MCM LAW GROUP, P.C.
Cesar O. Montoya (SBN: 320291)
206 W. 4th St Suite 437
Santa Ana, CA 92701
Phone: (714) 732-0287

Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
EL CENTRO DIVISION

YURBIN OTONIEL PEREZ-GOMEZ Petitioner, v. MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; TODD BLANCHE, Acting Attorney General of the United States; DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; JESUS ROCHA, Acting Director, San Diego ICE Field Office; and JEREMY CASEY, Warden Imperial Regional Detention Facility Respondents.	Case No. '26CV4057 BAS SBC **PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

1. Petitioner, YURBIN OTONIEL PEREZ-GOMEZ ("Petitioner"), through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his ongoing unlawful detention by the Department of Homeland Security ("DHS"), the Department of Justice ("DOJ"), and U.S. Immigration and Customs Enforcement ("ICE") (collectively, "Respondents"). **Petitioner was previously released by Respondents on an Order of Release on Recognizance following his apprehension on November 13, 2023 and thereafter remained at liberty for more than two and one-half years while fully complying with every condition of his release, including all required ICE reporting appointments.** On June 28, 2026, despite his demonstrated compliance and absence of any criminal history, Petitioner was taken back into ICE custody and has remained detained without an individualized custody determination or bond hearing. This continued detention violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment.

2. This case presents a fundamental due process violation. **Courts have increasingly recognized that when the government releases a noncitizen, that release creates a heightened liberty interest that cannot be**

extinguished without meaningful procedural safeguards. Petitioner's re-detention—without a bond hearing—violates the Fifth Amendment. *See Tulyakov v. LaRose*, No.: 3:26-cv-01695-BTM-BLM, 2026 U.S. Dist. LEXIS 80532 (S.D. Cal. Apr. 13, 2026); *Kai Wang v. Christopher Larose, Warden at Otay Mesa Det. Ctr*, No.: 3:26-cv-01130-BTM-BJW, 2026 U.S. Dist. LEXIS 58261 (S.D. Cal. Mar. 18, 2026); *Pacheco v. Larose*, No.: 3:25-cv-2421-JO-AHG, 818 F. Supp. 3d 1168 (S.D. Cal. Jan. 29, 2026); *Oli v. Andrews*, No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 20443 (E.D. Cal. Jan. 30, 2026); *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026).

3. These circumstances also create a substantial risk of an erroneous deprivation of liberty, as Petitioner remains incarcerated for an indeterminate period without a meaningful determination that his continued detention is necessary to serve any legitimate governmental interest.

4. Petitioner therefore seeks immediate release. Absent immediate intervention by this Court, Petitioner will continue to suffer irreparable harm through continued unlawful detention. The ongoing deprivation of liberty—without constitutionally adequate procedures—demands urgent judicial review and prompt relief.

II. JURISDICTION

5. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101, *et seq*.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7. Furthermore, federal courts retain jurisdiction over constitutional challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 513 (2018). Petitioner seeks only individualized habeas relief, which is expressly preserved under 8 U.S.C. § 1252(f)(1). That provision prohibits lower courts from enjoining or restraining the operation of certain immigration statutes on a classwide basis, but it explicitly preserves relief "with respect to the application of such provisions to an individual alien." 8 U.S.C. § 1252(f)(1). The Supreme Court's decision in *Garland v. Aleman Gonzalez* did not eliminate federal courts' authority to grant individualized habeas relief in detention cases. Instead, it limited only classwide injunctions that restrain the operation of detention statutes. Where Respondents lack constitutional authority to continue detention

without a legally adequate bond hearing, this Court retains full power to order individualized relief, including release or a constitutionally compliant bond hearing. *See Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

III. VENUE

8. Venue is proper in this district under 28 U.S.C. § 1391(e)(2). Petitioner is detained by Respondents, at the Imperial Regional Detention Facility in Calexico, California, which is within the jurisdiction of this District, and the Officer in Charge who makes custody decisions in Petitioner's case is located within this judicial district. Petitioner is subject, at any time, to being moved to another ICE detention facility. Undersigned counsel is not aware if he will be moved again and thus requests that he remain in the jurisdiction of this court.

IV. PARTIES

9. Petitioner, with **A-Number** [redacted], is a native and citizen of Guatemala who entered the United States without inspection on or about November 13, 2023, near Eagle Pass, Texas. He is currently detained at the Imperial Regional Detention Facility in Calexico, California. He is currently in custody and under the direct control of Respondents and their agents.

10. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of DHS. In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. This Respondent is empowered to carry out any administrative order against Petitioner and is the legal custodian of Petitioner.

11. Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States and the senior official of the DOJ. In that capacity, he has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

12. Respondent David J. Venturella is sued in his official capacity as the Acting Director of ICE. He is a legal custodian of Petitioner and has the authority to release him.

13. Respondent Jesus Rocha is sued in his official capacity as the Acting Director of the San Diego ICE Field Office. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Los Angeles Field Office.

14. Respondent Jeremy Casey[1] is sued in his official capacity as the Warden of the Imperial Regional Detention Facility, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner.

V. STATEMENT OF FACTS

15. Petitioner is a native and citizen of Guatemala who entered the United States without inspection on or about November 13, 2023, near Eagle Pass, Texas. **Following his apprehension by Respondents, Petitioner was released from custody on or about November 16, 2023, pursuant to an Order of Release on Recognizance**.

16. Following his release, Petitioner continuously resided in the State of Florida and fully complied with every condition imposed by Respondents. Petitioner consistently appeared for all required Office of Supervision ("OSUP") appointments at the Miramar, Florida ICE office, including appointments on January 10, 2024, January 9, 2025, and January 15, 2026. Following Petitioner's most recent reporting appointment, ICE scheduled his next Office of Supervision appointment for January 15, 2027, demonstrating that DHS and ICE continued

[1] As held by the Ninth Circuit, in habeas corpus cases, the proper Respondent is the warden of the detention facility where the immigration detainee is held. *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

to supervise Petitioner in the community and maintained regular contact with him.

17. Petitioner also complied with all other immigration requirements imposed upon him. He appeared for his scheduled biometrics appointment on December 11, 2024, obtained employment authorization, and continuously maintained a valid Employment Authorization Document ("EAD"), which remained valid through March 18, 2027.

18. Petitioner previously filed a Form I-589, Application for Asylum and for Withholding of Removal, and removal proceedings were initially commenced before the Immigration Court in Miami, Florida. Following Petitioner's detention and subsequent transfer by ICE to California, jurisdiction over his immigration proceedings was transferred to the Imperial Immigration Court in Imperial, California. At present, however, the Executive Office for Immigration Review's Automated Case Information System reflects only that Petitioner's removal proceedings remain pending and does not identify a future hearing date.

19. On or about June 28, 2026, Petitioner was on his way to work while his brother was driving when ICE officers stopped the vehicle and requested identification. Petitioner presented his valid Employment Authorization Document. ICE officers thereafter took Petitioner into custody. Petitioner is

presently detained at the Imperial Regional Detention Facility in Calexico, California.

20. At no time prior to Petitioner's re-detention did Respondents provide notice that it intended to revoke Petitioner's release on recognizance or otherwise alter the conditions under which he had remained at liberty for more than two years. **Likewise, Petitioner was not afforded any pre-deprivation custody determination or bond hearing before being returned to ICE custody**.

21. **Throughout the more than two years that Petitioner remained released on recognizance, Respondents repeatedly allowed him to remain at liberty while maintaining regular supervision over him**. Petitioner reported for every scheduled appointment, completed biometrics as directed, maintained valid employment authorization, remained continuously at his known residence, and fully complied with every condition imposed by DHS and ICE. According to information presently available, Petitioner has no criminal history, no known gang affiliation, no history of violence, and at no time following his release did he fail to appear for any required appointment or otherwise violate the conditions of his release.

22. Since his arrest on June 28, 2026, Petitioner has remained continuously

detained. Based on the information presently available, Petitioner has not received an individualized custody determination before an Immigration Judge regarding whether his continued detention is necessary.

23. As a result, Petitioner now seeks habeas corpus relief from this Court to challenge his continued unlawful detention, require Respondents to provide an individualized custody determination, and obtain such relief as necessary to ensure that Petitioner's detention complies with constitutional and statutory requirements.

VII. LEGAL ARGUMENT

A. Prudential Exhaustion Does Not Bar Review of Petitioner's Constitutional Challenge to His Re-Detention

24. Exhaustion does not bar review of Petitioner's constitutional challenge to his continued detention. The Ninth Circuit has repeatedly recognized that **"[t]he exhaustion requirement is prudential, rather than jurisdictional, for habeas claims."** *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Although a district court may require exhaustion where agency expertise is necessary to develop a proper record, where administrative review may allow the agency to correct its own errors, or where exhaustion would promote judicial efficiency, **exhaustion may be waived where administrative remedies are inadequate or**

ineffective, pursuit of those remedies would be futile, irreparable injury would result, or the proceedings would be void. *Id.*; *see also Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

25. Here, Petitioner's claims are constitutional and legal in nature. Petitioner does not challenge the validity of the removal proceedings, the merits of his pending application for asylum and withholding of removal, or Respondents' authority to pursue those proceedings. **Rather, Petitioner challenges Respondents' decision to revoke his liberty and re-detain him after years of supervised liberty in the community without first providing constitutionally adequate pre-deprivation procedures. Whether Respondents violated the Fifth Amendment by depriving Petitioner of that protected liberty interest without advance notice or a meaningful opportunity to be heard presents a constitutional question beyond the competence of the immigration courts**.

26. The administrative process is incapable of providing the relief sought herein. **Neither an Immigration Judge nor the Board possesses authority to adjudicate Petitioner's constitutional challenge, determine whether Respondents violated the Due Process Clause by re-detaining him without adequate procedural safeguards, or grant habeas corpus relief ordering Petitioner's release**. Accordingly, requiring further administrative exhaustion

would neither eliminate the need for judicial review nor permit the agency to provide the relief sought in this Petition.

27. Nor would further administrative proceedings meaningfully develop the factual record. The material facts are not in dispute. Petitioner was previously released from immigration detention pursuant to an Order of Release on Recognizance, remained at liberty in the community for more than two years while fully complying with DHS and ICE supervision requirements, and was re-detained while on his way to work without first receiving notice that Respondents intended to revoke his release or providing him with a pre-deprivation custody determination or bond hearing. Petitioner's removal proceedings remain pending before the Immigration Court. The issues presented in this Petition are therefore overwhelmingly constitutional and legal.

28. Requiring Petitioner to pursue additional administrative remedies would likewise be futile. Petitioner's constitutional claim does not depend upon whether Respondents characterize his detention under 8 U.S.C. § 1226(a) or any other detention authority. **Instead, the claim arises from Respondents' decision to revoke Petitioner's longstanding liberty without first providing constitutionally adequate process. The immigration courts and the BIA lack**

authority to remedy that constitutional violation or to restore the liberty interest that was extinguished when Petitioner was re-detained.

29. Finally, requiring further exhaustion would inflict precisely the type of irreparable injury recognized by courts considering challenges to continued immigration detention. Petitioner's constitutional injury occurred when Respondents deprived him of his liberty without first providing constitutionally adequate process, and that injury continues with each additional day of detention. Because Petitioner's claim presents a purely constitutional challenge that the administrative process cannot resolve, prudential exhaustion is excused.

30. Accordingly, Petitioner has satisfied, or alternatively is excused from, any prudential exhaustion requirement applicable under 28 U.S.C. § 2241, and this Court should reach the merits of Petitioner's constitutional challenge to his re-detention.

B. Prior Release on Parole or Recognizance Creates a Heightened Liberty Interest in Continued Freedom, Requiring Robust Due Process Before Re-Detention

31. While noncitizens located outside the United States are not granted the full protection of the Constitution, **the Due Process Clause applies to all "persons" within the borders of the United States, regardless of**

immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

32. Petitioner's re-detention violates the Fifth Amendment because his **prior Release on his own recognizance—created a constitutionally protected liberty interest that cannot be revoked without meaningful procedural safeguards**. The Supreme Court has made clear that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

33. Furthermore, the Supreme Court in *Jennings v. Rodriguez* addressed only statutory interpretation and expressly declined to resolve the constitutional questions surrounding prolonged detention. *Jennings v. Rodriguez*, 583 U.S. 281, at 312 (2018). Courts within this Circuit have recognized that *Jennings* left intact the constitutional challenges as-applied to detention. *See Cruz-Zavala v. Barr*, 445 F. Supp. 3d 571, 578–79 (N.D. Cal. 2020).

34. A protected liberty interest can arise from a conditional release from

physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). District Courts all over the Ninth Circuit have recognized that **once the government releases a noncitizen, that release creates a constitutionally protected liberty interest. Thus, once the government elects to release a noncitizen, that individual acquires a concrete liberty interest in remaining free from physical restraint, and that interest may not be extinguished arbitrarily**. *See Tulyakov v. LaRose*, No.: 3:26-cv-01695-BTM-BLM, 2026 U.S. Dist. LEXIS 80532 (S.D. Cal. Apr. 13, 2026); *Kai Wang v. Christopher Larose, Warden at Otay Mesa Det. Ctr*, No.: 3:26-cv-01130-BTM-BJW, 2026 U.S. Dist. LEXIS 58261 (S.D. Cal. Mar. 18, 2026); *Pacheco v. Larose*, No.: 3:25-cv-2421-JO-AHG, 818 F. Supp. 3d 1168 (S.D. Cal. Jan. 29, 2026); *Meneses v. Santacruz*, 811 F. Supp. 3d 1158 (C.D. Cal.2025); *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210, (C.D. Cal. May 13, 2026); *Oli v. Andrews*, No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 20443 (E.D. Cal. Jan. 30, 2026); *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026); *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (N.D. Cal. 2025); *Firas Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917 (W.D. Wash. 2019); *Matute v. Wofford*, 807 F. Supp. 3d 1120 (E.D. Cal. 2025); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021 (N.D. Cal. 2025).

35. Recent decisions confirm that this principle applies squarely to immigration re-detention. In *Meneses v. Santacruz*, 811 F. Supp. 3d 1158 (C.D. Cal. 2025), the Central District of California concluded that **the government's interest in re-detaining Petitioner without a hearing is minimal and does not outweigh Petitioner's liberty interest.** The court found that under the *Mathews v. Eldridge*, 424 U.S. 319 (1976), and its balancing of interest test framework, Petitioner should have been afforded a pre-detention hearing before being re-detained. Furthermore, the court cited the Supreme Court's decision in *Morrissey v. Brewer*, 408 U.S. 471 (1972), stating that release on parole of a criminal defendant creates "at least an implicit promise" that liberty will not be revoked without due process. It analogized this principle to noncitizens, holding that individuals released on bond or other forms of supervision have a liberty interest in remaining free from custody. *Meneses v. Santacruz, supra*, at 1162. (Emphasis added)

36. Similarly, in *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210 (C.D.Cal. May 13, 2026), the Central District of California cited *Morrissey v. Brewer* , 408 U.S. 471, 482 (1972), a case involving the revocation of parole in the criminal context, to conclude that the government's decision to allow a noncitizen to remain free despite knowledge of

his criminal history may create a constitutionally protected liberty interest in remaining at liberty absent a sufficient showing of danger or flight risk. The court observed that the government had long been aware of the petitioner's 2008 conviction, yet elected not to detain him for years. Under those circumstances, the court in *Nola* concluded that the **government's decision to release the petitioner carried "an implicit promise," within the meaning of *Morrissey*, that re-detention would occur only upon a sufficient showing of danger or flight risk. In doing so, just as in *Meneses*, the Central District Court in *Nola* extended the liberty-interest principles recognized in *Morrissey* beyond the criminal parole context and applied them to immigration detention.** *See Nola*, 2026 U.S. Dist. LEXIS 106210, at *21. Other courts have reached similar conclusions. *See Oli v. Andrews*, No. 1:26-cv-00477-DJC-AC, 2026 U.S. Dist. LEXIS 2044, at *5 (E.D. Cal. Jan. 30, 2026) (recognizing that **"[even when the government initially has the discretion to detain or release someone from custody, once the government decides to release them, that individual gains a constitutionally protected liberty interest in remaining out of custody," quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)**. Furthermore, In *Oli v. Andrews* the court ordered immediate release and enjoined future detention

absent pre-deprivation notice and a hearing at which the government bears the burden of proving danger or flight risk by clear and convincing evidence.

37. Moreover, in *Nola* the court further conducted a thorough analysis of the Ninth Circuit's prolonged-detention jurisprudence, addressing whether *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), had been abrogated by *Jennings v. Rodriguez*, 583 U.S. 513 (2018), and *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Although recognizing that portions of *Singh* had been undermined, the court concluded that *Singh's* due process requirement that the government justifies detention by clear and convincing evidence remains viable and has continued to be applied by courts following *Jennings* and *Rodriguez Diaz*. See *Nola v. Dep't of Homeland Sec.*, 2026 U.S. Dist. LEXIS 106210, at 15-21. Applying that standard, the court required the government to establish by clear and convincing evidence that continued detention was necessary and ultimately granted habeas relief in the form of the petitioner's immediate release.

38. Furthermore, in *M.B. v. Noem*, the Eastern District Court for California held that a **noncitizen released on parole and later re-detained at a routine ISAP check-in possessed a protected liberty interest and was entitled to due process protections before re-detention. The court emphasized that release creates an expectation of continued liberty that cannot be revoked absent**

appropriate procedural safeguards. *M.B. v. Noem*, No. 1:26-cv-00005-DJC-AC, 2026 WL 74155 (E.D. Cal. Jan. 9, 2026).

39. Moreover, federal courts have further clarified that this **liberty interest is not limited to parole but extends equally to noncitizens released on their own recognizance**. In *Zapata v. Kaiser*, the Northern District of California held that noncitizens released on recognizance are likewise entitled to a pre-detention hearing before re-detention. **The court explained that re-detaining a noncitizen without evidence that they are flight risks or dangers to the community violates substantive due process, underscoring that the constitutional protection attaches to the fact of release itself, regardless of the statutory mechanism by which release occurred.** This principle is particularly important here, where the precise form of Petitioner's initial release—parole or recognizance—does not diminish the constitutional protection afforded to his liberty. *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (N.D. Cal. 2025).

40. This rule has been applied consistently across cases involving re-detention after a period of community release. In *Matute v. Wofford*, the court held unequivocally that due process requires a pre-deprivation bond hearing before the government may re-detain a noncitizen who was previously released. *Matute v. Wofford*, 807 F. Supp. 3d 1120 (E.D. Cal. 2025).

41. Likewise, in *Guillermo M.R. v. Kaiser*, the court granted habeas relief and enjoined ICE from re-detaining the petitioner without a pre-deprivation hearing before a neutral decisionmaker, even though the petitioner had a serious criminal history. *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021 (N.D. Cal. 2025).

42. The facts of *Guillermo M.R.* underscore the strength of Petitioner's claim. There, the petitioner had been convicted of a violent offense and served a lengthy prison sentence, yet an Immigration Judge determined that he did not pose a danger or flight risk and ordered his release. After more than two (2) years of liberty in the community, during which he complied with conditions and established strong ties, ICE sought to re-detain him without a hearing and without identifying any material change in circumstances. The court held that such re-detention violated due process, emphasizing that the petitioner's extended period of liberty and compliance strengthened his protected interest and that ICE's internal procedures were insufficient because they lacked neutral adjudication.

43. Under these circumstances, the constitutional violation is clear. By re-detaining Petitioner without providing a bond hearing, the government has violated his due process rights. **More specifically, releasing Petitioner on own**

recognizance, the government endowed Petitioner with a protected liberty interest. *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (N.D. Cal. 2025); *see also Fernandez Lopez v. Wofford*, No. 1:25-cv-01226-KES-SKO, 2025 WL 2959319, at *5 (E.D. Cal. Oct. 17, 2025) (holding noncitizen paroled pursuant to 8 U.S.C. § 1182(d)(5)(A) had a protected liberty interest in remaining out of custody); *see also Garcia v. Andrews,* No. 1:25-cv-01006-JLT-SAB, 2025 WL 2420068, at *10 (E.D. Cal. Aug. 21, 2025) (holding noncitizen released on parole held a protected liberty interest in maintaining out-of-custody status); *J.E.H.G. v. Chesnut*, No. 1:25-cv-01673-JLT-SKO, 2025 WL 3523108, at *9 (E.D. Cal. Dec. 9, 2025) (same).

44. Here, the government has deprived Petitioner of a protected liberty interest without affording the procedural safeguards required by due process. Courts applying the *Mathews* balancing test framework have consistently recognized that the private interest in freedom from detention is substantial, the risk of erroneous deprivation is high absent a hearing, and the government's burden in providing such a hearing is minimal. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

45. This constitutional violation is not mitigated by the duration of Petitioner's detention; even detention within six (6) months may be unconstitutional where, as here, it is imposed without the procedural safeguards required by due process.

See Trinh v. Homan, 333 F. Supp. 3d 984 (C.D. Cal. 2018). Accordingly, Petitioner's re-detention without a bond hearing violates due process and warrants habeas relief.

C. Immediate Release Is the Appropriate Remedy Where the Government Has Failed to Provide Constitutionally Required Process Before Detention

46. "In habeas cases, federal courts have broad discretion in conditioning a judgment granting relief." *Lujan v. Garcia*, 734 F.3d 917, 933 (9th Cir. 2013). "Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of habeas corpus matters as law and justice require." *Id.* (quoting *Hilton v. Braunskill*, 481 U.S. 770, 775, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)). Likewise, federal courts retain "a fair amount of flexibility" in determining the appropriate remedy for unlawful detention. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). The traditional remedy for unconstitutional detention is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

47. Immediate release—not a remand for a belated bond hearing—is the appropriate remedy where, as here, the Respondents have failed to provide constitutionally required process and continue to detain Petitioner under an unlawful statutory framework. **This is particularly true in this case, where the request for a bond hearing is futile, as the Immigration Judge has to follow**

the erroneous legal precedent of *Yajure Hurtado*, where the Board found that every noncitizen is subject to mandatory detention, unless the noncitizen was admitted into the U.S.

48. The Due Process Clause protects the most fundamental liberty interest—freedom from physical restraint. As the Supreme Court has made clear, "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. 678, 690. That interest weighs heavily in favor of immediate release where detention has been imposed without the procedural safeguards required by law.

49. Courts have recognized that a post-deprivation bond hearing cannot cure the constitutional injury caused by unlawful detention. *See Velasquez v. Bondi*, No. 26-cv-01759-GPC-DDL, 2026 U.S. Dist. LEXIS 85165, at *18-19 (S.D. Cal. Apr. 16, 2026); *Nola v. Dep't of Homeland Sec.*, No. 5:26-cv-02180-MBK, 2026 U.S. Dist. LEXIS 106210, at *29-30 (C.D. Cal. May 13, 2026); *Arturo Hernandez Arechiga v. Bowen*, No. EDCV 26-1516-AS, 2026 U.S. Dist. LEXIS 115840, at *11-12 (C.D. Cal. May 26, 2026). As the Central District of California explained in *Bajaj v. Cruz*, 2026 U.S. Dist. LEXIS 54771, at *13 (C.D. Cal. Mar. 4, 2026), **the appropriate relief in such circumstances**

is not merely a new hearing, but release from custody. Similarly, in *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025), the court held that **"such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."** *Id.* (Emphasis added)

50. The reasoning underlying those decisions applies with even greater force here. Petitioner is not requesting an initial custody determination. **Rather, Petitioner seeks restoration of the liberty interest that Respondents themselves created when they released Petitioner on recognizance and allowed him to to remain at liberty in the community for years. As discussed above, Respondents cannot extinguish that protected liberty interest simply by re-detaining Petitioner without constitutionally adequate procedures**. Allowing the government a second opportunity to justify detention now–after the unlawful re-detention–would effectively reward the initial constitutional violation and permit continued deprivation of liberty that due process is designed to prevent. The Constitution requires a process before or at the time liberty is taken, not after the fact.

51. Habeas corpus exists precisely to remedy unlawful custody through

immediate release. As the Supreme Court has explained, **"the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody."** *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

52. **Immediate release is especially appropriate because Petitioner's removal proceedings remain pending before the Immigration Court. Release would neither terminate nor interfere with those proceedings**. Petitioner remains subject to the authority of the Immigration Court, has every incentive to continue pursuing his pending applications for immigration relief, and can appear at every scheduled hearing while living in the community under the same conditions that existed before his unconstitutional detention.

53. Restoring Petitioner to that *status quo* is precisely the equitable relief habeas corpus exists to provide. The federal habeas statute directs courts to dispose of cases "as law and justice require." 28 U.S.C. § 2243. Where Respondents have deprived an individual of physical liberty in violation of the Fifth Amendment, immediate release restores the parties to the last lawful status that existed before the constitutional violation.

54. Here, Petitioner has been re-detained without receiving notice or a bond

hearing, previous to the detention. Under these circumstances, where the government has failed to provide any constitutionally required process and has never justified detention, the only adequate remedy is an order directing Petitioner's immediate release.

VIII. CAUSES OF ACTION

Count I – Fifth Amendment Due Process Violation (Denial of Constitutionally Required Bond Hearing Following Re-Detention)

Respondents are further violating Petitioner's due process rights by re-detaining him after a prolonged period of release without providing any bond hearing or opportunity for an individualized determination of whether detention is justified.

Petitioner's prior release—whether on parole or recognizance—created a protected liberty interest in her continued freedom. S*ee Zadvydas v. Davis*. Courts have consistently held that this liberty interest cannot be revoked without meaningful procedural safeguards, including a hearing before a neutral decisionmaker at which the government bears the burden of proving danger or flight risk. *See Matute v. Wofford; Oli v. Andrews; M.B. v. Noem.*

This protection applies equally to noncitizens released on their own recognizance. *See Zapata v. Kaiser*. In addition, courts have granted habeas

relief where the government seeks to re-detain individuals without a pre-deprivation hearing, even where the petitioner had a significant criminal history. *See Guillermo M.R. v. Kaiser.*

Here, Respondents re-detained Petitioner after more than two (2) years of compliant release, without a bond hearing taking place previous to the re-detention. As a result, Petitioner did not receive any individualized determination of whether she poses a danger to the community or a flight risk. This complete denial of process violates the Fifth Amendment. Due process requires a meaningful opportunity to be heard before the government deprives an individual of liberty, and that requirement is not satisfied by categorical rules that foreclose any hearing.

Count II – Fifth Amendment Due Process Violation (Arbitrary and Punitive Re-Detention)

Respondents have also violated Petitioner's due process rights by subjecting him to arbitrary re-detention that is not justified by any individualized assessment and is therefore punitive in nature.

Petitioner was released from custody and remained in the community for more than two (2) years while fully complying with all conditions imposed by DHS. Petitioner consistently reported to his required ICE Office of Supervision

("OSUP") appointments, appeared for all scheduled appointments, maintained contact with immigration authorities, and complied with all immigration obligations. Despite this history of compliance, Respondents detained Petitioner on June 28, 2026, while he was on his way to work. Respondents have not identified any material change in circumstances, presented any evidence that Petitioner poses a danger to the community or a flight risk, or provided Petitioner with a meaningful individualized custody determination regarding the necessity of his continued detention.

Such re-detention is arbitrary and inconsistent with due process. As recognized in *Zapata v. Kaiser*, re-detaining noncitizens without evidence that they pose a danger or flight risk violates substantive due process. Similarly, courts have emphasized that detention must remain tied to its regulatory purpose and may not become punitive. *See Zadvydas v. Davis*.

Because Respondents have failed to provide any justification for Petitioner's re-detention and have deprived him of his liberty through arbitrary governmental action, his continued detention violates due process and is unlawful.

VIII. PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order Respondents not to remove Petitioner outside the jurisdiction of this Court;

(3) Grant the writ of habeas corpus;

(4) Order Respondents to IMMEDIATELY RELEASE Petitioner;

(5) Make a finding that Respondents have acted contrary to law and have abused Petitioner's due process rights;

(6) Order that Respondents are permanently ENJOINED AND RESTRAINED from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include, at a minimum, pre-deprivation notice describing the change of circumstances necessitating Petitioner's arrest and detention, and a timely hearing. At any such hearing, the Government shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight, and Petitioner shall be allowed to have his counsel present.

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Cesar O. Montoya
MCM LAW GROUP (CA SBN 320291)
206 W. 4th St, Suite 437
Santa Ana, CA 92701
Phone: 714-732-0287
Email: cesar@mcmlawpc.com

Counsel for Petitioner

Dated: July 15, 2026

PROOF OF SERVICE

I hereby certify that on July 15, 2026, I served a copy of the attached PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS, with the Clerk of the Court using the Court's CM/ECF system. I further certify that the CM/ECF system will automatically generate and transmit a Notice of Electronic Filing ("NEF") to all counsel of record who are registered CM/ECF users, INCLUDING BUT NOT LIMITED TO:

U.S. Attorney's Office:

USACAC.ImmHabeas@usdoj.gov.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ Cesar O. Montoya (SBN: 320291)
MCM LAW GROUP, P.C.
206 W. 4th St Suite 437
Santa Ana, CA 92701
Phone: (714) 732-0287
Email: cesar@mcmlawpc.com
Counsel for Petitioner

Dated: July 15, 2026