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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CORAL AICASI, PABLO JAVIER,
Petitioner,

v.

TODD BLANCHE, Attorney General of the U.S.; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; GREGORY J. ARCHAMBEAULT, San Diego Field Office Director, U.S. Enforcement and Removal Operations; Warden, Imperial Regional Detention Facility, in their official capacities,
Respondents.

Case No.: '26CV4690 JO BJW

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR INJUNCTIVE RELIEF

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I. INTRODUCTION

1. Petitioner, Pablo Javier Coral Aicasi ("Pablo"), is currently detained by Respondents in the Imperial Regional Adult Detention Facility ("Imperial") in Calexico, California, in violation of the Fourth and Fifth Amendments to the United States Constitution, as well as the Immigration and Nationality Act ("INA") and its implementing regulations.

2. On about June 29, 2026, Pablo was riding in a car on his way to work with other men, when three cars stopped them with masked men demanding to know if they were citizens. When Pablo did not respond, these individuals—who later proved to be agents from U.S. Immigration and Customs Enforcement ("ICE")—detained them all and placed them in immigration custody.

3. This detention occurred even though years prior—after determining that Pablo was not a danger to the community and was not a flight risk— ICE had previously released Pablo from immigration detention on his own recognizance. Yet prior to arresting Pablo and depriving him of his liberty, ICE made no individualized custody determination nor held any pre-deprivation hearings to show changed circumstances that would justify his re-detention.

4. Now, Pablo has been unlawfully detained at Imperial under Respondents' custody and control for over a month. During his time detained, he has faced concerning conditions, from lack of privacy to lack of food. This detention violates the Fourth and Fifth Amendments to the U.S. Constitution.

5. For these reasons, Pablo brings this action seeking a writ of habeas corpus requiring that he be immediately released.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, et seq. (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); 28 U.S.C. § 1651 (All Writs Act); and Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

7. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

8. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States, and Petitioner is detained in this district. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024).

III. EXHAUSTION

9. The usual requirement that remedies be exhausted prior to filing in federal court should be waived in this case, because administrative remedies are both inadequate and futile. For habeas claims, exhaustion requirement is not jurisdictional; it is prudential. *Singh v. Holder*, 638 F.3d 1196, 1203 n. 3 (9th Cir. 2011) (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). "[A] court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

10. The administrative remedies that potentially would be available to Pablo are seeking a bond hearing before the immigration judge assigned to his case and, if denied, apply to the BIA. Seeking a bond hearing, however, would be futile, and it would not adequately address his injury.

11. First, Pablo has already faced irreparable injury due to his unlawful detention. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Tinoco v. Noem*, 818 F. Supp. 3d 1141, 1153 (E.D. Cal. 2025). Each day Pablo remains detained, he continues to suffer this injury. *See Do v. Bowen*, No. EDCV 26-01852-KK-AJRX, 2026 WL 1123493, at *5 (C.D. Cal. Apr. 21, 2026) ("Petitioner continues to suffer a likely unconstitutional deprivation of his physical liberty with every passing day pending final adjudication of the underlying Petition. Under these circumstances, no further showing of irreparable injury is necessary.") This is especially true given the circumstances of his detention: Every day in detention he lacks sufficient clothing, he is at risk of getting sick from other detainees, and he is unable to communicate with his family and friends.

12. Second, in current circumstances, administrative remedies are futile. In the past year especially, courts around this country have found that there is "mounting evidence that bod determination hearings conducted in Immigration Court under § 1226(a) have preordained outcomes." *Singh v. Valdez*, No. 26-CV-1109-WJM, 2026 WL 890240, at *5 (D. Colo. 2026) ("[Federal] courts across the country have, with increasing frequency, ceased 'order[ing] even initial bond hearings . . . because Respondents' conduct can no longer be attributed to mere negligence or ineptitude . . . and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through post-hoc justifications."); see also *R.A.N.O. v. Wofford*, 820 F. Supp. 3d 1094, 1105–06 (E.D. Cal. 2026); *Luis Alberto R.C. v. Murray*, 817 F. Supp. 3d 917, 927 (E.D. Cal. 2025) (ordering immediate release when Petitioner was redetained, because any hearing for release should have occurred prior to redetention).

13. Accordingly, the only remedy available to Pablo is to seek an order from this court for his immediate release from detention. [1]

IV. PARTIES

14. The Petitioner is Pablo Javier Coral Aicasi, a 27-year-old national of Ecuador, who fears that he will suffer persecution if returned to his country of origin. Pablo has been detained since approximately June 29, 2026, and he is currently detained under the control and custody of Respondents and their agents at the Imperial.

15. Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States. As the Attorney General, Respondent Blanche is the legal custodian of Pablo.

16. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Respondent Mullin a legal custodian of Pablo.

17. Respondent David Venturella is sued in his official capacity as the Acting Director and Senior Official Performing the Duties of Director of ICE. As the Acting Director of ICE, Respondent Venturella is a legal custodian of Pablo.

18. Respondent Gregory J. Archambeault is sued in his official capacity as the Acting Field Office Director for ICE Enforcement and Removal Operations ("ERO") in San Diego, California. As the ERO San Diego Field Office Director, he is Petitioner's immediate custodian, responsible for his

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[1] While a recent ruling in *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. 2026) has determined that, contrary to recent DHS policy, individuals in circumstances similar to Pablo are indeed eligible for bond, this decision does not render Pablo's petition moot because Pablo's claim is different; he is not asking this court require a bond hearing, instead he "raises a constitutional claim based on the liberty interest that developed during his [two] years on release, and . . . argues that the government may not re-detain him without a showing at a pre-deprivation hearing that he is either a flight risk or a danger to the community." *R.A.N.O. v. Wofford*, 820 F. Supp. 3d 1094, 1099 n. 2 (E.D. Cal. 2026).

detention at Imperial, and is the person with the authority to authorize detention or release.

19. Respondent Jeremy Casey, Warden of the Imperial Regional Detention Center, oversees the day-to-day functioning of Imperial, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Respondent Casey is sued in his official capacity as the Warden of a federal detention facility.

V. LEGAL FRAMEWORK

20. The authority of DHS to detain and remove individuals is found in the Immigration and Nationality Act ("INA")—which has been codified in Chapter 8 of the U.S. Code—as well as the Code of Federal Regulations. Only in limited circumstances is detention mandatory.

21. One such circumstance is when individuals are subject to "expedited removal." 8 U.S.C. § 1225. Persons may be subject to expedited removal depending on the time and location they are apprehended by immigration officials. *Id.*

22. If a person subject to expedited removal indicates an intent to apply for asylum or expresses a fear of persecution, the individual will be referred to an asylum officer, who will make an initial determination as to the credibility of the claim and the likelihood that the individual will face future persecution. 8 U.S.C. § 1225(b)(1)(B)(i). If the asylum officer finds that the individual's fear is not credible or that harm is not sufficiently likely, the officer will make a negative fear determination.

23. If the asylum officer makes a negative fear determination, the noncitizen may elect to have the decision reviewed by an IJ. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). If the IJ disagrees with the asylum officer and determines that the noncitizen *has* met the threshold requirements to establish their fear of persecution, the IJ may vacate the negative credible

fear finding and refer the individual to DHS to initiate traditional removal proceedings. 8 C.F.R. §§ 1208.30, 208.30

24. While undergoing this process, detention of the noncitizen is **mandatory** until the detainee receives a positive credible fear determination or—if they do not receive a positive determination and no review is requested or the determination is affirmed by the IJ—until their removal. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

25. Once an IJ has found an individual to have a sufficiently viable claim to asylum and the individual is placed into traditional removal proceedings, the noncitizen is no longer subject to mandatory detention under 1225(b). Instead, typically, the noncitizen's detention is subject to 8 U.S.C. § 1226. While some noncitizens in this posture—individuals who have been arrested, charged with, or convicted of certain crimes—are subject to mandatory detention under Section 1226(c), that is not the default. Rather, the default detention authority is under Section 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Detention under Section 1226(a) is **discretionary**. *Id.*

26. If an immigration officer elects to use their discretion to release an individual in these circumstances, release may be with a bond or on conditional parole, 8 U.S.C. § 1226(a)(2), "provided that the [noncitizen] . . . demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). "Release [therefore] reflects a determination by the Government that the noncitizen is not a danger to the community or a flight risk." *Karen Dayana M. R. v. Chestnut*, 827 F. Supp. 3d 1348, 1352 (E.D. Cal. 2026) (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)).

27. While DHS may revoke the decision to release a noncitizen, 8 C.F.R. § 1236.1(c)(9), their authority is not absolute. Even where "the decision to detain or release an individual [is] within the government's discretion, the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release].' *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); see also *Karen Dayana M. R.*, 827 F. Supp. at 1355. "Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d at 1032.

28. Accordingly, the Ninth Circuit has repeatedly held that due process, with but one exception, requires that any future re-detentions of a previously paroled individual require a hearing *prior* to any re-detention. *R.A.N.O.*, 820 F. Supp. 3d at 1105–06 ("The Court concludes that a pre-deprivation hearing is necessary to satisfy due process."); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("'[T]he 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.'") (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), ("[T]he Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty . . . ."); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1017 (S.D. Cal. 2019).

29. Because of the released individual's liberty interest, the government may only violate the pre-detention determination requirement where the government provides "evidence of urgent concerns or [where there is] an especially strong government interest to justify a post-deprivation

hearing." *R.A.N.O.*, 820 F. Supp. 3d at 1105–06 (citing *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1035-37 (N.D. Cal. 2025)); see also *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 59–61 (1993) ("We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event, such as executive urgency.") In such cases, however, the Regulations (as well as the Fourth Amendment) require that a post-deprivation hearing should be conducted within 48 hours of detention. See 8 C.F.R. § 287.3(d); see also *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).

VI. STATEMENT OF FACTS

30. Pablo is currently detained by Respondents at the Imperial Regional Detention Center ("Imperial") in Calexico, California.

31. **Pablo fled Ecuador to escape political violence.** A national of Ecuador, Pablo was forced to flee his country at the age of 22. [redacted]

[redacted]

Shortly thereafter, Pablo made the decision to flee the country. After entering the United States on or around May of 2024, Pablo surrendered himself to immigration officials, seeking asylum.

32. **Pablo was placed expedited removal and underwent the credible fear process**. After requesting asylum, Pablo was interviewed by an official from the U.S. Customs and Immigration Service ("USCIS"), who determined that Pablo did not demonstrate a sufficient fear of harm. Pablo then requested an IJ review this decision, and, on May 8, 2024, **the IJ**

vacated the officer's negative credible fear determination, finding that Pablo had indeed demonstrated a significant possibility of being persecuted or tortured in Ecuador. The IJ then referred Pablo's case to DHS, so they could initiate removal proceedings against him.

33. **In June of 2024, DHS released Pablo on his own recognizance.** When DHS released Pablo, the order issued to him stated that he was being released on his own recognizance pursuant to Section 236 of the INA, provided that he comply with the enumerated conditions. These conditions included attendance at ICE check-ins and immigration court hearings, as well as not committing crimes or associating with gangs.

34. Upon release, Pablo moved to Maryland to live with his cousin. His first week in town, he joined a local church. Over the next two years, Pablo settled into his life in the United States, attending church regularly, volunteering in the community, working, and abiding by the terms of his release.

35. At no point in those two years did ICE purport that Pablo violated any of the conditions of his release. At no point has any government agency held any hearing to determine whether Pablo's parole was to be revoked and if so, on what basis.

36. **In June, Pablo was detained by ICE while on his way to work.** On or about June 29, 2026, Pablo was sitting in the back seat of a car with five other men as they drove to work. As the car traveled through a tunnel, an unmarked car pulled in front of them, another unmarked car came up to their side, and a third car remained behind them. As they were nearing the exit of the tunnel, the second car began veering into Pablo's car's lane, forcing the driver to swerve to avoid a collision. The first car slammed on its brakes. The car behind began turning on what appeared to be the lights

of a police car. Pablo's car stopped, and all three surrounding cars stopped as well.

37. Immediately, approximately six men exited the three vehicles. Most of the men wore face masks, none of the men were in official uniform except for a vest that said "ICE." As the men approached Pablo's car, they yelled, "Are you citizens? Do you have green cards?" Nobody inside the car responded.

38. The men circled the car, and opened all four doors, telling Pablo and his friends to get out. Again, the officers asked if they were citizens. One of Pablo's friends responded, "Do I have to answer your questions?" The officer said "Yes." Pablo's friend then explained that though he wasn't a citizen, he was already in removal proceedings and in the process of obtaining status. The officer said, "I don't care about that."

39. The officers asked again if the six men were citizens, and again no one responded. The officers then placed all six men in handcuffs and ushered them into their vehicles.

40. **At no point did any officer ask Pablo a direct question.** At no point did Pablo speak to any of the officers. The officers did not purport to have any warrant for Pablo's arrest.

41. Pablo was first taken to an unfamiliar building. He was never told where he was. There, one of the officers scanned Pablo's face with his phone. Pablo's immigration information, including his name, address, and case status, then populated. Shortly after, officers asked Pablo and his friends if they would rather "self-deport" or talk to a judge. Pablo elected to be seen by a judge.

42. Pablo was then taken to a holding cell, where he was kept for the next five days. Pablo estimates that the cell held about twenty other men. The cell had no beds; everyone was made to sleep on the floor. They were not given

blankets. They were not given sweatshirts until the third day. There was no separate bathroom—the one toilet was in full view of the other men.

43. A sign on the wall of the cell stated that the maximum time any person could be held was 48 hours. In fact, many men were released within that timeframe, but only once they agreed to sign away their right to have their case heard by a judge. Pablo and his friends never agreed to waive that right, and as a result they remained in that cell for five straight days.

44. **On the fifth day, Pablo was again shackled—by the wrists, by the waist, and by the feet—and placed on an airplane.** He was flown from Newark to San Diego with a stop in Arizona. At no time was he unshackled. He felt pain in his wrists for days afterwards.

45. Pablo was then taken to Imperial. Upon entry, he was only given one shirt, one pair of pants, and a couple pairs of socks and underwear. The requests he made for more shirts, socks, pants, and underwear were never answered.

46. **Pablo now lives in a cell block that houses at least forty men.** In this cell block, people are often sick, and when they are, they are not removed from the general population nor given medical masks. When Pablo had a fever, he was not given adequate medical attention. He suffers sleepless nights, listening to the chatter, snores, and screams of his fellow detainees.

47. Unable to attend church in detention, he has formed a make-shift prayer group with several other detainees. They read the bible, pray, and sing together. Pablo uses his faith to dull the pain of being detained.

48. Pablo's ability to communicate with the outside world is limited. He is charged for any phone calls he makes. His family members struggle to add money to the phone program, as the instructions are only provided in English. Even if they could manage the system, they lack the funds to speak to him regularly.

VII. GROUNDS FOR RELIEF

A. First Claim: The Government Has Violated Pablo's Right to Procedural Due Process.

49. Pablo realleges and incorporates by reference the above paragraphs.

50. By re-detaining Pablo without process, the government violated his right to due process under the Fifth Amendment.

51. To determine whether a civil detention has violated an individual's due process rights, courts consider the following three factors ("*Mathews* factors"), as set forth in *Mathews v. Eldridge*:

> (1) "the private interest that will be affected by the official action;"
>
> (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and
>
> (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

424 U.S. 319, 335 (1976). Applying the circumstances of Pablo's detention to this test indicates that the government has indeed infringed upon his constitutional rights.

1. Factor one: the private interest.

52. At stake for Pablo is "the most elemental of [his] liberty interests." *Lara v. Noem*, No. 5:25-CV-3072-ODW (JCX), 2025 WL 3255001, at *3 (C.D. Cal. Nov. 19, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.") Accordingly, courts have treated such an elemental interest as "clearly weighty." *Lara v. Noem*, 2025 WL 3255001 at *3.

53. That Pablo's detention is based on his lack of immigration status does not render this violation any less severe. The interest in one's freedom applies to "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, 693 (2001).

54. This interest is further strengthened where the noncitizen had been previously released from detention and complied with all conditions of release. "[A]lthough prisoners may not have a constitutional right to be assessed for parole, parolees who have already been released have a constitutional due process right to a hearing prior to being re-incarcerated." *Guillermo M. R.*, 791 F. Supp. 3d at 1031 (finding "no principled reason" why the liberty interest of an individual released from immigration detention would be less than an individual granted parole from prison); see also *Young v. Harper*, 520 U.S. 143, 147, 149, 152–53 (1997).

55. The first *Mathews* factor thus favors Pablo's claim, as the private interest involved is especially weighty.

2. Factor two: the risk of erroneous deprivation and value of alternate procedures.

56. The second *Mathews* factor also favors Pablo. Pablo was never afforded notice of the revocation of his parole nor afforded any process whatsoever to determine if his re-detention was warranted. *See Mathews*, 424 U.S. at 333–34 (finding procedural due process requires notice and an opportunity to be heard). "'[T]he risk of an erroneous deprivation [of liberty] is high where, as here, [the Petitioner] has not received any bond or custody redetermination hearing.'" *Karen Dayana M. R.*, 827 F. Supp. 3d at 1356 (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025)); see also *Luis Alberto R.C.*, 817 F. Supp. 3d at 927 (finding "the risk of erroneous deprivation is significant" where the

Petitioner was released under 8 U.S.C. § 1226 and the government detained him without alleging he violated conditions of his release or otherwise posed a flight risk or danger to the community).

57. Pablo was never offered any pre-deprivation hearing, let alone a post-deprivation hearing, as mandated by the Fourth Amendment as well as the Regulations. *See* sections VII(C)-(D), infra. No neutral arbiter has determined whether the facts show that he is a flight risk or danger to the community. No neutral arbiter has determined that circumstances had materially changed sufficiently to justify revocation of parole. Worse still, at no point—not before his arrest, during his arrest, or after his arrest—have the Respondents given Pablo any particularized justification for his detention.

3. Factor three: the government's interest.

58. Finally, the government's interest in detaining Pablo is not just low—it is nonexistent. "[A]lthough the government has a strong interest in enforcing the immigration laws," its interest in re-arresting someone "without a hearing is low." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); see also *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093–95 (E.D. Cal. 2025) ("In immigration court, custody hearings are routine and impose a 'minimal' cost").

59. In fact, "[t]he government has no interest in detaining an individual for immigration law violations beyond (1) ensuring a noncitizen's appearance at immigration proceedings and (2) preventing danger to the community." *Zadvydas*, 533 U.S. at 690–92 (civil immigration detention is "nonpunitive in purpose and effect."); see also *Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 31 (2003); *Zapata v. Kaiser*, 801 F.Supp.3d 919, 939 (N.D. Cal. 2025) (quoting *Hernandez*, 872 F.3d at 990, 994.) Detaining a noncitizen to effectuate any other goal is unconstitutional. *See Jackson v. Indiana*, 406 U.S. 715, 737 (1972);

see also *Foucha*, 504 U.S. at 79 ("Because 'liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,' the government may imprison people as a preventive measure only within strict limits") (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

60. The government determined that Pablo was neither a flight risk nor a danger to the community when it released him in 2024 on conditional parole, and it has raised no facts to suggest circumstances have changed. *See Hernandez*, 872 F.3d at 994 ("The government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.")

61. In sum, given the significant liberty interest at stake, the high risk of erroneous deprivation, and the minimal burden to the government of additional procedural safeguards, the government's detention of Pablo violates his right to procedural due process under the Fifth Amendment.

62. The only way to correct this injustice is through immediate release; ordering a bond hearing will not suffice. *See* section III, supra.

B. Second Claim: The Government Has Violated Pablo's Right to Substantive Due Process.

63. Pablo realleges and incorporates by reference the paragraphs above.

64. Even if the process the government provided to Pablo is considered sufficient, the government nevertheless violated his right to *substantive* due process. Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993).

65. The interest at stake—Pablo's freedom from being detained by the government—is indeed a fundamental liberty interest. *See* section VII

(A)(1) supra. The scope of the infringement, however, has not been narrowly tailored; nor does the infringement serve a compelling state interest.

66. Meanwhile, the government does not have a compelling interest in detaining Pablo, nor did it have one in re-detaining him in the first place. The government's interest in civil immigration detention is limited to "(1) ensuring a noncitizen's appearance at immigration proceedings and (2) preventing danger to the community," *Zadvydas*, 533 U.S. at 690–92, and DHS has already determined that Pablo's liberty does not threaten these interests. See section VII(A)(2), supra. Absent any showing of changed circumstances, the government cannot purport to have any interest in his detention, let alone a "compelling" one. And, as discussed in section VII(A)(2), supra, the government has not even attempted to make such a showing.

67. Where the government has "asserted no individualized justification—let alone a special or compelling justification—to continue to deprive [noncitizens] of their physical liberty," the substantive due process rights of those noncitizens are violated. *Jacobo Ramirez v. Noem*, 817 F.Supp.3d 1037 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection, some previously released on recognizance, likely to prevail on substantive due process claim). As a result, the appropriate remedy is his immediate release. *See Soriano v. Hernandez*, 830 F. Supp. 3d 1071, 1081 (W.D. Wash. 2026) (finding immediate release to be an appropriate remedy where there is no basis for detention); *Tinoco*, 818 F. Supp. 3d at 1153.

C. Third Claim: The Government Has Violated the Fourth Amendment

68. Pablo realleges and incorporates by reference the paragraphs above.

69. Respondents' warrantless re-arrest of Pablo by unidentifiable, masked agents and their refusal to make any probable cause determination,

violated the Fourth Amendment, the INA, and implementing regulations. Thus, this Court should order his immediate release.

70. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

71. As a general matter, the Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein*, 420 U.S. at 114. In the immigration context, there is a strong preference that this determination be made through warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). Where an individual has been detained based on probable cause in the past, that determination is extinguished as soon as they are released. *See Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (holding that re-arrest for immigration detention required a new warrant after previous release from immigration detention on bail); see also *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) ("It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable.").

72. However, immigration agents may conduct warrantless arrests where the agents have probable cause to believe the person is violating the immigration laws *and* that the person "is likely to escape before a warrant can be obtained," *i.e.*, is a flight risk. 8 U.S.C.§ 1357(a)(2); *see also Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025).

73. "Probable cause requires a 'substantial probability' based on facts related to the individual." *Id.* (quoting *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking)). Where

agents do not have a warrant to arrest an individual, the probable cause determination can come after the arrest, in the form of a prompt judicial probable cause determination. *See id.* The post-detention determination must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

74. As far as Pablo knows, there was no warrant for his arrest. During his arrest, no agent told him that they were acting pursuant to a warrant, nor did they address him by name, nor did they provide him with any paperwork that may have been a warrant.

75. As such, the agents were required to undergo a probable cause hearing within 48 hours. This, however, did not happen. When Pablo was arrested, he was taken to a holding cell and kept there for five days straight. After those five days, he was flown across the country to Imperial. At no point did he receive any hearing to determine if there was any reason to detain him.

76. Had there been such a hearing, DHS would not have been able to demonstrate it had probable cause to believe Pablo was violating immigration laws or that he was a flight risk. In fact, DHS had already determined he was *not* a flight risk or danger. And in the two years between that initial determination and Pablo's subsequent arrest, he had in fact become *less* of a flight risk—at the moment of his seizure, Pablo was living at a stable home address, which he had provided to DHS in the course of his immigration proceedings, had been in the United States for over two years, and had built strong ties to his community through his church participation. *See Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) ("Courts have … made the self-evident finding that the likelihood of escape is lower

when the individual has resided in the country for a lengthy period of time and has strong community ties.").

77. Moreover, there were no facts on the day of Pablo's arrest that would have given the ICE agents probable cause to think he was a noncitizen or was a flight risk. Pablo was a passenger in a car at the time of his arrest. Pablo fully complied with the ICE officers and in no way tried to disobey or flee. Pablo made no statements. The agents did not directly ask Pablo any questions; the agents did not find any evidence on his person relating to his immigration status. ICE didn't even learn of his identity until they had already seized him, handcuffed him, and transported him to a detention facility, where his face was scanned with a cell phone.

78. Just as with the due process violation, the appropriate remedy for the Fourth Amendment violation is immediate release. Courts across the country have ordered the release of noncitizens where the government failed to follow these requirements. *See Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025) (recommending immediate release because petitioner's "current detention violates her constitutional rights because her arrest was in violation of her Fourth Amendment rights"), report and recommendation adopted sub nom; *Rocha Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *A.B.D. v. Wamsley*, No. 25-cv-02014, 2026 WL 178306, at *11 (D. Or. Jan. 22, 2026) (ordering release where ICE officers "executed unlawful warrantless arrests that violated the INA, the APA, and Petitioners' Fourth Amendment rights"); *Urquilla-Ramos v. Trump*, No. 2:26-cv-00066, 2026 WL 475069, at *5–16 (S.D.W.V. Feb. 19, 2026) (finding petitioner's Fourth Amendment rights were violated when he was arrested by a group of masked agents and ordering release)

D. Fourth Claim: The Government Has Violated 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.3(d)

79. Even if the failure to hold a prompt custody determination hearing is not seen to have violated the Fourth Amendment, it did violate the Regulations. *See* 8 C.F.R. § 287.3(d) ("[A] [custody] determination will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance[.]") The Regulations dictate that at this custody determination hearing, the immigration officer make findings as to whether "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8).

80. As discussed in Section XX, supra, the Respondents failed to meet these requirements. Such a failure justifies Petitioner's release.

VIII. PRAYER FOR RELIEF

81. Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

(b) Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the pendency of these proceedings;

(c) Issue an Order directing Respondents promptly to show cause why this Petition should not be granted;

(d) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from custody subject to no conditions;

(e) Order that Respondents may not re-detain Petitioner without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances; and

(f) Order all other relief that the Court deems just and proper.

DATED this seventeenth day of August 2026.

Respectfully submitted,

/s/ Steven Shafer

Esperanza Immigrant Rights Project

Pro Bono Attorney for Petitioner

Respectfully submitted,

/s/ Eimile Nolan

Esperanza Immigrant Rights Project

Pro Bono Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND L. R. 83-16.2

Counsel verifies that this petition is authorized by Petitioner. It does not personally bear Petitioner's signature because of the significant difficulty for counsel in meeting with Petitioner in person and because mailing the petition to Petitioner and having it mailed back would cause delay that would only extend the period of his unlawful detention. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from the government, Petitioner, and/or Petitioner's current pro bono attorney.

DATED this seventeenth day of August 2026.

Respectfully submitted,

/s/ Steven Shafer
Senior Managing Attorney

/s/ Eimile Nolan
Senior Staff Attorney
Esperanza Immigrant Rights Project
Pro Bono Attorneys for Petitioner

PAGE COUNT CERTIFICATION

Counsel verifies that the foregoing brief in support of this petition, contained in this document, is 25 pages in length excluding the cover page, tables of contents and authorities, and verifications, which complies with the page limit set forth in CivL.R. 7.1(h).

/s/ Steven Shafer
/s/ Eimile Nolan
Esperanza Immigrant Rights Project
Pro Bono Attorneys for Petitioner