberty interest by virtue of having been paroled into the United States. This liberty interest is strengthened by him having been issued a work authorization under TPS after having been paroled. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

77. Mr. Torrealba Perez's arrest without a hearing violated the Constitution both substantively, because Respondents have no valid interest in detaining him since

circumstances have not changed since he was paroled into the United States, and procedurally, because he was not provided with a pre-detention hearing.

78. Mr. Torrealba Perez has demonstrated compliance with all prior immigration requirements as well as the laws of the United States generally over the past four years, and has community support in the United States.

79. Mr. Torrealba Perez's continued detention without a tenable justification violates his Fifth Amendment right to due process.

SECOND CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2) Unlawful Revocation of Parole / Unlawful Detention

80. Petitioner re-alleges and incorporates by reference every allegation in the preceding paragraphs as if fully set forth herein.

81. Under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

82. A court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

83. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

84. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons therefore. Under the APA, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious, or an abuse of discretion. *Id.* at *10.

85. By categorically revoking Mr. Torrealba Perez's parole without any description of the reasons therefore and detaining the Petitioner without consideration of his individualized facts and circumstances, Respondents have violated the APA.

86. Moreover, Respondents also acted arbitrarily and capriciously in detaining Mr. Torrealba Perez.

87. Respondents have made no finding that Mr. Torrealba Perez, an individual with no criminal history, is a danger to the community.

88. Respondents have also made no finding that Mr. Torrealba Perez is a flight risk.

89. By detaining Mr. Torrealba Perez categorically, Respondents have further abused their discretion because there have been no changes to their facts or circumstances since the agency made its initial determination to parole him into the United States that support detention.

90. As such, the Petitioner's detention was arbitrary and capricious in violation of the APA; the agency's actions must be set aside, and Mr. Torrealba Perez must be released from detention.

PRAYER FOR RELIEF

WHEREFORE, Mr. Torrealba Perez prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);

(3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California pending the resolution of this case;

(4) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner on the conditions of his prior humanitarian parole;

(5) Alternatively, conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued

detention by clear and convincing evidence pursuant to *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

(6) Alternatively, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence pursuant to Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) and where alternatives to detention and Petitioner's ability to pay a bond are considered;

(7) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

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

Dated: February 20, 2026

Respectfully submitted,

By: */s/ Kirsten Zittlau*
Kirsten Zittlau
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this, February 20, 2026, in San Diego, California.

/s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner