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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Elmer VICENTE MENDEZ,
Petitioner,

v.

Ron MURRAY, Warden, Mesa Verde Detention Center;

Sergio ALBARRAN, Field Office Director, San Francisco Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division;

Markwayne MULLIN, Secretary, United States Department of Homeland Security;

Todd BLANCHE, Acting Attorney General of the United States,
Respondents.

Case No.

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

INTRODUCTION

1. Petitioner, Elmer Vicente Mendez, is a 27-year-old young man from Guatemala who entered the United States as an unaccompanied child in 2016. He has been detained in the custody of the Department of Homeland Security (DHS) since May 27, 2026.

2. Upon entry in 2016, DHS detained Mr. Vicente Mendez and placed in the custody of the Office of Refugee Resettlement (ORR), as the Trafficking Victims Protection Reauthorization Act (TVPRA) requires for unaccompanied children. 8 U.S.C. § 1232(b)(1). ORR released him from its custody to an adult sponsor upon a finding that he presents neither a flight risk nor danger to the community. *See* 8 U.S.C. § 1232(c)(2)(A).

3. DHS re-detained Mr. Vicente Mendez on May 27, 2026, during a check-in with Immigration and Customs Enforcement (ICE). ICE did not provide him with a hearing where a neutral arbiter could determine whether there are materially changed circumstances to justify his re-detention. ICE also failed to assess the "least restrictive setting" for Mr. Vicente Mendez's placement, as required by the TVPRA. 8 U.S.C. § 1232(c)(2)(A).

4. Mr. Vicente Mendez's re-detention without a pre-deprivation hearing violates his procedural due process rights. His re-detention without a hearing and without assessment of the least restrictive placement also violates the TVPRA.

5. For all these reasons, Mr. Vicente Mendez respectfully asks this Court to hold that his re-detention without a pre-deprivation hearing unlawfully violates his due process and statutory rights. He urges this Court to grant his petition and issue a writ of habeas corpus ordering his immediate release or, at a minimum, a hearing before a neutral arbiter where the government bears the burden of justifying his detention by clear and convincing evidence. 28 U.S.C. § 2241. In the alternative, Mr. Vicente Mendez urges this Court to order Respondents to

show cause *within three days*, providing their reasons, if any, as to why his detention is lawful. 28 U.S.C. § 2243.

JURISDICTION

6. Respondents currently detain Mr. Vicente Mendez at the Mesa Verde Detention Center in Bakersfield, California.

7. This action arises under the Fifth Amendment to the Constitution of the United States, the INA, and the TVPRA.

8. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (general grant of habeas authority to district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

9. The federal habeas statute establishes this Court's power to decide the legality of Mr. Vicente Mendez's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

10. The Supreme Court, moreover, has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The Court has since reiterated federal court jurisdiction over habeas claims brought by petitioners in immigration custody. *See Jennings v. Rodriguez*, 583 U.S. 281, 294-96 (2018).

11. This Court may grant further relief pursuant to 28 U.S.C. § 2241 (Habeas), 28 U.S.C. § 2201 (Declaratory Judgment), and 28 U.S.C. § 1651 (All Writs).

VENUE

12. Venue is proper under 28 U.S.C. § 1391(e)(1) because Respondents detain Mr. Vicente Mendez in Bakersfield, California, within the jurisdiction of this Court. *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973); *see also Doe v. Garland*, 109 F.4th 1188, 1197-98 (9th Cir. 2024).

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred within this District.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Vicente Mendez is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days." *Id.* "[F]or good cause[,] additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). Habeas petitions must receive prompt attention from the Court. *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Mr. Vicente Mendez is a citizen of Guatemala who entered the United States as an unaccompanied child in 2016 and has resided in the United States since. He has been detained in the custody of Respondents since May 27, 2026.

17. Respondent Ron Murray is sued in his official capacity as Warden of Mesa Verde Detention Center (Mesa Verde) in Bakersfield, California. He is an employee of the GEO Group,

which contracts with DHS to hold noncitizens in custody at Mesa Verde. He has immediate physical custody of Mr. Vicente Mendez.

18. Respondent Sergio Albarran is sued in his official capacity as the Field Office Director, San Francisco Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division (ERO) for U.S. Immigration and Customs Enforcement (ICE). Respondent Albarran oversees the San Francisco ICE Field Office and is responsible for Mr. Vicente Mendez's detention and removal.

19. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of DHS. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Mr. Vicente Mendez's detention. Mr. Mullin has ultimate custodial authority.

20. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States. He is responsible for the Department of Justice (DOJ) and oversees the Executive Office for Immigration Review (EOIR), including the BIA and the immigration court system.

FACTUAL ALLEGATIONS

21. Mr. Vicente Mendez was born in Guatemala. He is of Mayan ethnicity and his first language is Mam.

22. Growing up in Guatemala, Mr. Vicente Mendez struggled to maintain stable housing from a young age. Mr. Vicente Mendez's mother passed away when he was eight years old. Mr. Vicente Mendez's father was absent. Having no one else to care for him, Mr. Vicente Mendez went to live with his sister.

23. However, his sister's husband severely abused Mr. Vicente Mendez both physically and emotionally. He would beat Mr. Vicente Mendez with sticks, cables, and anything

else he could grab with no justification. Mr. Vicente Mendez's sister was unable to protect him, as she was similarly abused by her husband. As such, Mr. Vicente Mendez lived in fear that his brother-in-law would severely injure him or even kill him.

24. Unable to withstand his brother in law's abuse, Mr. Vicente Mendez left his sister's home when he was around 10 years old and started shuffling around relatives' homes.

25. At the same time, Mr. Vicente Mendez lived in fear of gangs. Beginning when he was around nine years old, gang members began trying to recruit him. He refused to join the and was threatened and abused as a result. On one occasion, as Mr. Vicente Mendez was leaving church a group of adult gang members beat him, threatened to do worse if he continued to refuse recruitment.

26. Once he was old enough and able to afford the journey, Mr. Vicente Mendez decided to come to the United States in search of a safe and stable life.

27. Mr. Vicente Mendez entered the United States on January 17, 2016. Because Mr. Vicente Mendez was 16 years old at the time, DHS designated him as an "unaccompanied child" pursuant to 6 U.S.C. § 279(g)(2). As such, DHS transferred him to the custody of ORR, a component of the Department of Health and Human Services (HHS). *See* 8 U.S.C. § 1232(c)(2)(A). ORR released Mr. Vicente Mendez to his adult cousin's custody shortly thereafter. Ex. A.

28. Since coming to the United States in 2016, Mr. Vicente Mendez has built a life for himself and found the community he sorely lacked in Guatemala. His cousin, who sponsored his release from ORR custody, provided him with stable housing and support. With that stability, Mr. Vicente Mendez graduated from high school, something that would not have been possible for him in Guatemala.

29. Mr. Vicente Mendez now has a partner and a two-year-old U.S. citizen daughter. Prior to his detention, he worked at a car paint shop to support his partner and daughter. Mr. Vicente Mendez was also an active member of his church, attending services two to three times a week.

30. Since his release from ORR detention in 2016, Mr. Vicente Mendez has sought to comply with the ICE's terms of release. He retained counsel, attended all scheduled hearings, and remained alert to any developments in his immigration proceedings. Mr. Vicente Mendez was set to appear before an immigration judge in June 2026, but that hearing was reset when he was detained.

31. Mr. Vicente Mendez has twice been arrested in the United States. Both arrests resulted in convictions for driving under the influence (DUI). Mr. Vicente Mendez's most recent conviction occurred over one year ago, on April 25, 2025, in the Marin County Superior Court of California. He was convicted of DUI and driving without a valid license. He was sentenced to 18 months of probation and ordered to complete a DUI program.

32. In May 2026, ICE instructed Mr. Vicente Mendez to present himself for an in-person check-in. Mr. Vicente Mendez complied and attended the check-in on May 27, 2026. He was detained during that check-in. ICE did not provide him with any prior notice of any allegations of breach of release conditions. ICE did not conduct any interviews or allow Mr. Vicente Mendez to present evidence to challenge his re-detention. ICE's only stated reason for Mr. Vicente Mendez's re-detention was his April 2025 DUI conviction.

33. DHS currently detains Mr. Vicente Mendez at Mesa Verde Detention Center in Bakersfield, California. He is awaiting scheduling of a preliminary hearing in his removal

proceedings. To date, Respondents have not afforded Mr. Vicente Mendez an opportunity to challenge his re-detention in a hearing before a neutral arbiter.

LEGAL FRAMEWORK

I. Statutory Framework for Detention

34. Generally, removable noncitizens without final orders of removal are subject to detention under one of two statutory provisions under the INA, depending on the context in which they are arrested and deemed removable.

35. First, 8 U.S.C. § 1225 "applies primarily to [noncitizens] seeking entry into the United States" (applicants for admission) and "mandate[s] detention" of these noncitizens "until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. As the Supreme Court has clarified, this provision applies "at the Nation's borders and points of entry." *Id.* at 287.

36. Conversely, 8 U.S.C. § 1226 "applies to [noncitizens] already present in the United States." *Id.* at 303. Section 1226(a) "creates a default rule" permitting detention of removable noncitizens. *Id.* Because detention is permissible rather than mandatory, noncitizens detained under Section 1226(a) qualify for release on bond. *Id.*

37. Section 1226(c) operates as an exception to Section 1226(a)'s general rule in that it mandates detention of noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not qualify for bond.

38. As a court in this District has explained, "[w]hile section 1225 'authorizes the Government to detain certain aliens seeking admission into the country,' section 1226 'authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.'" *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1111 (E.D. Cal. 2025).

II. Statutory Protections under the TVPRA

39. Beyond the INA detention provisions, the TVPRA provides a separate detention scheme for noncitizens who enter the United States as unaccompanied children.[1] The TVPRA "does not mandate detention." *P.A.H.E. v. Noem*, No. 26-CV-01164-DJC-JDP, 2026 WL 451662, at *1 (E.D. Cal. Feb. 17, 2026). Instead, the TVPRA tasks HHS,[2] with custody determinations for unaccompanied children and requires placement "in the least restrictive [detention] setting," which may include outright release without bond to "a suitable family member." 8 U.S.C. § 1232 (c)(2)(A).

40. Assessment of the least restrictive detention setting includes consideration of whether the minor presents a "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232 (c)(2)(A); *C.R.J.M. v. Kennedy*, No. 26-CV-00742-DJC-EFB, 2026 WL 809940, at *2 (E.D. Cal. Mar. 24, 2026) ("The government necessarily determined that release was the least restrictive setting considering" danger and flight risk) (quoting 8 U.S.C. § 1232(c)(2)(A)).

41. Once an unaccompanied minor turns 18 years old, his legal custody is transferred to DHS. 8 U.S.C. § 1232(c)(2)(B). Like HHS, DHS must place noncitizens formerly designated as unaccompanied children—i.e. unaccompanied children who have reached adulthood—"in the least restrictive setting available after taking into account the [noncitizen's] danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(B). The statute further mandates that formerly designated unaccompanied children "*shall* be eligible to participate in alternative to

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[1] The term unaccompanied child refers to a child who has no lawful immigration status, is under the age of eighteen, and with respect to whom "no parent or legal guardian in the United States is available to provide care and physical." 6 U.S.C. § 279(g)(2).

[2] ORR is the subagency within HHS charged with overseeing unaccompanied children's detention and making custody determinations. Petitioner refers to ORR and HHS interchangeably.

detention programs, utilizing a continuum of alternatives based on the [noncitizen's] need for supervision, which may include placement of the [noncitizen] with an individual or an organizational sponsor, or in a supervised group home." *Id.*; *P.A.H.E.*, 2026 WL 451662, at *1.

42. Moreover, unlike applicants for admission, unaccompanied children are not subject to expedited removal and must be placed directly into removal proceedings. *Compare* 8 U.S.C. § 1232 (a)(5)(D)(i) *with* 8 U.S.C. § 1225(b)(1)(A) (providing for the expedited removal of applicants for admission absent a showing of a credible fear of persecution).

43. Section 1225 and Section 1232 "are thus plainly incompatible as one" subjects noncitizens to expedited removal and "mandates detention while the other requires placement in the least restrictive setting and contemplates placement in a variety of release programs." *P.A.H.E.*, 2026 WL 451662, at *1. As such, unaccompanied children cannot be subject to Section 1225 retroactively after release and years of residence in the United States. *F.S.S.M. v. Wofford*, No. 25-CV-01518-TLN-AC, 2025 WL 3526671, at *4 (E.D. Cal. Dec. 9, 2025).

III. Recent Agency Interpretation of Statutory Detention Provisions

44. In September 2025, the BIA issued a decision vastly broadening the classes of noncitizens subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). Specifically, it held that all noncitizens who entered without inspection are "applicants for admission" as defined under 8 U.S.C. § 1225(b) regardless of the length of their presence in the United States. *Id.*

45. Prior to *Matter of Yajure Hurtado*, agency policies and precedent considered noncitizens who entered without inspection and detained after residing in the United States subject to detention under Section 1226(a) and eligible for discretionary release. *Lepe*, 801 F. Supp. 3d at 1117 (discussing historical interpretation of Sections 1225 and 1226 and its

relevance to reviewing the recent BIA re-interpretation of those provisions). As such, *Matter of Yajure Hurtado* upended decades of well-settled law and procedure. *Id.*

46. The vast majority of courts in the country and within this District have rejected this interpretation. *See, e.g., Perez v. Lyons*, 823 F. Supp. 3d 1102, 1109 (E.D. Cal. 2026) (collecting cases rejecting *Matter of Yajure Hurtado*); *Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) ("By a recent count," the BIA's interpretation of Section 1225(b) in *Matter of Yajure Hurtado* "has been challenged in at least 362 cases in federal district courts. The challengers have prevailed . . . in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States.") (collecting cases); *Cunha v. Freden*, 175 F.4th 61, 96 (2d Cir. 2026); *Hernandez Alvarez v. Warden, Federal Detention Ctr. Miami*, 175 F.4th 1258, 1276 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732 (6th Cir. 2026); *but see Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128, 1137-38 (8th Cir. 2026).

47. On June 2, 2026, the BIA issued a decision holding that the TVPRA protections "do not remove" previously designated unaccompanied children "from the detention framework applicable to applicants for admission." *Matter of N-A-G-C-*, 29 I. & N. Dec. 662, 664-65 (BIA 2026). As such, the BIA considers formerly unaccompanied children subject to mandatory detention under *Matter of Yajure Hurtado*. *Id.* at 663-64.

EXHAUSTION

48. The habeas statute "'does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus.'" *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (quoting *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir.2001)).

49. Exhaustion is also not required as a prudential matter. Prudential exhaustion may be required if "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). In other words, "the exhaustion requirement may be waived if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury would result, or the administrative proceedings would be void.'" *Cornejo v. Andrews*, 823 F. Supp. 3d 1085, 1093 (E.D. Cal. 2026) (quoting *Laing,* 370 F.3d at 1000). Such is the case here.

50. First, exhaustion would be futile as the agency has already predetermined the legal issue underlying Mr. Vicente Mendez's bond eligibility. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228. Similarly, the BIA has foreclosed Mr. Vicente Mendez's ability to challenge his detention under the TVPRA. *Matter of N-A-G-C-*, 29 I. & N. Dec. at 663-65.

51. As multiple courts in this District have concluded, exhaustion would be futile given agency binding precedent holding that noncitizens in Mr. Vicente Mendez's position are subject to mandatory detention under Section 1225(b). *See, e.g., Singh v. Andrews*, 803 F. Supp. 3d 1035, 1044-45 (E.D. Cal. 2025); *Gualan-Namicela v. Becerra*, No. 26-CV-01460-DJC-EFB, 2026 WL 539059, at *1 (E.D. Cal. Feb. 26, 2026); *Bekler v. Noem*, 25-CV-01974-CDB, 2026 WL 234949, at *7 (E.D. Cal. Jan. 29, 2026); *Singh v. Warden of Golden State Annex Det. Facility*, No. 25-CV-01689-EPG-HC, 2026 WL 171952, at *2 (E.D. Cal. Jan. 22, 2026).

52. Even if Mr. Vicente Mendez had an administrative avenue to pursue, exhausting his constitutional claims would be futile because the agency does not have the authority to rule

on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) ("[T]he inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion.").

53. Moreover, requiring administrative exhaustion before ICE, the immigration court, and BIA would cause Mr. Vicente Mendez irreparable harm as he was unlawfully re-detained and remains in unjustified detention. *See Cornejo*, 823 F. Supp. 3d at 1093 (holding that exhaustion would cause irreparable harm to adult unaccompanied child unlawfully detained without a pre-deprivation hearing); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (recognizing that habeas petitioner "suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention" (internal quotation omitted)).

ARGUMENT

I. Mr. Vicente Mendez's re-detention without a pre-deprivation hearing violates his procedural due process rights.

54. The Due Process Clause protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 694 (2001) (internal quotations omitted). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690.

55. In the habeas context, these guarantees apply to all noncitizens in the United States, regardless of their admission status. *Singh*, 803 F. Supp. 3d at 1045-46. As such, while applicants for admission have no "due process rights *regarding their admission* into the United States[,] . . . 'it is well-established that the Due Process Clause stands as a significant constraint on the manner in which political branches may exercise this plenary authority'—through

detention or otherwise." *Id.* (quoting *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) and distinguishing *DHS v. Thuraissigiam*, 591 U.S. 103, 139–40 (2020)) (emphasis in original); *Castillo v. Wofford*, No. 25-CV-01586-JLT-HBK, 2025 WL 3466064, at *8 n.6 (E.D. Cal. Dec. 2, 2025) (same); *Zheng v. Warden of the Golden State Annex*, No. 26-CV-03533-EJD, 2026 WL 1354477, at *3 (E.D. Cal. May 14, 2026).

56. "To determine whether 'detention violates procedural due process, courts apply' the *Mathews* factors." *Otilio B.F. v. Andrews*, 809 F. Supp. 3d 1038, 1054 (E.D. Cal. 2025). That is, courts look to petitioner's private interest at stake, "the risk of erroneous deprivation" of that interest, and the "probable value" of additional "procedural safeguards." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

A. Private Interest

57. "Freedom from imprisonment is at the core of the Due Process Clause." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (citing *Zadvydas*, 533 U.S. at 690). As multiple courts in this District have recognized, noncitizens who have previously been released from detention have a substantial liberty interest. *See, e.g., id.* ("It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his out-of-custody status."); *Cornejo*, 823 F. Supp. 3d at 1097 ("Petitioner has a protected liberty interest, which arose from his prior release from physical restraint."). This is because, once a noncitizen is released upon a finding that he is neither a flight risk nor a danger to the community, he has "a reasonable expectation that he could remain at liberty pending his removal proceedings, *barring the government showing that his circumstances had materially changed.*" *Singh v. Andrews*, No. 26-CV-791-KES-CDB, 2026 WL 959976, at *3 (E.D. Cal. Apr. 9, 2026) (emphasis added).

58. Moreover, noncitizens deemed unaccompanied children at entry have "a heightened liberty interest" under the TVPRA, even after the age of 18. *Cornejo*, 823 F. Supp. 3d at 1098. Under the TVPRA, unaccompanied children's liberty interests are protected by the mandate to determine the "least restrictive setting" for placement, taking into consideration flight risk and dangerousness. *Id.* That mandate continues after unaccompanied children turn 18. 8 U.S.C. § 1232(c)(2)(B) (transferring authority over custody determinations to DHS after unaccompanied children turn 18 but continuing to require their placement in the "least restrictive setting" considering their danger, flight risk, and a spectrum of alternatives to detention); *see Cornejo*, 823 F. Supp. 3d at 1098; *P.A.H.E.*, 2026 WL 451662, at *2; *F.S.S.M.*, 2025 WL 3526671, at *4.

59. Here, Mr. Vicente Mendez has lived in the United States for more than ten years, in which time he has graduated high school and built a family and community for himself. He has a two-year-old daughter and a partner he dearly misses. He has become an active member of his church, attending services multiple times per week. Although Mr. Vicente Mendez grew up with unstable housing and under threat of violence in Guatemala, he has endeavored to build a stable life for himself in the United States.

B. Risk of Erroneous Deprivation

60. The risk that Mr. Vicente Mendez's liberty interest is arbitrarily infringed upon is also considerable. "This is particularly so where, as here, the petitioner was previously released pursuant to a finding that he was neither dangerous nor a flight risk" and then "received virtually no procedural safeguards such as a bond or custody redetermination hearing" before re-detention. *F.S.S.M.*, 2025 WL 3526671, at *6.

61. Although DHS may revoke bond or parole "at any time," 8 U.S.C. § 1226(b), "[t]he requirements of due process, of course, supersede statutory and regulatory authority, and numerous courts have held that the Due Process clause entitles a noncitizen to notice and an opportunity to be heard before his parole or bond is summarily revoked under section 1226(b)." *J.C.E.P. v. Wofford*, No. 25-CV-01559-EFB (HC), 2026 WL 809865, at *7 (E.D. Cal. Mar. 24, 2026) (collecting cases). In fact, even the BIA has recognized that "'where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.'" *Id.* at *5 (quoting *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)) (alterations in original).

62. The government has previously concluded that Mr. Vicente Mendez poses no flight risk or danger that can justify his detention when he was released from ORR. *Vigil v. Warden*, No. 26-CV-03967-VC, 2026 WL 1765207, at *2 (E.D. Cal. June 18, 2026) ("ORR's release of Petitioner then reflects a determination that he was not a flight risk or danger to the community when he was released to the custody of a sponsor."). As such, "a pre-deprivation hearing, provided *before* the Petitioner is detained, is necessary to protect Petitioner's liberty interest." *Cornejo*, 823 F. Supp. 3d at 1098 (emphasis in original); *R.D.T.M.*, No. 25-CV-01141-KES-SKO, 2025 WL 2686866, at *6 (E.D. Cal. Sept. 18, 2025) ("The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.").

63. Even if Respondents could demonstrate that Mr. Vicente Mendez's DUI convictions amounted to materially changed the circumstances that justify revocation of Mr. Vicente Mendez's release on parole, their failure to provide him with a hearing before a neutral arbiter carries a substantial risk of erroneous deprivation. *See Guzman v. Andrews*, No. 25-CV-

01015-KES-SKO, 2025 WL 2617256, at *6 (E.D. Cal. Sept. 9, 2025) ("While petitioner sustained a misdemeanor conviction in 2022, he is entitled to a determination as to whether that violation warrants modification of the immigration judge's 2011 release order."); *Singh v. Warden, Cass Cnty. Jail*, No. 26-CV-3085, 2026 WL 765718, at *1 (D. Neb. Mar. 18, 2026) (finding that bond cancellation is "immaterial to the legality of Petitioner's present detention" where respondents failed to provide petitioner with a pre-deprivation hearing).

C. Government interest

64. "[T]he government's interests in 'protecting the public from dangerous criminal' noncitizens and preventing noncitizens from fleeing are 'interests of the highest order.'" *Otilio B.F.*, 809 F. Supp. 3d at 1055 (quoting *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022)). However, such an interest can be easily protected through a pre-deprivation hearing before a neutral arbiter, especially "where such custody hearings are routine and impose minimal costs." *Cornejo*, 823 F. Supp. 3d at 1098.

D. In the context of re-detention, due process requires a pre-deprivation hearing.

65. Given Mr. Vicente Mendez's heightened liberty interest, his prior release upon a finding of no danger or flight risk, and the government's minimal burden in providing a custody redetermination hearing, this Court should hold that an adequate custody hearing is required *before* Mr. Vicente Mendez's re-detention, and thus order his immediate release. As courts in this District have held, in the context of re-detention, "a pre-deprivation hearing, provided *before* the Petitioner is detained, is necessary to protect Petitioner's liberty interest." *Cornejo*, 823 F. Supp. 3d at 1098 (emphasis in original).

II. Mr. Vicente Mendez's re-detention violates the TVPRA.

66. As the Supreme Court has held, "[w]hen the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (internal citation and quotations omitted). Accordingly, a court may grant a petitioner's writ of habeas corpus if he "demonstrates that he is in custody in violation of the Constitution or federal law." *R.A.N.O. v. Wofford*, 820 F. Supp. 3d 1094, 1099 (E.D. Cal. 2026) (citing 28 U.S.C. § 2241(c)(3)).

67. Under the TVPRA, unaccompanied children entering the United States are not subject to Section 1225 mandatory detention. *P.A.H.E.*, 2026 WL 451662, at *1. Instead, the TVPRA requires that unaccompanied children be "promptly place[d] in the least restrictive setting that is in the best interest of the child," which may include outright release without bond to "a suitable family member." 8 U.S.C. § 1232(b)(1), (c)(2)(A).

68. The government can only place an unaccompanied child in a "secure facility" if it determines that "the child poses a danger to self or others or has been charged with having committed a criminal offense." 8 U.S.C. § 1232(c)(2)(A). As such, an assessment of the least restrictive detention setting includes consideration of whether the minor presents a "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232 (c)(2)(A); *C.R.J.M.*, 2026 WL 809940, at *2 ("The government necessarily determined that release was the least restrictive setting considering" danger and flight risk) (quoting 8 U.S.C. § 1232(c)(2)(A)).

69. Importantly, these TVPRA protections continue to apply to unaccompanied children even after they reach the age of 18. Although the TVPRA transfers custody determination decisions from HHS to DHS once the unaccompanied child reaches adulthood, it still requires DHS to place noncitizens formerly designated as unaccompanied children "in the

least restrictive setting available after taking into account the [noncitizen's] danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232 (c)(2)(B).

70. The statute further mandates that adult unaccompanied children in these circumstances "*shall* be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the [noncitizen's] need for supervision, which may include placement of the[noncitizen] with an individual or an organizational sponsor, or in a supervised group home." *Id.*; *P.A.H.E.*, 2026 WL 451662, at *1.

71. Similarly, the TVPRA bypasses the expedited removal provision, requiring instead that unaccompanied children be placed directly into removal proceedings. *Compare* 8 U.S.C. § 1232 (a)(5)(D)(i) *with* 8 U.S.C. § 1225 (providing for the expedited removal of applicants for admission absent a showing of a credible fear of persecution). Section 1225 and Section 1232 "are thus plainly incompatible as one" subjects noncitizens to expedited removal and "mandates detention while the other requires placement in the least restrictive setting and contemplates placement in a variety of release programs." *P.A.H.E.*, 2026 WL 451662, at *1.

72. A noncitizen designated as an unaccompanied child may no longer meet the definition once he turns 18 or is reunited with a parent. However, nothing in the TVPRA or INA indicates that, at that point, a noncitizen who entered the United States as a child, was released from HHS custody, and has resided in the United States can then be subjected to Section 1225 mandatory detention. *F.S.S.M.*, 2025 WL 3526671, at *4. In fact, "[i]f [unaccompanied children] become 'arriving aliens' on the day they turn eighteen, subjecting them to rearrest and near-indefinite detention, then section 1232(c)(2)(B) of the TVPRA would lose the force of law." *Lopez v. Sessions*, No. 18-CV-4189, 2018 WL 2932726, at *13 (S.D.N.Y. June 12, 2018) (ordering release of formerly designated unaccompanied child); *J.S.M.R. v. Warden of Golden*

State Annex Det. Facility, No. 26-CV-01474-KES-SAB, 2026 WL 948525, at *1 (E.D. Cal. Apr. 8, 2026) (same).

73. In *Matter of N-A-G-C-*, the BIA extended *Matter of Yajure Hurtado*'s erroneous statutory interpretation to hold that previously designated unaccompanied children are subject to mandatory detention under Section 1225(b). 29 I. & N. Dec. at 665. However, in doing so, the BIA recognized that "issues regarding DHS placement determinations or obligations arising under the TVPRA" were beyond the scope of its review. *Id.* That is precisely the issue. Immigration judges and the BIA only have jurisdiction to review bond determinations subject to Section 1226(a). *See* 8 C.F.R. § 1003.1(b) (outlining the BIA's appellate jurisdiction); 8 C.F.R. § 1003.19(a) (limiting immigration judges' bond jurisdiction to matters involving 8 U.S.C. § 1226(a)).

74. Congress enacted a completely separate detention and release scheme for unaccompanied children entering the United States *precisely* to distinguish them from noncitizens subject to Section 1225. As the BIA has acknowledged, DHS's obligations under the TVPRA are beyond its jurisdiction. As such, Section 1225 does not speak and cannot extend to Mr. Vicente Mendez. Detention cannot be the default. Instead, he must be afforded the least restrictive setting, as required under the TVPRA.

III. Immediate release is the only appropriate remedy for Mr. Vicente Mendez.

75. It is well-established in Supreme Court precedent that "a court has broad discretion in conditioning a judgment granting habeas relief . . . 'as law and justice require.'" *Hilton*, 481 U.S. at 775. As such, "[H]abeas corpus is, at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Such equitable remedies "are a special blend of what is necessary, what is fair, and what is workable." *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973).

These principles allow this Court to order outright release—rather than a bond hearing where justice so requires. *Doe v. Chestnut*, 810 F. Supp. 3d 1169, 1202 (E.D. Cal. 2025) (ordering petitioner's release where continued detention violated substantive due process).

As outlined above, Mr. Vicente Mendez's re-detention without a pre-deprivation hearing violated his procedural due process rights, particularly in light of his prior release from detention premised on a finding of no flight risk or danger. As such, "a pre-deprivation hearing, provided *before* the Petitioner is detained, is necessary to protect Petitioner's liberty interest." *Cornejo*, 823 F. Supp. 3d at 1098 (emphasis in original); *Vigil v. Warden*, No. 26-CV-03967-VC, 2026 WL 1765207, at *4 (E.D. Cal. June 18, 2026) ("'Post-deprivation custody hearings do not remedy the lack of constitutionally required pre-deprivation process.'" (quoting *Singh v. Janecka*, No. 5:26-CV-01466-AYP, 2026 WL 1334832, at *4 (C.D. Cal. May 8, 2026)); *Cajina v. Wofford*, No. 25-CV-01566-DAD-AC, 2025 WL 3251083, at *6 (E.D. Cal. Nov. 21, 2025) (holding that immediate release is the appropriate remedy to restore the status quo); *Guzman*, 2025 WL 2617256, at *2 (pre-detention hearing required prior to revocation of the petitioner's release on bond).

76. The TVPRA also requires Mr. Vicente Mendez's immediate release, as it requires a determination of the "least restrictive" placement. *See* 8 U.S.C. § 1232(c)(2)(B). Re-assessment of the least restrictive placement must be made *before* detention. *Cornejo*, 2026 WL 237748, at *9. This is particularly so given Mr. Vicente Mendez's continued protections and "heightened liberty interest . . . under the TVPRA." *Id.* at *8.

77. In fact, under the TVPRA, Mr. Vicente Mendez should not be subject to detention pending a bond hearing at all. Instead, DHS must, by default, place him in the least restrictive setting considering his danger, flight risk, and a continuum of alternatives to detention. *Compare*

8 U.S.C. § 1232(c)(2)(B) *with* 8 U.S.C. § 1226(a) (providing that a noncitizen "may be arrested and detained" and the government either "may continue to detain" or "release" him on bond).

78. Importantly, Respondents claim to be detaining Mr. Vicente Mendez pursuant to Section 1225(b), as mandated by BIA precedent. As outlined above, however, that interpretation contravenes the TVPRA. *See supra* Part II. "Because Respondents do not assert any alternative basis for Petitioner's detention," immediate release is required to restore the status quo. *Maciel v. Noem*, No. 26-CV-01318-DC-CKD, 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026) (citing *Lepe*, 801 F. Supp. 3d at 1119).

79. In the alternative, this Court should order a bond hearing where Respondents bear the burden of justifying continued confinement by clear and convincing evidence that circumstances have materially changed such as to justify Mr. Vicente Mendez's detention. *See Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (holding that "due process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake . . . are both particularly important and more substantial than mere loss of money") (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (requiring clear and convincing evidence to justify civil commitment because "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause").

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment: Procedural Due Process

80. Mr. Vicente Mendez re-alleges and reincorporates by reference the paragraphs above.

81. 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.

82. Due process requires that the government exercise its reasonable interests in a fair manner, through safeguards that limit the risk of erroneous deprivation in relation to its interests.

83. Mr. Vicente Mendez has a strong liberty interest in remaining free from detention. Given his liberty interest, there is a substantial risk of erroneous deprivation absent an assessment of the propriety of his re-detention.

84. Providing a pre-deprivation hearing does not unduly burden Respondents.

85. Accordingly, Mr. Vicente Mendez's re-detention without a pre-deprivation hearing violates his procedural due process rights.

SECOND CLAIM FOR RELIEF

Violation of the Trafficking Victims Protection Reauthorization Act

86. Mr. Vicente Mendez re-alleges and incorporates by reference the paragraphs above.

87. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who entered the United States as unaccompanied children subject to 8 U.S.C. § 1232.

88. Instead, the TVPRA requires assessment of the least restrictive placement in light of a noncitizen's danger and flight risk, taking into consideration a spectrum of alternatives to detention. As the BIA has recently held, immigration courts have no authority to make such an assessment.

89. Accordingly, Mr. Vicente Mendez's re-detention without a pre-deprivation assessment of the least restrictive placement adequate for Mr. Vicente Mendez is unlawful.

PRAYER FOR RELIEF

WHEREFORE, Mr. Vicente Mendez respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Declare that Mr. Vicente Mendez's re-detention without a pre-deprivation hearing violates the Due Process Clause of the Fifth Amendment;

3) Declare that Mr. Vicente Mendez's detention without a pre-deprivation hearing violates the Trafficking Victims Protection Reauthorization Act;

4) Issue a writ of habeas corpus and order Respondents to release Mr. Vicente Mendez from custody;

5) In the alternative, issue a writ of habeas corpus and hold or order a prompt hearing before a neutral arbiter as described in 28 U.S.C. § 2243, at which Respondents must establish materially changed circumstances by clear and convincing evidence, evaluate Mr. Vicente Mendez's ability to pay in setting any monetary bond, and consider the necessity of any conditions of release only as reasonably warranted to assure the safety of the community and Mr. Vicente Mendez's future appearances.

6) Grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless Mr. Vicente Mendez is not entitled to relief. 28 U.S.C. § 2243. If this Court issues an order to show cause, it 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).

7) Award Mr. Vicente Mendez reasonable attorneys' fees, costs, and other disbursements in this action as permitted pursuant to the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law;

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

DATED this 13 day of July, 2026.

/s/ Tania Linares Garcia
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