Jessica Anleu, Esq.
ZAVA IMMIGRATION LAW GROUP, PLLC
5333 N. 7th Street, Suite B114
Phoenix, AZ 85014
Tel: (602) 795-5550
jessica@zavaimmigration.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA

Jeefry Heriberto Garcia Cruz

Petitioner,

v.

Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Todd Blanche, Attorney General of the United States, Executive Office for Immigration Review (EOIR); Corina Almeida, Chief Counsel, Immigration and Customs Enforcement (ICE), Office of Principal Legal Advisor, Eloy; Christopher McGregor, Field Office Director, ICE Enforcement and Removal Operations, Phoenix; Eric Rokowsky, Warden, Eloy Detention Center,

Respondents.

Case No._____

Immigration Number: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

1. Petitioner Jeefry Heriberto Garcia Cruz ([redacted]9), by and through undersigned counsel, challenges Respondent's unlawful re-detention of Petitioner. Petitioner was re-detained on March 22, 2026. Petitioner entered the United States on May 12, 2023 to seek asylum. Shortly after his entry, he was paroled into the United States and released on his own recognizance. Subsequent to his entry, he married his United States citizen wife and was in the process of applying for his green card (lawful permanent resident

status). Petitioner has no criminal history.

2. On or about March 22, 2026, Petitioner was stopped while driving a vehicle that was connected with a law enforcement investigation into a suspected DUI involving the registered owner of the vehicle. The vehicle belonged to his stepson. Although Petitioner was not accused of any criminal misconduct related to the suspected DUI, he was cited for driving without a license. Following the stop, Immigration and Customs Enforcement ("ICE") was contacted, and Petitioner was re-detained without any individualized determination that he posed a flight risk or danger to the community. Petitioner was subsequently taken into ICE custody and remains detained at the Eloy Detention Center ("EDC") in Eloy, Arizona.

3. During the nearly three (3) years since his release, Petitioner has fully complied with all requirements and has built a stable and law-abiding life in the United States. He married his United States citizen spouse and is actively pursuing lawful permanent residence. He has maintained steady employment, supported his family, and has no criminal history whatsoever.

4. Notably, following the dismissal of his removal proceedings so that he could pursue adjustment of status with U.S. Citizenship and Immigration Services ("USCIS"), Petitioner began taking steps to obtain lawful permanent residence through his United States citizen spouse. However, due to USCIS policy, individuals in ICE custody are unable to complete the required biometrics process necessary to adjudicate an adjustment application. As a result, Petitioner's current detention directly prevents him from pursuing the very relief that formed the basis for the Immigration Court's dismissal of his case, thereby causing

concrete prejudice and placing him at risk of prolonged separation from his wife.

5. Prior to re-detaining Petitioner, Respondents did not provide any written notice explaining the basis for the revocation of his release. Likewise, Respondents did not assess whether Petitioner presented a flight risk or danger to the community prior to his re-arrest. Nor did Respondents provide a hearing before a neutral decisionmaker, where ICE was required to justify the basis for re-detention or to explain why Petitioner is not a flight risk or a danger to the community.

6. Various District Courts have held that due process demands a hearing *prior* to the government's decision to terminate a person's liberty. *See, e.g., E.A. T.-B v Wamsley,* --- F. Supp. 3d --- No. C25-1192-KKE 2025 WL 2402130, at *2-6 (W.D. Wash. Aug. 19, 2025), *Ramirez Tesara v. Wamsley,* --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2-4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock,* No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7-9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley,* No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2-4 (W.D. Wash. Sept. 17, 2025); Report & Recommendation, *Lopez Reyes v. Wamsley,* No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13; *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025). Many other courts have recently held the same.

7. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional rights to due process.

8. Respondents deny Petitioner's release. Petitioner challenges the procedural and constitutional legality of his detention, including violations of due process and

applicable statutory/ regulatory requirements. Absent an order from this Court, Petitioner will continue to be unlawfully detained without meaningful opportunity for release.

9. Accordingly, this Court should grant the instant petition for writ of habeas corpus and order Petitioner's immediate release. *See E.A. T. -B,* 2025 WL 2402130, at *6 (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"). In the alternative, order the scheduling of a bond hearing before an immigration judge to afford Petitioner the protections as required by law.

10. Petitioner will suffer irreparable and immediate injury from continued unlawful detention unless the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is granted and Petitioner is immediately released.

II. JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

12. This Court has jurisdiction over petitions for Habeas Corpus pursuant to 28 U.S.C. § 2241. The Petitioner is in the custody of the United States.

13. This Court has jurisdiction over civil actions brought under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court has jurisdiction pursuant to 28 U.S.C. § 1361 which authorizes actions in district court, "to compel an officer or employee of the United States or agency thereof to perform a duty owed to the Petitioner."

14. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing

a declaratory judgement.

15. This Court has jurisdiction pursuant to the Administrative Procedures Act (APA) to set aside agency action not in accordance with law and order the agency to perform a duty owed to Petitioner under 5 U.S.C. § 706.

III. VENUE

16. Venue is proper because Petitioner is in the custody of the Immigration and Customs Enforcement in Eloy, Arizona, which is within the jurisdiction of this District.

17. Venue is asserted pursuant to 28 U.S.C. § 1391(e) because the Petitioner is being detained in Eloy, Arizona. Respondents are the U.S. Government, and no real property is involved in the action.

IV. EXHAUSTION

18. Exhaustion is a prudential rather than a jurisdictional requirement. *Singh v. Holder*, 638 F.3d 1196, 1203 n. 3 (9th Cir. 2011). Waiver of exhaustion is appropriate "where 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." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted).

19. The failure to exhaust administrative remedies does not bar these claims unless "Congress specifically mandates" exhaustion. *McCarthy v. Madigan,* 503. U.S. 140, 144 (1992). "But where Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.*

20. The Court should not require exhaustion here where further administrative

review of ICE's initial custody determination would be futile. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements.").

21. Finally, because Petitioner "raise[s] substantial constitutional question[s]," administrative exhaustion is excused. *See Postels v. Peters*, No. 99-cv2369, 2000 U.S. Dist. LEXIS 3356, at *17 (E.D. La. Mar. 15, 2000) (*citing Von Hoffburg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980).

22. In the instant case, Petitioner is not required to exhaust administrative remedies before seeking habeas relief under 28 U.S.C. § 2241 where no adequate or available administrative process exists to address the constitutional and statutory violations at issue. Here, Petitioner challenges the legality of his ongoing detention and the government's refusal for his release, relief that cannot be meaningfully obtained through any administrative mechanism. Petitioner has no other means of challenging his ongoing unlawful detention in violation of law.

V. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER OF SHOW CAUSE

23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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).

24. 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).

25. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

26. Pending adjudication of these claims, Petitioner asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Phoenix Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District.

VI. PARTIES

27. Petitioner, Jeefry Heriberto Garcia Cruz is a native and citizen of Mexico, and is currently detained by ICE in Eloy, Arizona. He is not subject to expedited removal under 8 U.S.C. § 1225(b)(1).

28. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS), responsible for overseeing and directing Immigration and

Customs Enforcement. DHS directed the policy to argue Petitioner is subject to mandatory detention.

29. Respondent Todd Blanche is the Attorney General of the United States. Respondent is the head of the United States Department of Justice and responsible for the entire department, which includes the Executive Office for Immigration Review ("EOIR"), including the BIA.

30. Respondent Corina Almeida, Chief Counsel of the ICE Office of Principal Legal Advisor oversees the ICE attorneys in Eloy, Arizona.

31. Respondent Christopher McGregor, Field Office Director Office Enforcement and Removal Operations in Phoenix, Arizona is responsible for Petitioner's custody in Eloy, Arizona. Respondent Christopher McGregor is also responsible for the acceptance and processing of the payment of bond and release of ICE detainees in Eloy, Arizona.

32. Respondent Eric Rokowsky is the Warden at the ICE contract facility Eloy Detention Center, operated by CoreCivic. Respondent Eric Rokowsky is responsible for Petitioner's physical custody.

VII. FACTUAL ALLEGATIONS

33. Petitioner Jeefry Heriberto Garcia Cruz is a 34-year-old citizen of Mexico who last entered the United States on May 12, 2023. Petitioner entered the United States, seeking asylum.

34. On May 12, 2023, Respondent DHS paroled Petitioner from its custody into the United States under 8 U.S.C. § 1182(d)(5), with his parole issued as valid until May 10,

2025.

35. Following his release, Petitioner attended his immigration hearings, and on January 22, 2024, the Immigration Court dismissed removal proceedings against Petitioner, expressly noting that he would be seeking adjustment of status through USCIS. In reliance on that dismissal, Petitioner began to pursue lawful permanent residence through his United States citizen spouse. However, his subsequent re-detention has rendered him unable to complete the USCIS biometrics process required to adjudicate his application. Thus, Respondents' detention has effectively foreclosed the very avenue of relief that the Immigration Court contemplated in dismissing his proceedings.

36. In the almost three (3) years since his release, Petitioner, to the best of his knowledge, fully complied with all conditions and reporting requirements imposed by ICE.

37. Notwithstanding his demonstrated compliance, on March 22, 2026, ICE abruptly re-detained Petitioner without justification or prior notice. He has remained in custody since that date without any meaningful opportunity to challenge his detention.

38. Prior to Petitioner's re-detention in March 2026, he did not receive written notice of the reason for his re-detention.

39. Prior to Petitioner's re-arrest, ICE did not assess whether he presented a flight risk or danger to the community.

40. Prior to Petitioner's re-arrest, he never received a hearing before a neutral decisionmaker to determine if his re-detention is justified.

41. Prior to Petitioner's re-arrest, and continuing through the present period of detention, Respondents have not articulated any concrete plan to remove Petitioner to

Mexico and his removal proceedings remain ongoing.

42. Petitioner is currently in the custody of ICE, as he is detained at the Eloy Detention Center in Eloy, Arizona.

VIII. LEGAL FRAMEWORK

43. Respondents may contend that the mandatory detention scheme under 8 U.S.C. § 1225(b)(1) applies to individuals treated as applicants for admission, including certain arriving noncitizens. However, that framework does not govern here. Petitioner was released into the United States and resided in the community for over a year while his removal proceedings were pending.

44. Once released, due process requires that an individual such as Mr. Garcia Cruz—who was released on his own recognizance with parole for validity of two (2) years and lived in the community for almost three (3) years without incident—be afforded a hearing before a neutral decisionmaker to determine whether re-detention is justified and whether he poses a flight risk or danger to the community. That release created a protected liberty interest in his continued freedom.

45. Having exercised its discretion to release Petitioner into the United States, the Government cannot now "switch tracks" and reimpose detention—whether under § 1225(b) or otherwise—without first providing constitutionally adequate process. Allowing re-detention without such safeguards would eviscerate the procedural protections guaranteed by the Due Process Clause.

46. "Freedom from imprisonment- from government custody, detention, or other forms of physical restraint- lies in the heart of the liberty protected by the Due Process

Clause." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). As one District Court recently recognized, this is the "most elemental of liberty interests." *E.A. T. -B*, 2025 WL 2402130, at *3 (citation modified).

47. Consistent with this principle, individuals released from custody on conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

48. Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

49. The Supreme Court has consistently held that procedural due process requires: (a) Notice of action being taken; (b) an opportunity to be heard at a meaningful time and in a meaningful manner; and (c) an individualized assessment of risk before deprivation of liberty. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Under *Mathews*, the private liberty interest is at its apex, the risk of erroneous deprivation without a hearing is substantial, and the government's interest in summary re-detention without process is minimal.

50. In the immigration context, this principle applies to both initial detention and revocation of release. Arbitrary or prolonged detention without a hearing violates the Fifth Amendment.

51. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's

asserted justification for a noncitizens' physical confinement "outweighs the individuals' constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

52. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard … at a meaningful time in a meaningful manner." (citation modified); *see also, e.g. Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed … a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

53. Several courts have recognized that these principles apply with respect to the re-detention of the many non-citizens that DHS has arbitrarily begun taking back into custody, often after such persons have been released for months and years.

54. For example, in *E.A. T.-B*, the District Court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976), framework to hold that even in a case where the government asserted that mandatory detention initially applied, a person's re-detention could not occur absent a hearing. The Court did the same in *Ramirez Tesara, Kumar,* and *Ledesma Gonzalez. See Ramirez Tesara,* 2025 WL 2637663, at *2-3; *Kumar*, 2025 WL 2677089, at *2-3; *Ledesma Gonzalez,* 2025 WL 2841574, at *7-8.

55. In applying the three *Mathews* factors, the E.A. T.-B court held that the

petitioner had "undoubtedly [been] deprive[d] … of an established interest in his liberty," 2025 WL 2402130, at *3, which, as noted, "is the most elemental of liberty interests," *id.* (citation modified). The Court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that purposes of detention- the prevention of danger and flight risk- are properly served. *Id. at *4-5.* Finally, the Court explained that "the Government's interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and a hearing on [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *Id.* at *5. As a result, the Court ordered the petitioner's immediate release. *Id.* at *6.

56. The Court's decisions in *E.A. T.-B., Ramirez Tesara, Kumar,* and *Ledesma Gonzalez* are consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem,* --- F. Supp. 3d ---, No. 5:25-CV-056-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAV, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews,* No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

57. The same framework and principles apply here and compel Petitioner's immediate release.

58. Petitioner, without any criminal record, a lawful worker, and primary

caregiver, poses no danger and is not a flight risk.

59. Due process does not permit the government to re-detain Petitioner and strip him of his liberty without written notice and pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey,* 408 U.S. at 487-88. Such written notice and a hearing must occur *prior* to any re-detention.

60. Respondents revoked Petitioner's release and deprived him of liberty without providing written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention. Respondents' re-detention violates the Due Process Clause of the Fifth Amendment.

IX. **CLAIMS FOR RELIEF.**

61. Petitioner realleges and incorporates by reference paragraphs 1 through 60 herein as fully set forth.

62. Petitioner's continued detention is a violation of Due Process rights under the Fifth Amendment, which provides that no person shall "be deprived of life, liberty, or property without due process of law" along with the U.S. Constitution and not in accordance with the INA.

63. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, "[t]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful,

unlawful, temporary or permanent." *Id.* at 693.

64. Pursuant to the APA, the Respondents' refusal to release Petitioner is arbitrary, capricious, and not in accordance with the law. Respondents' re-detention of Petitioner constitutes final agency action for which there is no other adequate remedy in a court, and which was undertaken without observance of procedures required by law.

65. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

66. Respondents revoked Petitioner's parole and order of release on his own recognizance and detained him without providing notice, an opportunity to be heard, or any individualized assessment of danger or flight risk. Petitioner has continuously resided in this country since May 2023, has no criminal history, is married to United States citizen and is otherwise statutorily eligible to obtain his green card in the United States and has consistently complied with all immigration requirements. He is neither a danger to the community nor a flight risk.

67. This Court has jurisdiction to review the Respondents' action and order Petitioner's immediate release.

68. Respondents' mandatory detention of Petitioner without consideration for release or access to a bond hearing violates his due process rights.

69. Petitioner is eligible for payment of attorney's fees, related expenses, and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PRAYER FOR RELIEF.

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

1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;
2) Issue an Order to Show Cause ordering Respondents to show cause within three days as to why this Petition should not be granted as required by 28 U.S.C. § 2243;
3) Order Respondents that they not transfer Petitioner out of this district during the pendency of the court's adjudication of this petition, or alternatively, provide Petitioner and his habeas counsel with advance notice of any transfer or removal;
4) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody and enjoining his re-detention absent compliance with due process, including written notice and a hearing prior to any re-detention at which Respondents must demonstrate, by clear and convincing evidence, that Petitioner poses a flight risk or danger to the community and that no alternatives to detention would sufficiently mitigate those risks; or, in the alternative, order that Petitioner be provided an individualized bond hearing within five (5) days of this Court's order;
5) Declare that Petitioner's detention without first providing an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment as well as the relevant statute and regulations governing detention of noncitizens;
6) Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7) That the Court grant further relief as this Court deems just and proper under the

circumstances.

RESPECTFULLY SUBMITTED this 21st day of April 2026.

By: __s/ *Jessica Anleu, Esq.*___

Jessica Anleu, Esq.
Attorney for Petitioner

LIST OF ATTACHED EXHIBITS

Exhibit	Description
A	I-94, Parole, dated May 12, 2023 and valid until May 10, 2025
B	Order of the Immigration Judge Dismissing Proceedings, dated January 22, 2024 (Noting Petitioner was seeking adjustment of status with USCIS)

CERTIFICATE OF SERVICE

On the 21st day of April 2026, I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241**, on each person/entity listed below addressed as follows:

Civil Clerk
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Eric Rokowsky
Eloy Detention Center
1705 E Hanna Rd
Eloy, Arizona 85131

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485 Washington, DC 20528

s/ *Jessica Anleu, Esq.*