Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: theodoraadoghe@gmail.com

Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: mlhlawoffice@yahoo.com

Attorneys for the Petitioner

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

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| Franklin Omar Bonilla Fuentes,<br>Petitioner,<br>v<br>JEREMY CASEY, Warden, Imperial Regional Adult Detention Facility, Calexico, California, in his official capacity;<br>DANIEL A. BRIGHTMAN, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement,in his official capacity;<br>MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity;<br>DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;<br>TODD BLANCHE, Acting U.S. Attorney General, in his official capacity,<br>Respondents | **'26CV4129 BJC AHG**<br><br>PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 |

## INTRODUCTION

1. Petitioner, Franklin Omar Bonilla Fuentes ("Petitioner"), is a citizen of Honduras who reentered the United States with his minor son on or about October 17, 2017, after fleeing persecution in Honduras. Upon his reentry, Petitioner expressed to immigration officials that he feared persecution and harm if returned to Honduras. Petitioner was subsequently released from immigration custody under an Order of Supervision ("OSUP").

2. Since his release, Petitioner has continuously resided in the United States for nearly nine years and has fully complied with every condition of his Order of Supervision ("OSUP"), including all reporting requirements imposed by U.S. Immigration and Customs Enforcement ("ICE"). During that time, Petitioner remained gainfully employed, filed federal income tax returns, supported his spouse and three minor children, including his youngest child, a United States citizen, and incurred no criminal charges or convictions.

3. 3. In or about 2018, through prior counsel, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal and Protection under the Convention Against Torture, based on his fear of returning to Honduras. Because Petitioner is subject to a reinstated removal order, the United States Citizenship and Immigration Services ("USCIS") Asylum Pre-Screening Officer ("APSO") determined that Petitioner must first complete the reasonable fear process before his application could proceed. Beginning in 2022, Petitioner's counsel repeatedly requested that the reasonable fear interview be scheduled. Despite those repeated requests, the interview has never been conducted.

4. On June 27, 2026, Petitioner appeared for a scheduled ICE reporting appointment as required by his Order of Supervision ("OSUP"). Rather than conducting a routine

supervision appointment, ICE officers detained Petitioner based on his prior removal order. Although Petitioner had fully complied with every condition of his OSUP and had committed no violations or criminal offenses, Respondents revoked his Order of Supervision and returned him to custody without providing the notice and prompt informal interview required by 8 C.F.R. §§ 241.4(l) and 241.13(i). Petitioner has remained detained since that date.

5. While detained, Petitioner has been informed by ICE officers that Respondents intend to remove him to Honduras even though, after expressing a fear of persecution and torture if returned to Honduras, he has never been referred for or received the reasonable fear proceedings required by 8 C.F.R. §§ 241.8(e) and 208.31. Petitioner's counsel notified the appropriate ICE office that Petitioner had expressed a fear of returning to Honduras.

6. Petitioner's continued detention is unlawful for two independent reasons. First, Respondents revoked Petitioner's Order of Supervision in violation of the Immigration and Nationality Act ("INA"), its implementing regulations, the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and the Due Process Clause of the Fifth Amendment. Second, Respondents cannot rely on Petitioner's purportedly imminent removal to justify his continued detention because they have failed to comply with the mandatory regulatory procedures that govern individuals subject to reinstated removal orders who have expressed a fear of persecution or torture upon return, as set forth in 8 C.F.R. §§ 208.31 and 241.8(e).

7. Accordingly, Petitioner respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's immediate release from unlawful detention.

## JURISDICTION

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

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 2241(c)(3) and 1331 because Petitioner is in federal immigration custody and challenges the legality and constitutionality of his detention under the Constitution and laws of the United States. This Court's jurisdiction also arises under Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause). See Preiser v. Rodriguez, 411 U.S. 475, 484 (1973); Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004).

10. Federal courts retain habeas jurisdiction over challenges to immigration detention that are independent of the merits of a removal order. Petitioner does not challenge his prior removal order or seek review of any removal determination. Rather, Petitioner challenges only the legality and constitutionality of his continued detention and Respondents' failure to comply with the procedures governing that detention. Accordingly, jurisdiction is not barred by 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), or 1252(g). See Zadvydas v. Davis, 533 U.S. 678, 687 (2001); INS v. St. Cyr, 533 U.S. 289, 300-01 (2001); Nadarajah v. Gonzales, 443 F.3d 1069, 1075-80 (9th Cir. 2006); Jennings v. Rodriguez, 583 U.S. 281, 293-94 (2018).

11. This Court has authority to grant habeas relief pursuant to 28 U.S.C. §§ 2241-2243, declaratory relief pursuant to 28 U.S.C. §§ 2201-2202, and all writs necessary or appropriate in aid of its jurisdiction pursuant to 28 U.S.C. § 1651.

**VENUE**

12. Venue is proper in this District because Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California, which is located within the Southern District of California. Respondents are officers, employees, or agencies of the United States acting in their official capacities, Petitioner is confined in this District, and no real property is involved in this action. Accordingly, venue is proper pursuant to 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. (emphasis added).

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

15. Petitioner Franklin Omar Bonilla Fuentes is a citizen of Honduras and is currently detained at the Imperial Regional Detention Facility in Calexico, California. Petitioner is in the custody and under the direct control of Respondents and their agents.

16. Respondent Jeremy Casey is the Warden of the Imperial Regional Detention Facility in Calexico, California. He is sued in his official capacity. Respondent Casey has immediate physical custody of Petitioner and is Petitioner's immediate custodian.

17. Respondent Daniel A. Brightman is the Field Office Director for the San Diego Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE ERO"). He is sued in his official capacity. The San Diego Field Office exercises authority over Petitioner's immigration custody and detention. Respondent Brightman is a legal custodian of Petitioner and has authority concerning Petitioner's release.

18. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS") and is sued in his official capacity. In that capacity, Respondent Mullin oversees DHS, including ICE, the component agency responsible for Petitioner's detention. Respondent Mullin is a legal custodian of Petitioner.

19. Respondent David J. Venturella is the Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. In that capacity, Respondent Venturella oversees ICE, including the agency officials responsible for Petitioner's custody and detention. Respondent Venturella is a legal custodian of Petitioner and has authority concerning Petitioner's release.

20. Respondent Todd Blanche is the Acting Attorney General of the United States and is sued in his official capacity. In that capacity, Respondent Blanche oversees the U.S. Department of Justice, including the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA").

Respondent Blanche is a legal custodian of Petitioner.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

21. Petitioner, Franklin Omar Bonilla Fuentes, is a native and citizen of Honduras. He is presently detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") following his arrest during a scheduled supervision appointment at the ICE Enforcement and Removal Operations ("ERO") office in Miramar, Florida, Petitioner was then transferred to the Imperial Regional Detention Facility.

22. Petitioner first entered the United States on or about April 21, 2013, near the Texas border. He was placed in expedited removal proceedings and removed from the United States. On or about October 17, 2017, Petitioner reentered the United States near Rio Grande City, Texas, accompanied by his minor son, having fled his native Honduras because members of the [redacted] threatened him and his family. Petitioner was apprehended and processed by U.S. Customs and Border Protection ("CBP").

23. After Petitioner was processed by CBP, he and his minor son were released from immigration custody. Petitioner was issued an Order of Supervision (Form I-220B), placed under an Order of Supervision, and directed to report periodically to ICE ERO.

24. Since his release in 2017, Petitioner has consistently complied with ICE's reporting requirements. His documented appearances at the ICE ERO Miramar office include the following dates: November 21, 2017; November 21, 2018; November 22, 2019; January 21, 2020; November 30, 2021; November 29, 2022; November 29, 2023; November 29, 2024; December 23, 2025; December 27, 2025; and June 27, 2026.

25. Petitioner never failed to appear for a required ICE appointment and never attempted to evade immigration authorities. To the contrary, for nearly nine years, he consistently presented himself to ICE as directed and complied with the conditions of his supervision.

26. A prior attorney attempted to file Form I-589, Application for Asylum and for Withholding of Removal, on Petitioner's behalf. That application was rejected for lack of jurisdiction because Petitioner is subject to a reinstated removal order and must instead pursue protection through the reasonable-fear procedure. After learning of the jurisdictional issue, Petitioner, through counsel, requested a reasonable-fear interview from ICE ERO and the Asylum Pre-Screening Officer Unit ("APSO").

27. Before his detention, Petitioner had been permitted to remain in the community under ICE supervision since 2017. ICE authorized Petitioner to work in the United States, and Petitioner currently possesses a valid Employment Authorization Document under category C18, based on his Order of Supervision, which remains valid through December 16, 2026. Petitioner previously received employment authorization under the same category while reporting to ICE.

28. Petitioner has no criminal history. He has never been charged or convicted of any criminal offense in the United States. His present immigration detention is the only detention he has experienced since his release by CBP in 2017.

29. Petitioner has lived and worked in the Miami area for several years and has maintained stable employment since approximately 2018. He is employed by FJT Automotive Group, where he performs automotive bodywork and painting on vehicles purchased by automobile dealers at auction. He has worked for FJT Automotive Group since

approximately 2018. Petitioner also performs work for Carmath Enterprises LLC, where he has likewise been employed since approximately 2018. Petitioner has consistently supported himself and his family through lawful employment and has filed federal income tax returns for each tax year beginning in 2019 through at least tax year 2025.

30. Petitioner has been married to his spouse since September 19, 2020, and they reside together as a family. Petitioner is the father of three children. His youngest child is a United States citizen by birth.

31. Petitioner's youngest child, [redacted] suffers from asthma and requires ongoing medical care, including nebulizer treatments, pediatric care, monitoring, and prescription medication. Before his detention, Petitioner assisted in caring for [redacted] and provided financial support for the household.

32. On June 27, 2026, Petitioner voluntarily appeared at the ICE ERO Miramar office for his scheduled supervision appointment. Although Petitioner had complied with every reporting obligation imposed by ICE, officers detained him during that appointment. Petitioner was not arrested based on any new criminal charge, violation of supervision, missed appointment, or allegation that he posed a danger to the community.

33. If released, Petitioner will immediately return to his family's residence in Miami, Florida, resume lawful employment, remain with his valid Florida driver's license, continue supporting his spouse and children, assist with his United States citizen daughter's medical care, and comply with all reporting requirements, court appearances, and conditions imposed by ICE or the Court.

## LEGAL FRAMEWORK AND ANALYSIS

## COUNT I

### A. Respondents Violated the INA and DHS Regulations by Revoking Petitioner's Order of Supervision Without Following the Mandatory Procedures Required by Law

34. The detention and release of noncitizens subject to a final order of removal are governed by 8 U.S.C. § 1231. The statute provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). If the noncitizen "does not leave or is not removed within the removal period," however, "the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." Id. § 1231(a)(3).

35. Petitioner's release on an Order of Supervision ("OSUP") and the revocation of that release are governed by 8 C.F.R. § 241.4(l).

36. Section 241.4(l) provides two grounds under which supervised release may be revoked: "(1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."

37. "(2) Determination by the Service. The Executive Associate Commissioner shall have

authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(1)–(2); see also Bui v. Warden of the Otay Mesa Detention Facility, No. 25-cv-2111-JES-DEB, 2025 WL 2988356, at *4–5 (S.D. Cal. Oct. 23, 2025).

38. These procedural requirements are mandatory. Federal agencies are required to comply with the regulations they promulgate. As the Supreme Court explained, "so long as the regulations remain operative, the Attorney General denies himself the right to sidestep" them. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 (1954). The Ninth Circuit likewise stated that "[i]t is well settled that an agency must abide by its own regulations." Ramon-Sepulveda v. INS, 743 F.2d 1307, 1310 (9th Cir. 1984).

39. The same principle applies where agency regulations govern the rights and interests of affected individuals. The Second Circuit explained that "the long-settled principle [is] that the rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency." Montilla v. INS, 926 F.2d 162, 169 (2d Cir.

1991). The court further observed that "the notion of fair play . . . precludes an agency from promulgating a regulation affecting individual liberty or interest, which the rule-maker may then with impunity ignore or disregard as it sees fit." Id. In the immigration-detention context, Rombot v. Souza, 296 F. Supp. 3d 383, 388 (D. Mass. 2017), stated that "ICE, like any agency, has the duty to follow its own federal regulations." The court concluded: "Based on ICE's violations of its own regulations, the Court concludes [the petitioner's] detention was unlawful." Id

40. Courts in this District have held that the procedural requirements stated in 8 C.F.R. § 241.4(l)(1) apply when ICE revokes release under § 241.4(l)(2). In Joseph v. Casey, No. 3:25-cv-3560-JES-KSC (S.D. Cal. Dec. 29, 2025), the petitioner reported to ICE for a scheduled check-in pursuant to his OSUP and was detained after that appointment. The court stated that "revocation under any part of this provision—either § 241.4(l)(1) or § 241.4(l)(2)—requires an adequate notice of the reasons for the revocation of release and a prompt initial informal interview to afford the alien an opportunity to respond to the reasons given in the notice." The court further stated that those provisions, "at a minimum, require Petitioner to have received adequate notice of the reasons for his revocation of release and an opportunity to be heard on those issues." Although ICE provided the petitioner a written Notice of Revocation, the court held that its language was insufficient because it did not identify a specific changed circumstance applicable to him. The record also did not establish that the petitioner received the required informal interview. The court concluded that Respondents failed to follow their own regulations by failing to provide notice stating an adequate basis for revocation and failing to provide a

prompt informal interview so that the petitioner could contest the reasons for revocation.

41. Similarly, in Bui v. Warden of the Otay Mesa Detention Facility, No. 25-cv-2111-JES-DEB, 2025 WL 2988356, at *4–6 (S.D. Cal. Oct. 23, 2025), Respondents did not contend that the petitioner had violated the terms of his supervised release and instead relied on § 241.4(l)(2). The court held that the notice and prompt informal interview requirements stated in § 241.4(l)(1) applied to the revocation. The court further held that an interview conducted later as part of the ninety-day custody-review process "does not suffice to meet the requirement for a 'prompt' informal interview required under Respondents' own regulations and does not work to cure this violation." The court concluded that Respondents "failed to follow their own regulations" and that those failures "constitute a violation of Petitioner's due process rights" warranting habeas relief.

42. Likewise, in McSweeney v. Warden of the Otay Mesa Detention Facility, No. 3:25-cv-02488-RBM-DEB, 2025 WL 2998376, at *5–7 (S.D. Cal. Oct. 24, 2025), the court concluded that ICE's explanation for revocation was "conclusory and unclear" and did not provide adequate notice of the basis for the decision. The court further stated that the petitioner "could not have meaningfully responded to the proffered reasons for revocation when he had not yet even been informed of those reasons." The court also held that an interview conducted six months after re-detention did not satisfy the requirement that the initial informal interview occur "promptly" after the petitioner's return to custody. See also Diaz v. Wofford, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *7 (E.D. Cal. Sept. 5, 2025) ("DHS's failure to follow its own procedural regulations may

constitute a due process violation."); M.S.L. v. Bostock, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025) ("Although ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody, they have a protected liberty interest in remaining out of custody."); Constantinovici v. Bondi, No. 3:25-CV-02405-RBM-AHG, 2025 WL 2898985, at *5 (S.D. Cal. Oct. 10, 2025) ("Both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 were intended to 'provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release . . . .'") (citation omitted); Guillermo M. R. v. Kaiser, No. 25-CV-05436-RFL, 2025 WL 1983677, at *5 (N.D. Cal. July 17, 2025) ("The fact that Petitioner is subject to discretionary conditions of release likewise does not mean he lacks a protectable liberty interest and can be re-detained without process.").

43. Here, Petitioner complied with the conditions of his Order of Supervision for nearly nine years, reporting to ICE as required. Nothing in the record indicates that Petitioner violated any condition of his Order of Supervision that would support revocation under § 241.4(l)(1). Instead, it appears Respondents revoked Petitioner's Order of Supervision pursuant to § 241.4(l)(2) when they detained him during his scheduled ICE reporting appointment on June 27, 2026.

44. Even if Respondents acted pursuant to § 241.4(l)(2), they were required to notify Petitioner of the reasons for revoking his release and afford him a prompt initial informal interview at which he could respond to those reasons. Respondents did neither. Petitioner received no notice identifying any reason for the revocation of his Order of Supervision,

nor was he afforded the prompt initial informal interview required by § 241.4(l)(1). Consequently, Petitioner was never afforded the opportunity "to respond to the reasons for revocation stated in the notification."

45. Accordingly, ICE, like any other agency, is required to follow its governing regulations. Respondents failed to follow the mandatory procedures prescribed by 8 C.F.R. § 241.4(l)(1) by failing to: (1) notify Petitioner of the reasons for revoking his Order of Supervision; and (2) afford Petitioner a prompt initial informal interview at which he could respond to those reasons. Under Accardi, Ramon-Sepulveda, and the decisions of this District addressing materially similar OSUP revocations, Respondents' failure to comply with the governing regulation rendered the revocation of Petitioner's Order of Supervision unlawful. Because Petitioner's present detention stems from that unlawful revocation, his continued detention is likewise unlawful.

**B. Respondents' Revocation of Petitioner's Order of Supervision Violates the Administrative Procedure Act**

46. The Administrative Procedure Act ("APA") requires a reviewing court to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The APA further requires a reviewing court to set aside agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

47. Agency action is arbitrary or capricious where the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a

difference in view or the product of agency expertise." Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); see also Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 658 (2007). Although an agency may change its position, it must "display awareness that it is changing position" and provide a reasoned explanation for the change. FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

48. As established above, Respondents revoked Petitioner's Order of Supervision without complying with the mandatory procedures prescribed by 8 C.F.R. § 241.4(l). Respondents' decision was therefore not in accordance with law and was taken without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (D).

49. Respondents also changed their position concerning Petitioner's supervised release without displaying awareness of that change or providing a reasoned explanation for it. From 2017 until June 27, 2026, Respondents continued Petitioner's release under an Order of Supervision. Petitioner voluntarily appeared for every scheduled reporting appointment, and Respondents permitted him to remain at liberty throughout that period. Respondents nevertheless revoked Petitioner's Order of Supervision during a scheduled reporting appointment without identifying any reason for the change or explaining why continued supervised release was no longer appropriate. Respondents therefore failed to provide the reasoned explanation required when an agency changes its prior position. FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

50. Accordingly, Respondents' decision revoking Petitioner's Order of Supervision was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and

taken without observance of procedure required by law, in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A), (D).

**C. Respondents Violated Petitioner's Right to Due Process Under the Fifth Amendment.**

51. In addition to violating the INA, its implementing regulations, and the Administrative Procedure Act, Respondents violated Petitioner's rights under the Due Process Clause of the Fifth Amendment by revoking Petitioner's Order of Supervision and re-detaining him without the notice and meaningful opportunity to respond required before previously authorized liberty may be withdrawn.

52. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Because Respondents deprived Petitioner of his liberty by revoking his Order of Supervision and returning him to immigration custody, the Fifth Amendment required that such deprivation occur only through constitutionally adequate procedures.

53. It is firmly established that the protections of the Due Process Clause extend to noncitizens present in the United States. See Trump v. J.G.G., 145 S. Ct. 1003, 1006 (2025) (per curiam) ("It is well established that the Fifth Amendment entitles aliens to due process of law."); Reno v. Flores, 507 U.S. 292, 306 (1993). In Zadvydas v. Davis, 533 U.S. 678, 693 (2001), the Supreme Court held that the Due Process Clause applies to all "persons" within the United States, including noncitizens, "whether their presence here is lawful, unlawful, temporary, or permanent." The Supreme Court further explained that "[f]reedom 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."

Id. at 690.

54. As a threshold matter, Petitioner possesses a protected liberty interest. Several courts addressing procedural due process claims arising from the revocation of a noncitizen's parole or supervised release have held that "when the Government grants a noncitizen parole or supervised release, it creates a protected liberty interest subject to due process protection." Vu Quoc Pham v. Warden, No. 1:25-cv-01873, 2026 WL 673404, at *14 (E.D. Cal. Mar. 10, 2026) (collecting cases holding that when the Government grants a noncitizen parole or supervised release, it creates a protected liberty interest subject to due process protection); see also Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025); Viengkhone S. v. Albarran, No. 1:25-cv-1505-KES-HBK, 2025 WL 3521302, at *6-7 (E.D. Cal. Dec. 8, 2025); Meneses v. Santacruz, No. 2:25-cv-11206-MCS-PVC, 2025 WL 3481771, at *2-3 (C.D. Cal. Dec. 2, 2025).

55. Here, Respondents released Petitioner under an Order of Supervision in 2017 and permitted him to remain at liberty for nearly nine years before revoking that release. Thus, under Vu Quoc Pham and the authorities it collected, Respondents' grant of supervised release created a protected liberty interest subject to due process protection.

56. Having established that Petitioner possesses a protected liberty interest, the Court must next determine what process was constitutionally due before Respondents could revoke Petitioner's Order of Supervision and return him to immigration custody. The Ninth Circuit and district courts within this Circuit evaluate procedural due process claims in the immigration context under the balancing framework established in Mathews v. Eldridge, 424 U.S. 319 (1976). See Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206-07

(9th Cir. 2022); E.A.T.-B. v. Wamsley, 795 F. Supp. 3d 1316, 1320-21 n.4 (W.D. Wash. 2025); Rodriguez Jimenez v. Bondi, No. 25-cv-02167-RSM, 2025 WL 3466925 (W.D. Wash. Dec. 3, 2025); Tzafir v. Bondi, No. 2:25-cv-02126, 2026 WL 74088, at *2 (W.D. Wash. Jan. 9, 2026); Hogarth v. Santacruz, No. 5:25-cv-09472-SPG-MAR, 2025 WL 3211461, at *6 (C.D. Cal. Oct. 23, 2025).

57. As the Supreme Court explained, "[t]he right to be heard before being condemned to suffer grievous loss of any kind ... is a principle basic to our society." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Under Mathews, courts consider: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation through the procedures used and the probable value of additional procedural safeguards; and (3) the Government's interest, including the administrative burden associated with additional procedures. Id. at 335.

**1. The Private Interest Affected by Respondents' Revocation of Petitioner's Order of Supervision Is Substantial.**

58. The first Mathews factor considers the private interest affected by the Government's action. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The private interest at stake here is Petitioner's physical liberty. The Supreme Court has repeatedly recognized that "[f]reedom 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 (2001); see also Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004).

59. That liberty interest is particularly significant where, as here, the Government has already

released an individual from custody. In Morrissey v. Brewer, 408 U.S. 471, 482 (1972), the Supreme Court explained that although conditional liberty is subject to restrictions, it includes many of the core values of unqualified liberty because the individual is able to "be gainfully employed," "be with family and friends," and "form the other enduring attachments of normal life." The Court further recognized that revocation of that conditional liberty inflicts a "grievous loss" upon the individual. Id.

60. Courts applying Morrissey in the immigration context have likewise recognized that a noncitizen's liberty interest strengthens during a period of release. In Riz Juarez v. Warden of Cimarron Correctional Facility, No. CIV-26-563-G, Report and Recommendation, at __ (W.D. Okla. June 3, 2026), although the petitioner had been released on his own recognizance rather than under an Order of Supervision, the court held that the petitioner's interest in remaining free from detention "grew even stronger" during his release as he worked, got married, and presumably "form[ed] the other enduring attachments of normal life." Id. (quoting Morrissey, 408 U.S. at 482). See also Garcia v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *3 (E.D. Cal. July 14, 2025) (recognizing that individuals subject to conditional release possess a liberty interest in their continued release); Board of Pardons v. Allen, 482 U.S. 369, 377-81 (1987) (recognizing that governmental action can create a liberty interest protected by the Due Process Clause); Johnson v. Williford, 682 F.2d 868, 873 (9th Cir. 1982) (same); Pablo Sequen v. Kaiser, 800 F. Supp. 3d 998, 1009 (N.D. Cal. 2025) (recognizing that a noncitizen who had spent years living and working in the United States while released had "gain[ed] a foothold in the United States," thereby

strengthening the liberty interest at stake.)

61. Here, Petitioner remained at liberty in his community under an Order of Supervision. Petitioner was able to "be gainfully employed," "be with family and friends," marry, financially support his spouse and three minor children, including his United States citizen daughter, Genesis, who suffers from asthma and requires ongoing medical care, and "form the other enduring attachments of normal life" recognized in Morrissey.

62. Likewise, Petitioner's interest in remaining free from detention "grew even stronger." Riz Juarez. Petitioner likewise gained "a foothold in the United States." Pablo Sequen. As a result, Respondents' revocation of Petitioner's Order of Supervision inflicted the very "grievous loss" the Supreme Court recognized accompanies the withdrawal of previously granted conditional liberty. Morrissey, 408 U.S. at 482.

63. Accordingly, Petitioner's private interest in remaining free from physical restraint is substantial, and the first Mathews factor weighs heavily in Petitioner's favor.

**2. The Risk of an Erroneous Deprivation Is Substantial, and Additional Procedural Safeguards Have Significant Value**

64. The second Mathews factor considers "the risk of an erroneous deprivation" of Petitioner's protected liberty interest through the procedures used and "the probable value, if any, of additional or substitute procedural safeguards." Mathews v. Eldridge, 424 U.S. 319, 335 (1976). As the Supreme Court explained, "[i]n procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." Zinermon v. Burch, 494 U.S. at 125–26

(citing Parratt, 451 U.S. at 451 U.S. 537; Carey v. Piphus, 435 U.S. 247, 435 U.S. 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property"))

65. District Courts have recognized that re-detaining a noncitizen after a lengthy period of release without meaningful notice or an opportunity to be heard creates a substantial risk of erroneous deprivation. In Tzafir v. Bondi, No. 2:25-cv-02126, 2026 WL 74088, at *4 (W.D. Wash. Jan. 9, 2026), the court concluded that the second Mathews factor favored the petitioner where she had remained released under an Order of Supervision for sixteen years, complied with every condition of her supervision, and the Government failed to articulate any changed circumstances or meaningful justification for her re-detention. See also E.A.T.-B. v. Wamsley, 795 F. Supp. 3d 1316 (D. Colo. 2025) (holding that the Government's failure to provide adequate notice of the reasons for re-detention and a meaningful opportunity to respond created a significant risk of erroneous deprivation).

66. The same risk is present here. Petitioner was not provided notice of the reasons for revocation, was not informed that he had violated the conditions of his supervision, and was not advised of any changed circumstances warranting his re-detention. As a result, Petitioner was deprived of his conditional liberty without any meaningful opportunity to contest the factual or legal basis for that deprivation.

67. The value of additional procedural safeguards was substantial. Notice of the reasons for revocation, a prompt informal interview, and an opportunity to respond would have significantly reduced the risk of an erroneous deprivation by permitting Petitioner to challenge the asserted basis for revocation before his continued detention. Indeed,

Respondents' own regulations required those very procedures. See 8 C.F.R. § 241.4(l). Respondents' failure to provide the procedures required by due process and prescribed by their own regulations substantially increased the risk of an erroneous deprivation of Petitioner's liberty interest.

68. Accordingly, the second Mathews factor therefore weighs heavily in Petitioner's favor.

**3. The Government's Interest Does Not Outweigh Petitioner's Interest in Constitutionally Adequate Procedures**

69. The third Mathews factor considers "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

70. The Government has legitimate interests in ensuring a noncitizen's appearance at future immigration proceedings and protecting the community. Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Those interests, however, are not absolute. As the Ninth Circuit explained, "[d]eprivations of physical liberty are a pervasive feature of our current system of immigration enforcement. While the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

71. Courts applying the third Mathews factor have likewise recognized that the Government's interest is diminished where a noncitizen has remained released under an Order of Supervision for many years, complied with every condition of supervision, and poses no danger to the community. See Tzafir v. Bondi, No. 2:25-cv-02126, 2026 WL 74088, at *4

(W.D. Wash. Jan. 9, 2026) (concluding that the Government's interest in detention was low where the petitioner had remained released under an Order of Supervision for sixteen years, complied with her supervision, and posed no danger to the community). Likewise, the additional procedures required by due process impose little administrative burden. As one court observed, "[i]n immigration court, custody hearings are routine and impose a 'minimal' cost." Carballo v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025) (quoting Doe v. Becerra, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025)).

72. Here, Respondents' interest in ensuring Petitioner's appearance is minimal. Nothing in the record suggests that Petitioner ever absconded, failed to appear as directed, or otherwise presented a risk of flight. To the contrary, since his release in 2017, Petitioner consistently and faithfully complied with ICE's reporting requirements by voluntarily appearing at the ICE ERO Miramar office on November 21, 2017; November 21, 2018; November 22, 2019; January 21, 2020; November 30, 2021; November 29, 2022; November 29, 2023; November 29, 2024; December 23, 2025; December 27, 2025; and June 27, 2026.

73. Respondents' interest in protecting the community is likewise minimal. Petitioner has no criminal history, has never been charged, or convicted of a criminal offense, and Respondents have never alleged that he poses a danger to the community. Like the petitioner in Tzafir, Petitioner's lengthy compliance with the conditions of his supervision and the absence of any danger to the community substantially diminish Respondents' interests in his continued detention.

74. Nor would providing the constitutionally adequate procedures required by the Due Process Clause and prescribed by 8 C.F.R. § 241.4(l) have imposed a significant fiscal or administrative burden. Rather, at most, those procedures would have imposed a "minimal" cost. Carballo v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025) (quoting Doe v. Becerra, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025))

75. Accordingly, the third Mathews factor therefore weighs in Petitioner's favor.

76. Balancing the three Mathews factors, Petitioner has demonstrated that his liberty interest is substantial, the risk of an erroneous deprivation is significant, and the Government's interest does not outweigh his interest in receiving constitutionally adequate procedures before being deprived of that liberty. Accordingly, Respondents violated the Due Process Clause of the Fifth Amendment by revoking Petitioner's Order of Supervision and continuing his detention without constitutionally adequate procedures.

## COUNT II

## Respondents' Reliance on Petitioner's Purportedly Imminent Removal Violates the Governing Regulations

77. Respondents presently continue to detain Petitioner under a reinstated removal order and have informed him that they intend to remove him to Honduras. Petitioner, however, expressed a fear of persecution or torture when DHS reinstated his prior removal order on October 17, 2017. The issue presented is whether Respondents may rely upon Petitioner's purportedly imminent removal after Petitioner's expressed fear triggered the mandatory procedures prescribed by the governing regulations, where those procedures have never

been completed.

78. Under 8 C.F.R. § 241.8(a), an immigration officer may reinstate a prior order of removal upon determining that the noncitizen has been subject to a prior order of removal, is the same person who was previously removed, and unlawfully reentered the United States. Once those determinations are made, "the alien shall be removed under the previous order of exclusion, deportation, or removal." 8 C.F.R. § 241.8(c). Section 241.8(e), however, provides an exception. It states: "If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture pursuant to § 208.31 of this chapter." 8 C.F.R. § 241.8(e).

79. Section 208.31(a) provides that it applies to a noncitizen "whose removal is reinstated under section 241(a)(5) of the Act and who expresses a fear of returning to the country of removal." Section 208.31(b) further provides that such a noncitizen "shall be referred to an asylum officer for a reasonable fear determination," and that "[i]n the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral." 8 C.F.R. § 208.31(a), (b).

80. A previously executed removal order may be executed again only after it has been reinstated. Morales-Izquierdo v. Gonzales, 486 F.3d 484, 487 (9th Cir. 2007) (en banc). Before DHS may execute a reinstated removal order, it must comply with the procedures prescribed by 8 C.F.R. § 241.8. Galindo-Romero v. Holder, 640 F.3d 873, 877 (9th Cir. 2011); Alcala v. Holder, 563 F.3d 1009, 1013–14 (9th Cir. 2009).

81. In Ortiz-Alfaro v. Holder, 694 F.3d 955 (9th Cir. 2012), the Ninth Circuit explained that although a noncitizen subject to a reinstated removal order generally "shall be removed" under the prior removal order, "§ 241.8(e) creates an exception by which an alien who asserts 'a fear of returning to the country designated' in his reinstated removal order is 'immediately' referred to an asylum officer who must determine if the alien has a reasonable fear of persecution or torture in accordance with 8 C.F.R. § 208.31." Id. at 958. The court further held that "where an alien pursues reasonable fear and withholding of removal proceedings following the reinstatement of a prior removal order, the reinstated removal order does not become final until the reasonable fear of persecution and withholding of removal proceedings are complete." Id. at 960. The court reached that conclusion because construing the reinstated removal order as final before completion of those proceedings would deprive the noncitizen of judicial review of the reasonable fear determination and "could raise serious constitutional concerns." Id. at 959–60.

82. Here, Petitioner falls squarely within the exception established by 8 C.F.R. § 241.8(e). DHS reinstated Petitioner's prior removal order on October 17, 2017. During that same reinstatement process, Petitioner expressed a fear of persecution or torture if returned to Honduras. On November 7, 2020, the asylum office dismissed Petitioner's Form I-589 application after determining it lacked jurisdiction because of the reinstated removal order and advised Petitioner that his fear claim "will be considered by an asylum officer through the reasonable fear screening process pursuant to 8 C.F.R. § 208.31." Despite that notice, nothing in the record reflects that Respondents immediately referred Petitioner for a reasonable fear determination or that any such determination has occurred, nearly nine

years after Petitioner first expressed his fear of return.

83. Petitioner continued to follow Respondents' instructions. On November 28, 2022, he requested the reasonable fear process. On July 9, 2026, after ICE informed Petitioner that Respondents intended to remove him to Honduras, Petitioner's removal proceedings counsel again notified ICE that Petitioner had asserted a fear of return and reminded Respondents that Petitioner's claim.

84. Because Respondents never completed the reasonable fear proceedings required by 8 C.F.R. §§ 241.8(e) and 208.31, Petitioner's reinstated removal order is not final under Ortiz-Alfaro. Accordingly, Respondents may not execute Petitioner's reinstated removal order. When considered together with Count I, Respondents have not established a lawful basis to continue Petitioner's detention.

**REMEDY**

85. Habeas corpus is the traditional remedy for unlawful executive detention. Munaf v. Geren, 553 U.S. 674, 693 (2008) ("The typical remedy for such detention is, of course, release."); Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020) ("Habeas has traditionally been a means to secure release from unlawful detention."); Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) ("[T]he traditional function of the writ is to secure release from illegal custody."). Congress likewise authorizes district courts to dispose of habeas matters "as law and justice require." 28 U.S.C. § 2243.

86. Immediate release is the appropriate remedy for Petitioner's ongoing unlawful detention. Courts within the Ninth Circuit have granted habeas relief by ordering the immediate release of noncitizens who were unlawfully re-detained after their release under an Order

of Supervision or similar conditions of release. See, e.g., Tzafir v. Bondi, No. 2:25-cv-02126, 2026 WL 74088 (W.D. Wash. Jan. 9, 2026); Diego Francisco v. Noem, No. 2:26-cv-00025 (W.D. Wash. Jan. 8, 2026); Yunhe Bai v. Noem, No. 1:26-cv-03307 (E.D. Cal. June 15, 2026).

87. As demonstrated in Count I, Respondents unlawfully revoked Petitioner's Order of Supervision in violation of the Immigration and Nationality Act, Respondents' implementing regulations, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment. As demonstrated in Count II, Respondents may not lawfully execute Petitioner's reinstated removal order because they failed to comply with the mandatory procedures prescribed by 8 C.F.R. §§ 241.8(e) and 208.31. Respondents therefore lack lawful authority to continue Petitioner's detention.

88. Because Petitioner's continued detention is unlawful, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Respondents to immediately release him from custody under the terms of his previously issued Order of Supervision, or under such other lawful conditions of supervision as the Court deems appropriate.

## CONCLUSION

89. For the foregoing reasons, Petitioner's continued detention is unlawful under the Immigration and Nationality Act, Respondents' implementing regulations, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment.

## PRAYER FOR RELIEF

90. WHEREFORE, Petitioner respectfully requests that this Court:

91. Grant the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2241 and 2243;

92. Issue the writ and order Petitioner's immediate release from immigration custody under the terms of his previously issued Order of Supervision;

93. Pending resolution of this Petition, pursuant to the Court's authority under the All Writs Act, 28 U.S.C. § 1651(a), enjoin Respondents from transferring Petitioner outside the Southern District of California in order to preserve this Court's jurisdiction;

94. Pending resolution of this Petition, pursuant to the Court's authority under the All Writs Act, 28 U.S.C. § 1651(a), enjoin Respondents from removing Petitioner from the United States in order to preserve this Court's jurisdiction and its ability to afford effective habeas relief;

95. Order Respondents to provide Petitioner's counsel with reasonable advance notice of any scheduled proceeding or action affecting Petitioner's custody or removal;

96. Award attorneys' fees and costs to the extent authorized by law; and

97. Grant such other and further relief as the Court deems just and proper.

Dated: July 17, 2026. Respectfully Submitted,

/s/ Theodora E. Adoghe
Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: theodoraadoghe@gmail.com

/s/ Mariana L. Hanna
Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna

402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: mlhlawoffice@yahoo.com

**VERIFICATION**

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that I have read the foregoing Petition for Writ of Habeas Corpus and that the facts stated therein are true and correct to the best of my knowledge.

Executed on July 17, 2026.

/s/ Theodora E. Adoghe
Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: theodoraadoghe@gmail.com

/s/ Mariana L. Hanna
Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: mlhlawoffice@yahoo.com