

1 CASSANDRA LOPEZ (SBS 260919)

2 **AL OTRO LADO**

3 511 E. San Ysidro Blvd. #333

4 San Ysidro, CA 92173

5 Telephone: 619-730-5891

6 Fax: 619-345-4693

7 Email: Cassandra.l@alotrolado.org

8 Counsel for Petitioner

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTAL DISTRICT OF CALIFORNIA**

12 JESUS ANTONIO CALDERON
13 GONZALEZ

14 Petitioners,

15 v.

16 JEREMY CASEY, Facility
17 Administrator at the Imperial Regional
18 Detention Facility, GREGORY J.
19 ARCHAMBEAULT, Director of the
20 U.S. Immigration and Customs
21 Enforcement San Diego Field Office,
22 TODD LYONS, acting Director of U.S.
23 Immigration and Customs
24 Enforcement, MARKWAYNE
25 MULLINS Secretary of the U.S.
26 Department of Homeland Security,
27 and TODD BLANCHE, U.S.
28 Attorney General.

Respondents.

**VERIFIED PETITION FOR A WRIT
OF HABEAS CORPUS**

'26 CV3537 JO JLB

INTRODUCTION

1
2 1. Petitioner Jesus Antonio Calderon Gonzalez files this petition for a writ of
3 habeas corpus.

4 2. Petitioner is a native of Mexico who has resided in the United States since
5 2001, *for approximately 25 years*. Ex A.

6 3. Petitioner entered the United States on a tourist visa when he was four years
7 old. *Id.*

8 4. Petitioner was detained by immigration authorities on March 13, 2026, while
9 he was driving home to Riverside, California. Ex. B. He has been detained since that time
10 and is being held at the Imperial Regional Detention Facility (IRDF) in Calexico,
11 California.

12 5. Petitioner is in pending removal proceedings before an immigration judge and
13 is charged with having been admitted to the United States but having remained in the
14 country for a time longer than permitted. Ex. A. He is seeking relief before the immigration
15 court in the form of cancellation of removal and adjustment of status through his U.S.
16 citizen wife. His next hearing is an individual merits hearing on July 10, 2026.

17 6. On April 20, 2026, Petitioner was provided a bond hearing pursuant to 8
18 C.F.R. § 1236. The Immigration Judge denied bond on the grounds that Petitioner is a
19 danger to the community and poses a risk of flight. Ex. C, D.

20 7. The immigration judge failed to properly apply the factors required by the
21 BIA's precedent decisions *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) and *Matter*
22 *of Patel*, 15 I. & N. Dec. 666, 666–67 (BIA 1976). Petitioner has resided in the United
23 States for 25 years, has one prior criminal charge that resulted in misdemeanor diversion,
24 has worked, has established family ties, and is eligible for relief from removal. Thus,
25 precedent establishes that the immigration judge find that he is *not* a flight risk or a danger
26 and order a reasonable bond.
27
28

1 8. Despite precedent, the immigration judge held that Petitioner was such a flight
2 risk and a danger that no bond should be afforded and that he should continue to be detained
3 for the duration of his removal proceeding.

4 9. Petitioner is deprived of his personal liberty and continues to be detained as a
5 result.

6 10. Any appeal of that decision to the Board of Immigration Appeals is futile and
7 will cause significant delay, impinging on Petitioner's due process and liberty interests.

8 11. Moreover, Mr. Calderon Gonzalez must be released from custody unless and
9 until DHS proves to a neutral adjudicator, by clear and convincing evidence that he is a
10 flight risk or a danger to the community. Because he had previously been at liberty in the
11 United States with the knowledge of the immigration authorities, he possesses a protected
12 liberty interest. *Fernandez Lopez v. Wofford*, Case. No. 25-cv-01226-KES-SKO (HC),
13 2025 WL 2959319, at *7 (E.D. Cal. Oct. 17, 2025).

14 12. Due Process requires the government to provide noncitizens with notice and
15 a hearing prior to depriving an individual of their liberty interest. *See e.g. Ariza Garcia v.*
16 *Mullin*, No. 3:26-CV-02241-RBM-MSB, 2026 WL 1142629, at *2 (S.D. Cal. Apr. 27,
17 2026); *Faizyan v. Casey*, No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D.
18 Cal. Nov. 17, 2025); *Ramirez-Bibiano v. LaRose*, No. 25-CV-3429-JLS (SBC), 2025 WL
19 3632748, at *4–5 (S.D. Cal. Dec. 15, 2025).

20 **JURISDICTION AND VENUE**

21 13. This Court has jurisdiction over the present action based on the United States
22 Constitution Article I, Section 9 (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus);
23 28 U.S.C. § 1331 (Federal Question), and 28 U.S.C. § 1346(b) (Federal Respondent).

24 14. The federal district courts have jurisdiction under Section 2241 to hear habeas
25 claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings*
26 *v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

27 15. “A federal district court has habeas jurisdiction under 28 U.S.C. § 2241 to
28 review bond hearing determinations for “constitutional claims and legal error.” *Singh v.*

1 *Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011), 638 F.3d at 1200-01; *De La Cruz Sales v.*
2 *Johnson*, 323 F. Supp. 3d 1131, 1139 (N.D. Cal. 2017) (concluding that immigrant’s claims
3 were reviewable by district court where bond determination challenged as constitutionally
4 flawed); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024)(concluding that a federal
5 court has discretion to review a bond denial when a “district court...ordered the bond
6 hearing under the Due Process Clause”); *Hasratyan v. Bondi*, 2026 WL 288909 at *3-4
7 (C.D. Cal. Feb. 2, 2026)(ordering the release of an immigration detainee following the
8 court’s review of an IJ’s bond denial that was based on procedural and legal error);
9 *Mayancela v. FCI Berlin, Warden*, No. 25-cv-348-LM-TSM, 2025 WL 3215638, at *4
10 (D.N.H. Nov. 18, 2025) (If the government does not meet its burden and the IJ determines
11 that the noncitizen must remain in custody, then “a petition for a writ of habeas corpus,
12 filed in the appropriate district court, is the only mechanism by which a noncitizen may
13 seek judicial review of an IJ’s bond decision.”). (citations omitted).

14 16. Venue is proper in the Southern District of California, pursuant to 28 U.S.C.
15 §§ 1391 and 2241(d) because Mr. Calderon Gonzalez is detained at IRDF.

17 PARTIES

18
19 17. Petitioner Jesus Antonio Calderon Gonzalez is a citizen of Mexico. He is in
20 pending removal proceedings and is currently detained at IRDF.

21 18. Respondent Jeremy Casy is the facility administrator at IRDF. He is thus
22 Petitioner’s immediate custodian. He is sued in his official capacity.

23 19. Respondent Patrick Divver is the Director of ICE’s San Diego Field Office,
24 which has jurisdiction over ICE detention facilities in San Diego and Imperial County,
25 including IRDF, and is thus Petitioner’s immediate custodian. He is sued in his official
26 capacity.

27 20. Respondent Todd Lyons is the Acting Director of ICE and has authority over
28 the operations of ICE. In that capacity and through his agents, Respondent Lyons has broad

1 authority over the operation and enforcement of the immigration laws. Respondent Lyons
2 is sued in his official capacity.

3 21. Respondent Markwayne Mullin is the Secretary of the Department of
4 Homeland Security. He is responsible for the implementation and enforcement of the
5 Immigration and Nationality Act and oversees ICE, which is responsible for Petitioners'
6 detention. Respondent Mullin has ultimate custodial authority over Petitioners. He is sued
7 in his official capacity.

8 22. Todd Blanche is the Acting Attorney General of the United States and head
9 of the Department of Justice, which encompasses the Board of Immigration Appeals and
10 the Immigration Courts. Mr. Blanche shares responsibility for implementation and
11 enforcement of the immigration laws with Respondent Mullin. Mr. Blanche is a legal
12 custodian of Petitioner. He is sued in his official capacity.

13 FACTS

14 23. Petitioner is a native and citizen of Mexico. He is 28 years old.

15 24. Petitioner arrived in the United States on a tourist visa on July 8, 2001, when
16 he was four years old, and has resided in Southern California since that time.

17 25. Petitioner is married to Serena Juarez, who is a United States citizen. They
18 met in May of 2023, started dating in August of 2024, moved in together in November
19 2025 in Riverside and married in May 2025 while Mr. Calderon Gonzalez was in
20 immigration detention.

21 26. Serena filed an I-130 petition on his behalf on June 2, 2026. Ex. E.

22 27. Petitioner has one biological son who is a United States citizen and lives in
23 Lake Elsinore, California. Petitioner is no longer in a relationship with his son's mother,
24 but they shared custody, and his son would spend every other weekend with him. Mr.
25 Calderon Gonzalez paid child support before he was detained.
26
27
28

1 28. Petitioner also has two sisters and a brother who are United States citizens and
2 live in Arizona. Petitioner has resided with his family in Lake Elsinore and Riverside,
3 California for many years.

4 29. Petitioner grew up in Southern California. He graduated from Lakeside High
5 School in Lake Elsinore, California in 2015. He attended trade school for concrete
6 carpentry through the carpenters' union in 2016 and was certified as a journey man.

7 30. He has been employed as a concrete carpenter for over ten years and worked
8 on projects such as building the foundation for government buildings and schools.

9 31. In 2014, Petitioner applied for and received status under Deferred Action for
10 Childhood Arrivals (DACA) and an employment authorization card. Petitioner's DACA
11 status subsequently lapsed after he was arrested in 2019 for a marijuana offense. Ex. B at
12 3.

13 32. In 2019, Petitioner was arrested for Cal. HS §11360(A), HS §11377(A), and
14 §11357(A). He was subsequently granted misdemeanor pretrial diversion and the case was
15 dismissed according to PC 1001.95(c). Petitioner completed all the terms of the diversion
16 without issue, has not re-offended, and his arrest records have been sealed pursuant to PC
17 851.93. During the diversion period, he was required to complete 100 hours of community
18 service at any non-profit, complete a drug and alcohol education class, and be subject to
19 search. Ex. F. This is his sole criminal record.

20 33. According to the I-213, after Mr. Calderon Gonzalez's arrest in 2019, "it was
21 determined that the subject was amendable to DHS/ICE enforcement action. Based on this
22 information, an ICE immigration form I-247A (Notice of Action) was lodged." Ex. B at 3.
23 However, Mr. Calderon Gonzalez was not contacted by ICE or EOIR and he remained at
24 liberty in the community with the knowledge of the immigration authorities until his arrest
25 on March 13, 2026.

26 34. On March 13, 2026, Petitioner was arrested by immigration authorities. Ex.
27 B. At that time, he was driving home from a job site at the Riverside Fire Station 49 in
28 Desert Center. He had been working at that site, which is several hours from his house in

1 Riverside, for a few days. His company had provided him with housing at a local Air B
2 and B. He had spent the previous night in Desert Center and the next morning began his
3 drive home when he was stopped by border patrol in Indio.

4 35. The I-213 documenting the stop was drafted by Agent Sergio Gallegos,
5 although Agent Gallegos was not one of the agents involved in the stop. Ex. B. According
6 to Agent Gallegos, Agents Gamiz and Kearney were parked on the median of I-10 in a
7 marked Border Patrol vehicle monitoring westbound traffic. Ex. B at 2. They observed a
8 black 2016 Chevy Silverado and began following it. *Id.* As they began following the
9 Silverado it slowed down to 65 miles per hour. According to Agent Gallegos, Agents
10 Gamiz and Kearney “observed the Silverado swerving between lanes, behavior often
11 exhibited by drivers involved in illicit activity who become aware of law enforcement
12 presence.” *Id.* While they were following the car, the agents conducted a records check
13 confirming that the car was registered to Jesus Calderon Gonzalez and that he did not
14 possess legal documentation to be in or remain in the United States. *Id.* Based on this
15 information, Border Patrol initiated a traffic stop. *Id.* at 3. The Silverado yielded on the
16 westbound I-10 Gold Center exit off-ramp. The agents asked Mr. Calderon Gonzalez to
17 step of the vehicle, which he did, and the agents began asking him questions. *Id.* They
18 asked Mr. Calderon Gonzalez to identify himself. He did not want to provide his name and
19 instead asked the agents the reason for the vehicle stop. The agents confirmed his identity
20 and placed him under arrest for being in the United States illegally. *Id.*

21 36. Mr. Calderon Gonzalez has been detained since that time and is being held at
22 the Imperial Regional Detention Facility.

23 37. Petitioner was provided a bond hearing before an immigration judge on April
24 20, 2026, pursuant to 8 C.F.R. §1236. ¹ He submitted a 56-page packet of evidence in
25

26
27 ¹ The written transcript of the bond hearing was not produced by the immigration
28 court because there was no appeal. However, the audio recordings are available, and a
transcript has been prepared and attached as Exhibit D.

1 support of his request for bond, showing that he is eligible for relief from removal, and
2 establishing that he is not a danger or a flight risk. Ex. D at 1. He provided criminal records
3 demonstrating that his 2019 charge was resolved via the misdemeanor diversion program.
4 Ex. F. He provided a letter of support from his now wife who is his sponsor, his U.S. citizen
5 child's birth certificate, and evidence that he had been paying child support. The IJ also
6 had a RAP sheet that was submitted by the government and the I-213 documenting the
7 2026 stop by border patrol. Ex. D at 1.

8 38. The immigration judge denied Petitioner's request for release on bond, finding
9 that Petitioner is a danger to the community and a risk of flight. Ex. C.

10 39. Specifically at the bond hearing, the judge stated, "I think he is a danger to the
11 public regarding his, um, drug sales, um, his drug use, um, I think he was very evasive
12 when answering questions. You had to kind of pull everything, all the details out of him
13 one by one. I think that goes to his credibility which will, um go to danger to the public
14 and flight risk." Ex. D at 12. This conclusion is contradicted by the fact that Mr. Calderon
15 Gonzalez's 2019 arrest resolved with his completion of a misdemeanor diversion program.
16 Moreover, Mr. Calderon Gonzalez has no subsequent criminal record after 2019. The IJ
17 further found that he does not have a credible sponsor, despite his wife Serena providing a
18 letter to the Court that she will provide him with food and lodging. Ex. D at 12. The IJ did
19 not ask to question Serena or ask Mr. Calderon Gonzalez about his additional ties to the
20 community, employment history, or family ties.

21 40. The IJ misstated the facts in the record throughout the bond hearing. Toward
22 the beginning of the hearing, the IJ asks Mr. Calderon Gonzalez's attorney to go into the
23 details of the March 13, 2026, stop by border patrol and states, "it looks like he was running
24 heat for another vehicle," notwithstanding the fact that there was zero evidence in the
25 record to support such a conclusion. Ex. D at 4. The IJ goes on to explain to Mr. Calderon
26 Gonzalez's attorney, "'Running heat' is that, so when you're 'running heat' you have a
27 'load' vehicle that has either drugs or aliens in it. Border Patrol identifies that vehicle which
28 they did in this instant. Then they come out behind that instant - the 'heat' vehicle would

1 be what your client was driving which then commits traffic violations, waves down or gains
2 the attention of the Border agents to direct the Border Patrol agents um, to the 'heat' vehicle
3 as op..., and then, as opposed to, away from the 'load' vehicle, so the 'load' vehicle can
4 get away. This is, how I'm reading this is this is a classic thing what your client did." *Id.*

5 41. After an inaudible response from Mr. Calderon Gonzalez's attorney, the IJ
6 continues, "they can't stop y...uh...Counsel, I'm just going to stop you right there. Border
7 Patrol can't stop you for traffic violations. They can't pull you over for swerving, for
8 speeding, but they can pull you over for "running heat" if they believe you are involved in
9 illegal activity. And that's what they are saying in, in their, in their report. They believe he
10 was, uh, "running heat," he was a driver and his sole purpose was to distract law
11 enforcement away from this other vehicle so they could get away." *Id.*

12 42. Nowhere in the I-213 is there any indication that the border agents believed
13 that Mr. Calderon Gonzalez was "running heat" on March 13, 2026, when they stopped
14 him. Agent Gallegos gave four reasons for why they conducted the stop: 1) Mr. Calderon
15 Gonzalez slowed down when the agents began following him; 2) the Silverado was
16 swerving between lanes which they believed is behavior "exhibited by drivers involved in
17 illicit activity who become aware of law enforcement presence;" 3) agents did a license
18 plate search of the car and determined that it was registered to Jesus Calderon Gonzalez
19 who did not have legal status in the U.S.; and 4) agents visually confirmed that Mr.
20 Calderon Gonzalez was the driver of the Silverado. Ex B at 2-3.

21 43. It is unclear why the IJ concluded that Mr. Calderon Gonzalez was "running
22 heat." The IJ did not ask the government to bring the agents involved with the arrest to
23 Court, and he did not ask if they had dash camera footage from the stop and arrest. He
24 simply jumped to the conclusion that Mr. Calderon was stopped for "running heat." This
25 colloquy calls into questions the immigration judge's neutrality and impartiality.

26 44. The IJ also misstated the facts in the record before him. Despite there being
27 no evidence of any continued drug use on the part of Mr. Calderon Gonzalez, the IJ said at
28 the end of the hearing, "if I released you and you had to follow court orders, I don't know

1 if you'd actually follow court orders. You followed it in your underlining case, in your
2 2019 case, but you clearly didn't learn following the rules of the court and society and have
3 continued to use drugs and, and not follow law officers' commands, when you said that
4 you even knew that, that you needed to follow their commands." Ex. D at 13. Nowhere is
5 there any evidence that Mr. Calderon "continued to use drugs" after his arrest in 2019 and
6 the IJ does not indicate how he came to that conclusion. In addition, the evidence in the I-
7 213 indicates that Mr. Calderon Jimenez did indeed follow orders. He yielded when the
8 border patrol agents stopped him, he got out of the car when they told him to, and there is
9 no evidence that he resisted arrest. Ex. B.

10 45. During the hearing, the IJ focused much of his attention on the facts of Mr.
11 Calderon Gonzalez's 2019 offense and asked him many questions on the record about the
12 details of the offense. It does not appear that the IJ had evidence related to the offense other
13 than the rap sheet and Mr. Gonzalez Calderon's testimony in court. Notwithstanding the
14 fact that Petitioner's only criminal record is a marijuana charge from seven years ago that
15 was dismissed after he successfully completed misdemeanor diversion, the IJ concluded,
16 "You are a danger to the community, beyond a risk of flight, based on your criminal
17 behavior, um, the last couple of years." This is simply not borne out by the facts in the
18 record before the IJ and is in fact contradicted by the fact that the 2019 offense resolved in
19 misdemeanor diversion. He has no subsequent criminal charges or arrests.

20 46. Petitioner did not file an appeal of the bond decision because it would be
21 futile, and he would suffer irreparable harm.

22 47. Petitioner's next hearing before the immigration judge is an individual merits
23 hearing set for July 10, 2026.

24
25 **EXHAUSTION TO THE**
26 **BOARD OF IMMIGRATION APPEALS IS NOT REQUIRED**
27
28

1 48. There is no requirement of statutory exhaustion for a petition for writ of
2 habeas corpus. However, exhaustion may be required as a prudential matter. *Ward v.*
3 *Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012).

4 49. “Courts may require prudential exhaustion if (1) agency expertise makes
5 agency consideration necessary to generate a proper record and reach a proper decision;
6 (2) relaxation of the requirement would encourage the deliberate bypass of the
7 administrative scheme; and (3) administrative review is likely to allow the agency to
8 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
9 488 F.3d 812, 815 (9th Cir. 2007) (internal citations and quotations omitted).

10 50. Because exhaustion is not jurisdictional, courts “have discretion to waive a
11 prudential requirement.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).

12 51. A court may waive the exhaustion requirement “when administrative
13 remedies are inadequate or their exercise would be futile, or irreparable injury would
14 result without immediate judicial intervention.” *Ward v. Chavez*, 678 F.3d at 1045.

15 52. Prudential exhaustion should be waived because administrative remedies are
16 inadequate, and exhaustion would be futile. Of the 39 Board of Immigration Appeals
17 decisions issued in the months May through August 2025 in cases where the noncitizen
18 appealed Adelanto immigration court bond decisions, none of those cases overturned an
19 immigration judge’s finding that the noncitizen was a danger to others or a flight risk.² Of
20 the six decisions which sustained the appeal and remanded the case, all were due to
21 procedural errors made by the immigration judge.

22 53. The precedent decisions issued by the Board of Immigration Appeals under
23 the Trump Administration further indicate that it is futile to require prudential exhaustion.
24

25
26 ² The decisions are posted at EOIR Freedom of Information Act (FOIA) Reading Room
27 at <https://foia.eoir.justice.gov/app/ReadingRoom.aspx>. They are not available after
28 August of 2025.

1 A March 30, 2026 report issued by the National Public Radio found that last year, 97
2 percent of Board published decisions were in favor of the Department of Homeland
3 Security.³ On April 9, 2026, *The New York Times* reported that “The administration has
4 instructed judges to stop granting bond to immigrants who crossed the border illegally, a
5 change from decades of practice. The new policy has required people to remain in
6 detention for extended periods even if they do not have a criminal record and have lived
7 in the country for years.”⁴

8 54. As such it is futile to require Petitioner to appeal to the Board of
9 Immigration Appeals and any requirement of prudential exhaustion should be waived.
10

11 **THE COURT HAS JURISDICTION OVER MIXED QUESTIONS OF LAW AND**
12 **LEGAL QUESTIONS**

13 55. The jurisdiction stripping provision at 8 U.S.C. § 1226(e) applies only to a
14 challenge to a “discretionary judgment by the Attorney General or a decision that the
15 Attorney General has made regarding his detention or release.” *Jennings v. Rodriguez*,
16 583 U.S. 281, 295 (2018) (plurality) (cleaned up).

17 56. The Court has jurisdiction to address legal claims and mixed questions of
18 law. *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).
19
20

21
22 ³ Ximena Bustillo, Rahul Mukherjee, “An Immigration Court Few Have Heard of is
23 Quietly Shaping Policy Behind the Scenes,” npr.org,
24 (Mar. 20, 2026) [https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-](https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation)
25 [detention-appeals-board-deportation](https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation)

26 ⁴ Nicholas Nehamas, Allison McCann, Steven Rich, Jazmine Ulloa and Hamed Aleaziz,
27 “How Trump Purged Immigration Judges to Speed Up Deportations,” *The New York*
28 *Times*, April 9, 2026 [https://www.nytimes.com/2026/04/09/us/politics/trump-miller-](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html)
[immigration-judges-purge.html](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html)

1 57. The Court must apply Board of Immigration Appeals precedent to determine
2 whether Petitioner presents such a risk of flight that a decision denying bond in its
3 entirety is warranted. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *Matter of Patel*,
4 15 I. & N. Dec. 666, 666–67 (BIA 1976).

5 58. The application of these precedent decisions to undisputed facts is
6 reviewable as a mixed question of law. *Wilkinson v. Garland*, 601 U.S. 209, 221 (2024).

7 **MR. CALDERON GONZALEZ POSSESSES A PROTECTED LIBERTY**
8 **INTEREST IN REMAINING OUT OF CUSTODY**

9 59. In addition, because Mr. Calderon Gonzalez had previously been at liberty in
10 the United States with DACA status, Due Process Requires notice and a hearing prior to
11 his detention. “[T]he Due Process Clause applies to all ‘persons’ within the United States,
12 including aliens, whether their presence here is lawful, unlawful, temporary, or
13 permanent.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). Accordingly, “[i]t is well
14 established that the Fifth Amendment entitles aliens to due process of law in the context
15 of removal proceedings.” *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (internal quotation
16 marks omitted) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

17 60. Before re-detaining a noncitizen, the Fifth Amendment's Due Process Clause
18 requires the government to provide advance notice, demonstrate a change in
19 circumstance, and afford a meaningful opportunity to be heard. Re-detention that occurs
20 without satisfying these procedural safeguards violates the Constitution. *See e.g. Ariza*
21 *Garcia v. Mullin*, No. 3:26-CV-02241-RBM-MSB, 2026 WL 1142629, at *2 (S.D. Cal.
22 Apr. 27, 2026); *Faizyan v. Casey*, No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at
23 *7 (S.D. Cal. Nov. 17, 2025); *Ramirez-Bibiano* 2025 WL 3632748, at *4–5 (ordering
24 immediate release subject to conditions of petitioner’s preexisting parole where DHS had
25 summarily revoked parole and re-detained without notice or a hearing); *see also Maceo-*
26 *Aguilera v. LaRose*, 26-CV-532-LL-MSB, 2026 WL 381633 (S.D. Cal. Feb. 11, 2026);
27 *Escamilla Alvarado v. Casey* Case No. 26-cv-2593-JO-BJW (S.D. Cal. May, 7, 2026),
28

1 Dkt. No. 6; *Magana-Hernandez v. Casey* Case No. 26-cv-2952-JLS (MSB) (S.C. Cal.
2 May 18, 2026), Dkt. No.5.

3 61. The same liberty interest should also apply here because in 2014, Mr.
4 Calderon Gonzalez applied for and received DACA and an employment authorization
5 card. Ex. D at 3. His DACA status lapsed after he was charged with a marijuana offense
6 in 2019. *Id.* According to the I-213, after his arrest in 2019 “upon review of database
7 information, it was determined that the subject was amenable to DHS/ICE enforcement
8 action. Based on this information, an ICE immigration Form I-247A (Notice of Action)
9 was lodged.” Ex. B at 3. However, he continued to remain at liberty in the United States
10 until his detention on March 13, 2026. Because ICE allowed him to remain at liberty,
11 Due Process Requires notice and a hearing prior to his detention. “[T]he Due Process
12 Clause applies to all ‘persons’ within the United States, including aliens, whether their
13 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S.
14 678. Accordingly, “[i]t is well established that the Fifth Amendment entitles aliens to due
15 process of law in the context of removal proceedings.” *J.G.G.*, 604 U.S. at 673 (internal
16 quotation marks omitted) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Due process
17 “requires some kind of a hearing before the State deprives a person of liberty or
18 property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

19 62. Traditionally, to determine what protections due process demands in a given
20 situation, courts consider three factors, the *Mathews* factors: (1) the private interest that
21 will be affected by the official action; (2) the risk of erroneous deprivation of such
22 interest through the procedures used, and the probable value of additional safeguards; and
23 (3) the government’s interest, including the function involved and that burdens that
24 would be imposed by additional process. *See Mathews v. Eldridge*, 424 U.S. at 335
25 (1976). In applying these factors specifically to the context of a person challenging
26 immigration detention, courts assess: (1) the petitioner’s liberty interest in remaining out
27 of custody; (2) the risk of erroneous deprivation of that interest in remaining out of
28

1 custody; and (3) the government's interest in detaining the petitioner without affording
2 pre-deprivation notice, reasoning, and a hearing. *Ramirez-Bibiano*, 2025 WL 3632748 at
3 *4–5.

4 63. Consistent with the traditional *Mathews* three-factor test, district courts in
5 the Ninth Circuit have formulated a bright-line Due Process rule: if a noncitizen has been
6 paroled into the U.S., the government may not revoke their parole or re-detain them
7 without first affording pre-deprivation notice and a hearing establishing that the person is
8 now a danger or flight risk—failure to provide this is a violation of the person's Fifth
9 Amendment Due Process rights requiring immediate habeas relief. *See, e.g., Ramirez-*
10 *Bibiano*, 2025 WL 3632748 (ordering immediate habeas relief; holding the government's
11 summary revocation of parole and re-detention without pre-deprivation notice or a
12 hearing establishing present risk of danger or flight violates Fifth Amendment Due
13 Process); *see also Noori v. LaRose*, 807 F. Supp. 3d 1146 (S.D. Cal. 2025)(granting
14 immediate habeas release; holding the government's summary revocation of parole and
15 re-detention without pre-deprivation notice, reasons, and a hearing establishing present
16 danger or flight risk violated due process under *Mathews*); *Ramirez Tesara v. Wamsley*,
17 800 F. Supp. 3d 1130 1135–39 (W.D. Wash. 2025) (granting TRO and ordering
18 immediate release; applying *Mathews* to hold that even though petitioner's parole had
19 expired, because he had previously been paroled his re-detention without a pre-
20 deprivation hearing establishing a justification for re-detention violated due process under
21 *Mathews*); *Fernandez Lopez v. Wofford*, No. 1:25-CV-01226-KES-SKO (HC), 2025 WL
22 2959319, at *6 (E.D. Cal. Oct. 17, 2025) (ordering immediate habeas release; canvassing
23 seven cases establishing the principle that re-detention of a previously paroled noncitizen
24 without a pre-deprivation hearing establishing a change in the person's risk of danger or
25 flight violates Due Process and requires immediate habeas relief).

26 64. Courts have applied this rationale to individuals who are released on their
27 own recognizance. *See Maceo-Aguilera v. LaRose*, 26-CV-532-LL-MSB, 2026 WL
28

1 381633 (S.D. Cal. Feb. 11, 2026); *Escamilla Alvarado v. Casey*, No. 26-cv-2593-JO-
2 BJW (S.D. Cal. May 7, 2026), Dkt. No. 6; *Magana-Hernandez v. Casey*, No. 26-cv-
3 2952-JLS (MSB) (S.D. Cal. May 18, 2026), Dkt. No. 5; *Diaz v. Casey*, No. 26-cv-3306-
4 RSH-BJW (S.D. Cal. June 4, 2026), Dkt. No. 5. Similarly, here the decision by the
5 immigration authorities to allow Mr. Calderon Gonzalez to remain at liberty after his
6 DACA status has lapsed and not subject him to ICE custody “reflected a determination
7 by the government that [he] was neither a flight risk nor a danger to the community, and
8 [Petitioner] has a strong interest in remaining at liberty unless [he] no longer meets those
9 criteria.” *Pinchi v. Noem*, 792 F. Supp. 3d. 1025, 1034 (N.D. Cal. 2025).

10
11 65. While the government has discretion to revoke his liberty, it may not do so in
12 a manner that violates Mr. Calderon Gonzalez’s constitutional rights. Because Mr.
13 Calderon Gonzalez previously been granted DACA in 2014 and had been at liberty in the
14 United States after his DACA status had lapsed in 2019 with the knowledge of the
15 immigration authorities, due process requires that he be provided with a pre-deprivation
16 bond hearing prior to his detention. *See Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025
17 WL 1707737, *4 (S.D.N.Y. 2025).

18
19
20 **CAUSES OF ACTION**

21 **COUNT I**

22 **Violation of Administrative Procedure Act: Ongoing Detention Unauthorized Under**
23 ***Matter of Patel***

24 66. Petitioner incorporates the allegations in the paragraphs above as though
25 fully set forth here.

26 67. In *Matter of Patel*, Dec. 666, 666–67 (BIA 1976), the Board of Immigration
27 Appeals considered whether an immigration judge erred in releasing a noncitizen on a
28 bond of \$500 rather than releasing him on his own recognizance. In setting a bond of

1 \$500, judge relied upon the noncitizen having “overstayed his student visa” and the fact
2 that “the visa petition of which he is the beneficiary was denied because he lacked a labor
3 certification.” *Id.* at 667.

4 68. The Board reversed and held that “[t]hese factors bear little if any relevance
5 to the issue of whether or not the [noncitizen] is likely to appear for his deportation
6 proceeding.” *Id.* According to the Board, “[s]uch a broad interpretation of what
7 constitutes an ‘adverse factor’ in this context could result in requiring a bond of almost
8 every alien who is held in deportation proceedings.” *Id.* Therefore, the Board ordered the
9 release of the noncitizen on his own recognizance. *Id.*

10 69. *Matter of Patel* continues to be binding precedent. *See Matter of R-A-V-P-*,
11 27 I. & N. Dec. 803, 805 (BIA 2020) (“we have found that an alien who had prior lawful
12 status and a probable path to future lawful status, as well as immediate family members
13 with whom he could continue to reside in the United States, did not present a flight risk.
14 *See Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1976)”).

15 70. Immigration judges are required to follow precedent. 8 C.F.R. § 1003.1(g)
16 (“decisions of the Board and decisions of the Attorney General are binding on all officers
17 and employees of DHS or immigration judges in the administration of the immigration
18 laws of the United States.”).

19 71. The one exception to *Matter of Patel* is that the bond statute now requires
20 the posting of a minimum bond of \$1500 when a noncitizen is ordered released by the
21 Attorney General. 8 U.S.C. § 1226(a)(2).

22 72. The immigration judge found that Petitioner was a flight risk because the IJ
23 was of the opinion that his sponsor did not earn enough money, he was employed when
24 he did not have legal authorization to work, he has been in the United States for a very
25 long time without legal status and had done nothing to gain legal status. Ex. D at 12. The
26 IJ acknowledged that he is eligible for certain forms of relief to stay in the United States
27 but held it against Mr. Calderon Gonzalez that he had not applied for any forms of relief
28

1 at the time of the bond hearing. *Id.* Moreover, because of his 2019 marijuana charge, the
2 IJ was doubtful that Mr. Calderon Gonzalez would follow court orders, despite
3 acknowledging that Mr. Calderon Gonzalez appeared in court on his criminal case and
4 was granted diversion. Ex. D at 12-13. The IJ was also concerned that Mr. Calderon
5 Gonzalez did not want to identify himself to border patrol agents on the day of his arrest.
6 *Id.* at 13. The IJ concluded that he was a flight risk because: “You don’t have a credible
7 sponsor. Um. You don’t have one person in the community that says you are a good
8 person. In fact you’ve had two arrests, um, one which you’re providing evasive answers
9 are from the 2019 arrest. And then you were evasive in relation to what happened in your
10 most recent arrest just last month.” *Id.* at 13.

11 73. *Matter of Patel* dictates that *no bond* should have been required at all, let
12 alone a finding that Petitioner was a flight risk of such a magnitude that no bond could be
13 set to provide incentives for his continued appearance before the immigration court.
14 *Matter of Patel*, 15 I. & N. Dec. 666, 667 (BIA 1976) (“it appears to us that no reasons
15 have been given to justify holding the respondent under even a minimal bond.”)

16 74. “[A]n individual's bond hearing fails to comport with due process where an
17 Immigration Judge relies on considerations that would lead to an automatic denial of
18 bond in all cases.” *Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL
19 768859, at *5 (E.D. Va. Mar. 18, 2026).

20 75. The finding that Petitioner came to the United States unlawfully and worked
21 without authorization is not a basis for determining that Petitioner is a flight risk and
22 denying bond. *Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL
23 768859, at *6 (E.D. Va. Mar. 18, 2026).

24 76. Petitioner establishes that he is not a flight risk for purposes of 8 U.S.C. §
25 1226(a). He has lived in the United States for 25 years. He has a United States citizen
26 wife and son. He is eligible for adjustment of status before the immigration judge under 8
27
28

1 U.S.C. § 1255(i). He has one criminal offense from seven years ago that resulted in
2 misdemeanor pre-trial diversion criminal history.

3 77. *Matter of Patel* dictates that Petitioner be released from custody without any
4 showing of bond required at all, and the amended bond statute requires a minimum bond
5 of \$1500. 8 U.S.C. § 1226(a)(2). As such, the immigration judge was required to issue
6 the minimum bond of \$1500.

8 COUNT II

9 **Violation of Administrative Procedure Act: Abuse of Discretion in Failing to** 10 **Properly Apply *Matter of Guerra***

11 78. Petitioner repeats, re-alleges, and incorporates by reference each and every
12 allegation in the preceding paragraphs as if fully set forth herein.

13 79. The denial of release on bond is a final agency action where, as here,
14 prudential exhaustion not required.

15 80. Under the Administrative Procedure Act, a court must “hold unlawful and
16 set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise
17 not in accordance with the law,” that is “contrary to constitutional right [or] power,” or
18 that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory
19 right.” 5 U.S.C. § 706(2)(A)-(C).’

20 81. The government’s discretion in immigration bond hearings remains
21 constrained by the requirements of constitutional due process limits. *Hernandez v.*
22 *Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to
23 incarcerate non-citizens is always constrained by the requirements of due process.”). A
24 noncitizen may show that an IJ abused her discretion in violation of the due process
25 clause in a bond hearing by demonstrating either that the IJ “simply did not apply the
26 right standard to the facts” or that “the IJ erred because the evidence itself could not—as
27 a matter of law—have supported the decision to deny bond.” *Garcia v. Hyde*, 817 F.
28

1 Supp. 3d 112, 126 (D.R.I. Dec. 3, 2025) (internal quotations omitted); *see also Nat. Res.*
2 *Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An agency acts
3 contrary to the law when it gives mere lip service or verbal commendation of a standard
4 but then fails to abide the standard in its reasoning and decision.”).

5 82. Immigration judges are required to follow precedent. 8 C.F.R. § 1003.1(g)
6 (“decisions of the Board and decisions of the Attorney General are binding on all officers
7 and employees of DHS or immigration judges in the administration of the immigration
8 laws of the United States.”).

9 83. The Board of Immigration Appeals’ precedent decision in *Matter of Guerra*,
10 24 I. & N. Dec. 37, 40 (BIA 2006) requires that the noncitizen demonstrate that he is not
11 “a threat to national security, a danger to the community at large, likely to abscond, or
12 otherwise a poor bail risk.” *Id.* If these factors are met, the immigration judge is required
13 to order release. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

14 84. The *Matter of Guerra* factors include any or all of the following:

- 15 a. whether the alien has a fixed address in the United States;
- 16 b. the alien's length of residence in the United States;
- 17 c. the alien's family ties in the United States, and whether they may entitle
18 the alien to reside permanently in the United States in the future;
- 19 d. the alien's employment history;
- 20 e. the alien's record of appearance in court;
- 21 f. the alien's criminal record, including the extensiveness of criminal
22 activity, the recency of such activity, and the seriousness of the offenses;
- 23 g. the alien's history of immigration violations;
- 24 h. any attempts by the alien to flee prosecution or otherwise escape from
25 authorities; and
- 26 i. the alien's manner of entry to the United States.

27 *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). In Mr. Calderon Gonzalez’s case,
28

1 the immigration judge failed to apply the full set of *Matter of Guerra* factors.

2 85. Petitioner has a fixed address with his U.S. citizen wife, has resided in the
3 Southern California for 25 years, has a U.S. citizen son and siblings, graduated from high
4 school in the United States, attended trade school, has worked as a journeyman in
5 concrete construction, has no prior immigration violations with the exception of his visa
6 overstay when he was a young child, appeared in court on his criminal case as directed,
7 and has not attempted to escape authorities. Moreover, he is eligible to adjust status
8 through his wife. While he has one criminal arrest, it was seven years ago and resulted in
9 misdemeanor diversion.

10 86. All of the *Matter of Guerra* factors support release. The finding that
11 Petitioner was a flight risk and a danger such that no bond amount will secure his
12 appearance at future immigration court hearings is an abuse of discretion in light of the
13 *Matter of Guerra* factors.

14 15 COUNT III

16 **Violation of Administrative Procedure Act: Abuse of Discretion in Failing to Set** 17 **Reasonable Bond Amount**

18 87. Petitioner repeats, re-alleges, and incorporates by reference each and every
19 allegation in the preceding paragraphs as if fully set forth herein.

20 88. The denial of release on bond is a final agency action where, as here,
21 prudential exhaustion not required.

22 89. Under the Administrative Procedure Act, a court must “hold unlawful and
23 set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise
24 not in accordance with the law,” that is “contrary to constitutional right [or] power,” or
25 that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory
26 right.” 5 U.S.C. § 706(2)(A)-(C).
27
28

90. The immigration judge was required to set a reasonable bond amount to address any concerns that Petitioner is a flight risk unless no bond amount would secure attendance in removal proceedings. *See e.g. Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 807 (BIA 2020) (finding no amount of bond would secure attendance where the noncitizen had limited avenue for relief and minimal ties to the United States).

COUNT IV

Violation of Procedural Due Process

Revocation of Release without neutral decision maker

92. Petitioner re-alleges and incorporates by reference each allegation contained above.

93. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty 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 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

94. An individual released from immigration custody has a liberty interest in remaining free from detention. *Morrissey*, 408 U.S. at 482. The liberty interest applies to individuals who are released on their own recognizance to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV- 01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). This liberty interest applies to individuals like Petitioner who have been living in the United States for years with the knowledge of the immigration authorities.

97. Due Process requires that Petitioner be afforded a bond determination before a neutral adjudicator if the government is to re-detain Petitioner. *Mathews v. Eldridge*, 424 U.S. 319; *Ramirez-Bibiano*, 2025 WL 3632748, at *5; *Ramirez Tesara*, 800 F. Supp. 3d at 1136; *Fernandez Lopez v. Wofford*, 2025 WL 2959319, at *7.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Declare that the Immigration Judge's bond denial violated due process and was an abuse of discretion;
- c. Issue a writ of habeas corpus requiring that Defendants release Petitioner;
- d. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which he is determined to be a flight risk or danger to the community in compliance with governing law and due process;
- e. Alternatively, order that Petitioner be released on a bond of \$1500.
- f. Alternatively, order that Petitioner be afforded a new bond hearing before an immigration judge that complies with governing law and due process. At such hearing, the burden of proof should be on the government to establish through clear and convincing evidence that Mr. Calderon Gonzalez is a danger or a flight risk if released. *See Sadeqi v. LaRose* No. 25-cv-2587-RSH-BJW, 2025 WL 3154520, at *4 (S.D. Ca.; Nov. 12, 2025) (citing *Singh v. Holder*, 638 F.3d 1196,

1203 (9th Cir. 2011)) (“Petitioner is entitled to a prompt and individualized bond hearing, at which Respondents must justify his continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released.”).

- g. Given the IJs misstatement of the facts and conclusions during the bond hearing that were not based on any facts in the record, Mr. Calderon Gonzalez is concerned about his ability to receive a fair hearing before the immigration court. This Court should further require the government to provide him with a bond hearing before a “fair, neutral, and open-minded immigration judge.” *Domingos v. Casey*, No. 3:26-cv-01151-BTM-JLB, 2026 LX 176120, at *9 (S.D. Cal. Mar. 23, 2026);
- h. Award reasonable attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
- i. Order further relief as this Court deems just and appropriate.

Dated: June 12, 2026

Respectfully Submitted,

S/Cassandra Lopez

Cassandra Lopez (CA SBN #260919)

Al Otro Lado

511 E. San Ysidro Blvd. #333

San Ysidro, CA 92173

Telephone: 619-730-5891

Fax: 619-345-4693

cassandra.l@alotrolado.org

Counsel for Petitioner

**VERIFICATION BY ATTORNEY ACTING ON MR. CALDERONG
GONZALEZ'S BEHALF PURSUANT TO 28 U.S.C. §2242**

I am submitting this verification on behalf of Mr. Calderon Gonzalez because I am his attorney. As Mr. Petitioner's attorney, 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.

Dated: June 12, 2026

By: /s/ Cassandra Lopez