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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Eliseo LOPEZ-GAYTAN,

Petitioner,

v.

Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; Todd BLANCHE, Acting U.S. Attorney General; David VENTURELLA, Acting Director, Immigration and Customs Enforcement; Patrick DIVVER, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Christopher J. LAROSE, Warden, Otay Mesa Detention Center; U.S. DEPARTMENT OF HOMELAND SECURITY; IMMIGRATION AND CUSTOMS ENFORCEMENT and EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. '26CV4754 RBM DDL

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

PETITIONER DHS NO.: [redacted]

INTRODUCTION

1. Petitioner, Eliseo Lopez-Gaytan, a citizen of Mexico, is in the physical custody of Respondents at Otay Mesa Detention Center in San Diego, California. He has been in the custody of U.S. Immigration and Customs Enforcement (ICE) since being detained pursuant to a warrantless arrest on August 12, 2026, by a roving ICE patrol.

2. Mr. Lopez, by and through his undersigned counsel, hereby files this Petition for Writ of Habeas Corpus to compel his immediate release from Respondents' custody.

3. Mr. Lopez was previously detained by the U.S. Department of Homeland Security (DHS) on May 21, 2018. On the same day, May 21, 2018, the DHS released Mr. Lopez on an Order of Release on Recognizance.[1] No material change in facts or circumstances has occurred since the DHS released him on his own recognizance over eight years ago in May 2018.

4. On May 21, 2018, the DHS issued Mr. Lopez a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States without admission or parole.

5. On June 13, 2024, the Immigration Judge granted Mr. Lopez's unopposed motion to terminate the removal proceedings on the basis that the Notice to Appear was defective.

6. Mr. Lopez must be released from custody unless and until DHS proves to a neutral. adjudicator, by clear and convincing evidence, that there are changed circumstances justifying Mr. Lopez's re-detention. DHS will not be able to do so. Due process requires the government to provide noncitizens with notice and a hearing *prior to* re-detention; re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

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[1] 8 U.S.C. § 1226(a) "provides that immigration officers may, in their discretion, detain noncitizens or may release them on conditional parole (also called an Order of Release on Recognizance, or 'OREC'"). *Ledesma Gonzalez v. Bostock*, CASE NO. 2:25-cv-01404-JNW-GJL, 2025 WL 2841574, at *3 (W.D. Wash. Oct. 7, 2025).

7. Because no circumstance justified Mr. Lopez's re-detention, and his detention is unlawful and unconstitutional, the Court should accordingly order Mr. Lopez's immediate release, and order that Respondent DHS must release Petitioner within one day.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, California.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702 (waiver of sovereign immunity), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is currently detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Eliseo Lopez-Gaytan was arrested by ICE agents on or about August 13, 2026 in Escondido, California, and has been in immigration detention since that date. Since Petitioner's arrest, ICE is holding him without bond.

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

17. Respondent David Venturella is the Acting Director of Immigration and Customs Enforcement, a federal law enforcement agency within the Department of Homeland Security. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Venturella exercises control over and is custodian of persons held in ICE facilities nationally. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. At all times relevant to this Complaint, Respondent Venturella was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

18. Respondent Patrick Divver is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities in the San Diego Field Office. He is Petitioner's immediate custodian and is responsible for Petitioner's detention. He is sued in his official capacity.

19. Respondent Christopher J. LaRose is employed by CoreCivic, Inc., as Warden of the Otay Mesa Detention Center in San Diego, California. He has immediate physical custody of Petitioner. He is sued in his official capacity.

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

21. Respondent Immigration and Customs Enforcement (ICE) is the agency within DHS responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

23. "The Fifth Amendment guarantees that that '[n]o person shall be…deprived of life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. Amend. V). "[T]he Due Process Clause applies to all 'persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).

24. Immigration detention is a form of civil confinement, and thus "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 423 (1979).

25. Immigration detention that is punitive in purpose and effect violates the Due Process Clause. *Zadvydas*, 533 U.S. at 690. The only legitimate use of immigration detention is when, based on an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court, or they are a danger to the community. *Id.*

26. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

27. The Immigration and Nationality Act establishes various procedures through which individuals may be detained pending a decision on whether or not the noncitizen is to be removed. 8 U.S.C. § 1226(a).

28. Immigration officers may only conduct warrantless arrests in limited circumstances. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) "is likely to escape before a warrant can be obtained for his arrest". 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii). An officer "has

reason to believe" when they have the equivalent of "the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

29. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.

30. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

31. Courts in this District have consistently held that noncitizens who have been released on their own recognizance from immigration custody pending removal proceedings have a constitutionally protected liberty interest in remaining out of immigration custody. Courts in this district and across the country have recognized a noncitizen's significant liberty interest in continued freedom after release on recognizance from DHS custody. *See e.g. Garcia-Henriquez v. LaRose*, No. 26-cv-00249-RBM-BJW, 2026 WL 323328, at *2 (Feb. 6, 2026) (finding that Petitioner released on Order of Release on Own Recognizance who lived in the U.S. for years before being re-detained had a protected liberty interest in remaining free from detention); *Xie v. LaRose*, No. 26-cv-03649-RBM-MSB, 2026 WL 92066, at *2 (Jan. 13, 2026) (same); *Naveen v. LaRose*, No. 25-cv-3689 JLS (AHG), 2025 WL 3771900, at *2 (Dec. 31, 2025) (noncitizen released on conditional parole has a liberty interest in remaining out of custody); *Ortiz Reyes v. LaRose*, No. 25-cv-2938 JLS (VET), 2025 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025) ("Petitioner has a significant liberty interest in remaining out of custody pursuant to his OR release."); *Chancely Fanfan, et al. v. Noem*, No. 25-cv-3291, 2025 WL 3563739, at *3 (S.D. Cal. Dec. 12, 2025) ("District courts in the Ninth Circuit consistently hold that if DHS has released a noncitizen pending civil removal proceedings, the noncitizen has a protected liberty interest in remaining out of immigration custody." (internal quotation marks and citations omitted)); *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) ("The core issue implicates a significant liberty interest: continued freedom after release on own recognizance."); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953, at *2 (S.D. Cal. Nov. 19, 2025) ("Petitioner was apprehended by immigration officials, released on his own recognizance, and then re-detained

without notice or a hearing, which violates the due process to which he is entitled."); *Faizyan v. Casey,* No. 25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) ("Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole."); *see also Valencia v. Zapata v. Kaiser*. No. 25-cv-07492-RFL, 2025 WL 2578207, at *2 (Sept. 5, 2025) (Northern District of California granted a TRO for a group of noncitizens who were detained by U.S. immigration officials, released on their own recognizance, and then re-detained by ICE without explanation, holding that the petitioners had a protectable liberty in remaining out of custody and thus had to be given notice and a hearing prior to being taken back into custody); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

FACTS

32. Petitioner Eliseo Lopez-Gaytan, 40, is a native and citizen of Mexico.

33. Before his detention, Mr. Lopez was residing in Escondido, California. Mr. Lopez has been residing in the United States since approximately 2004, over 20 years.

34. Mr. Lopez has four United States citizen children, three of whom are minors. [Exh. G, Birth Certificates of Lopez Children.]

35. Mr. Lopez has no criminal history.

36. During 2005 and 2006, Mr. Lopez was subjected to administrative voluntary departure to Mexico on three separate occasions.[2] [*See* Exhs. B and C, Form I-213, Record of Deportable/Inadmissible Alien, dated May 21, 2018 and EARM Search Results.] Mr. Lopez last entered the U.S. without inspection in or about September 2006 and he has remained in the U.S. since that time with no departures. [*See* Exh. F, Notice to Appear, dated August 13, 2026.]

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[2] In or about April 2005, Mr. Lopez departed to Mexico. He attempted to reenter the United States without inspection in or about June 2005 and was apprehended by U.S. Customs and Border Protection agents (CBP) and subjected to administrative voluntary departure. In or about June 29, 2006, Mr. Lopez was detained by immigration officials and subjected to administrative voluntary return to Mexico. He was again subjected to administrative voluntary return when he attempted to reenter the U.S. without inspection in or about August 2006.

37. On May 21, 2018, Mr. Lopez was arrested and detained by ICE. [Exh. B, Form I-213, Record of Deportable/Inadmissible Alien, dated May 21, 2018.]

38. On May 21, 2018, the DHS issued Mr. Lopez a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States without admission or parole. [Exh. D, Notice to Appear, dated May 21, 2018.]

39. On the same day, May 21, 2018, the DHS released Mr. Lopez on an Order of Release on Recognizance. [Exh. A, ICE Form I-220A, Order of Release on Recognizance.]

40. On June 13, 2024, the Immigration Judge granted Mr. Lopez's unopposed motion to terminate the removal proceedings on the basis that the Notice to Appear was defective. The DHS did not oppose the motion. [Exh. E, Order of the Immigration Judge Terminating Removal Proceedings, dated June 13, 2024.]

41. On information and belief, on the morning of August 12, 2026, Mr. Lopez was arrested and detained outside his home pursuant to a warrantless arrest by ICE in Escondido, California

42. On information and belief, none of the agents ever provided Mr. Lopez with a warrant or any document of any kind.

43. On information and belief, the agents told Mr. Lopez that they were arresting him because he "has an immigration problem."

44. On information and belief, none of the agents ever asked Mr. Lopez any questions about his family, employment, or community ties.

45. On information and belief, the ICE agents chained Mr. Lopez's arms and legs; he asked the agents why they have such an attitude as he was cooperating with them and had always cooperated with immigration officials, but the agents offered no response or explanation.

46. On information and belief, following his transfer to the Otay Mesa Detention Center, ICE issued a custody determination to continue Mr. Lopez's detention without an opportunity to post bond or be released on other conditions.

47. On August 13, 2026, the DHS issued Mr. Lopez a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as noncitizen present in the United States without admission or parole, and have initiated removal proceedings against him in the Immigration Court. [Exh. F, Notice to Appear, dated August 13, 2026.]

48. Mr. Lopez is currently detained at the Otay Mesa Detention Center.

49. Mr. Lopez is scheduled to appear for a Master Calendar Hearing before the Otay Mesa Immigration Court on August 25, 2026.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

50. With regard to habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). 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." *Id.* (quoting *Liang v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

51. No statutory exhaustion requirements apply to Mr. Lopez's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See American-Arab Anti-Discrimination Comm. V. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (Finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review constitutional claims); *In re Indefinite Det. Cases*, 83 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

52. Mr. Lopez is the main financial provider for his family. His family is at risk of suffering extreme financial and emotional hardship in his absence. [Exh. H, Letters of Support.]

53. In addition, the irreparable injury Mr. Lopez faces extends beyond a chance at physical liberty. There are several "irreparable harms imposed on anyone subject to immigration detention[.]" *Hernandez*, 872 F.3d at 995. These include conditions threatening the health and safety and the lives of persons in ICE custody.[3]

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[3] "County sues DHS over access to Otay Mesa detention facility: County officials say detainees have reported freezing temperatures, untreated medical conditions and food unfit for human consumption," NBC San Diego, March 10, 2026, available at: https://www.nbcsandiego.com/news/local/county-sues-dhs-over-access-to-otay-mesa-detention-facility/3992889/; *see also* "Deaths of detainees in ICE custody surge under 2nd Trump Administration," ABC News, March 30, 2026, available at: https://abcnews.com/US/deaths-detainees-ice-custody-surge-2nd-trump-administration/story?id=131473647; *see also* "Deaths in ICE Custody Are Growing. 'They Let Him Rot in There,'" New York Times, March 29, 2026, available at: https://www.nytimes.com/2026/03/29/us/ice-detention-deaths-immigrants.html; *see also* "Data: More ICE custody deaths reported in last 6 months than in all of FY 2025," Action 5 News, March 31, 2026, available at: https://www.actionnews5.com/2026/03/31/data-more-ice-custody-deaths-reported-last-6-months-than-all-fy2025/; *see also* "Death rate in ICE immigrant detention centers

FIRST CLAIM FOR RELIEF
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9) –
Abuse of Discretion

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

55. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

56. An action is an abuse of discretion if 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." *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

57. To survive an APA challenge, the agency must articulate "a satisfactory explanation for its action, "including a rational connection between the facts found and the choice made." *Dept. of Com. v. New York*, 139 S. Ct. 2251, 2569 (2019) (citation omitted).

58. By re-arresting and re-detaining Mr. Lopez without consideration of his individualized facts and circumstances, Respondents have violated the APA. There have been no changes to his facts or circumstances that would warrant his re-arrest and re-detention since the DHS released Mr. Lopez on his own recognizance on May 21, 2018.

59. Respondents considered Mr. Lopez's facts and circumstances in May 2018 and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this re-arrest and re-detention over eight years later. The fact that the Respondents already released Mr. Lopez on his own recognizance under the same

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more than doubles under Trump, Reuters analysis finds," Reuters, June 17, 2026, available at: https://www.reuters.com/legal/government/death-rate-ice-immigrant-detention-centers-more-than-doubles-under-trump-reuters-2026-06-17/

facts and circumstances shows that the Respondents do not consider him to be a danger to the community or a flight risk. Over eight years have passed with no intervening violations.

SECOND CLAIM FOR RELIEF.
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Not in Accordance with Law and in Excess of Statutory Authority
Violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii) –
Warrantless Arrest Without Probable Cause or Likelihood of Escape

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

61. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has "reason to believe" that an individual is "likely to escape before a warrant can be obtained for [their] arrest." To meet this requirement, officers must have "grounds for a reasonable belief that they were particularly likely to escape." *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995); *see also Yeleshev v. Larocco*, No. 26-cv-2294, 2026 WL 1353806, at *3 (E.D.N.Y. May 14, 2026) (noting that "the limited circumstances permitting warrantless arrests ... often all turn on the existence of exigent circumstances").

62. Similarly, 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is "likely to escape before a warrant can be obtained."

63. Respondents' warrantless arrest of Petitioner without an individualized determination that Petitioner was "likely to escape" before a warrant is issued is "final agency action" that is "in excess of statutory jurisdiction, authority, or limitations" under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

64. Respondents failed to make any individualized determination regarding whether Mr. Lopez is a flight risk prior to detaining him.

THIRD CLAIM FOR RELIEF

Petitioner's Detention Violates His Fourth Amendment Right Against Unlawful Arrest

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

66. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials.

67. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause.

68. "Further seizure requires a court order or new cause; the original probable cause determination is no justification." *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (internal citations omitted); *see also United States ex rel. Heikkinen v. Gordon*, 190 F.2d 16, 19 (8th Cir. 1951) ("Ordinarily in criminal cases, where one has been released on bail he can not be rearrested in the same jurisdiction on the same charge on which he was originally arrested.").

69. In the immigration context, this prohibition means that a person who immigration authorities released from initial custody cannot be rearrested "solely on the ground that he is subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom.*, *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

70. Here, Respondents' re-arrest and re-detention of Petitioner is premised on nothing more than his unauthorized presence in the United States, which formed the basis of his initial detention and subsequent release from custody in 2018. [*See* Exhs. D and F, Notices to Appear.] No material change in facts or circumstances has occurred since the DHS released Mr. Lopez from custody on his own recognizance over eight years ago in May 2018. Thus, his re-arrest and re-detention violates the Fourth Amendment

FOURTH CLAIM FOR RELIEF

Petitioner's Detention Violates His Fifth Amendment Right to Substantive Due Process

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

72. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the hearing of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

73. This interest in freedom from detention is particularly strong for individuals who are facing re-arrest and re-detention. In *Morrissey v. Brewer,* the Supreme Court held that an

individual who is re-detained after being released- has a "valuable" liberty interest notwithstanding the "indeterminate" nature of his freedom. 408 U.S. 471, 482 (1972). "There is also a meaningful distinction between a challenge to an initial period of detention . . . and a challenge to *re-detention* after a court has previously granted release on bond pending immigration proceedings." *Carballo v. Andrews*, No. 1:25-CV-00978- KES-EPG (HC), 2025 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025) (emphasis in original).

74. Mr. Lopez has resided in the United States for over 20 years. He has never missed any court dates or check-ins with authorities. The DHS was aware of the administrative voluntary returns to Mexico that he suffered in 2005 and 2006 and his unlawful entries when it released him on his own recognizance in 2018. On the date of Mr. Lopez's re-detention on August 12, 2026, he had been on release status for over eight years following an individualized determination. The DHS did not oppose the termination of Mr. Lopez's removal proceedings in 2024 and did not take any action to reinitiation removal proceedings against him at that time. No material change in facts or circumstances has occurred since the DHS released Mr. Lopez on his own recognizance on May 21, 2018. The Respondents have violated Mr. Lopez's Due Process interest in freedom from arbitrary detention.

FIFTH CLAIM FOR RELIEF
Petitioner's Detention Violates His Fifth Amendment Right to Procedural Due Process

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

76. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

77. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decision under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with due process. *See Zadvydas*, 533 U.S. at 698.

78. Once a determination to release an individual from custody is made, the release order may be revisited only if the facts and circumstances warrant revocation or reconsideration. "In practice, the DHS re-arrests individuals only after a 'material' change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention." *Sanchez v. Larose*, No. 25cv2396-JES-MMP, 2025 WL 2770629, at

*3 (S.D. Cal. Sep. 26, 2025) (internal citations omitted); *Van Tran v. Noem,* No. 25-cv-2334-JES-MSB, 2025 WL 2770623, at *6-7 (S.D. Cal. Sep. 29, 2025) (citing *Ying Fong v. Ashcroft,* 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004). "This standard prevent[s] arbitrary revocations and ensure[s] that detention decisions rest[] on individualized assessments of changed circumstances rather than categorical assumptions. *Gonzalez v. Bostock*, 808 F.Supp.3d 1189, 1200 (W.D. Wash. Oct. 7, 2025) (discussing *Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020) (quoting *Ortega v. Bonnar*, 415 F.Supp.3d 963, 968 (N.D. Cal. 2019) (quoting *Matter of Sugay*, 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D. Cal. 2017). Cf. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

79. To determine the procedural protections required to satisfy the Due Process Clause, the Court applies the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court must consider: (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." *Id.* The Ninth Circuit has "assume[d] without deciding" that *Mathews* applies in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 n. 2 (N.D. Cal. Jul. 24, 2025) (collecting cases where the Ninth Circuit has applied *Mathews* in the immigration context).

80. First, Mr. Lopez has a significant liberty interest in remaining at liberty after being released on his own recognizance. "[E]ven 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 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser,* No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ('[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.'); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23,

2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ('Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.')); *see also Guillermo M.R. v. Kaiser*, 791 F. Supp. 1021, 1031-32 (N.D. Cal. July 17, 2025) ("[E]ven if immigration detainees must wait months before a periodic re-review of their detention, those already released on immigration bond… after a neutral adjudicator has performed an individualized assessment and found no flight risk or danger…possess an interest in their continued liberty, which grows over time, and a due process right to a hearing before being re-detained.") Courts in this District have consistently held that noncitizens who have been released from immigration custody on their own recognizance pending removal proceedings have a constitutionally protected liberty interest in remaining out of immigration custody. *See e.g. Garcia-Henriquez v. LaRose*, No. 26-cv-00249-RBM-BJW, 2026 WL 323328, at *2 (Feb. 6, 2026) (finding that Petitioner released on Order of Release on Own Recognizance who lived in the U.S. for years before being re-detained had a protected liberty interest in remaining free from detention); *Xie v. LaRose*, No. 26-cv-03649-RBM-MSB, 2026 WL 92066, at *2 (Jan. 13, 2026) (same); *Naveen v. LaRose*, No. 25-cv-3689 JLS (AHG), 2025 WL 3771900, at *2 (Dec. 31, 2025) (noncitizen released on conditional parole has a liberty interest in remaining out of custody); *Ortiz Reyes v. LaRose*, No. 25-cv-2938 JLS (VET), 2025 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025) ("Petitioner has a significant liberty interest in remaining out of custody pursuant to his OR release."); *Chancely Fanfan, et al. v. Noem*, No. 25-cv-3291, 2025 WL 3563739, at *3 (S.D. Cal. Dec. 12, 2025) ("District courts in the Ninth Circuit consistently hold that if DHS has released a noncitizen pending civil removal proceedings, the noncitizen has a protected liberty interest in remaining out of immigration custody." (internal quotation marks and citations omitted)); *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) ("The core issue implicates a significant liberty interest: continued freedom after release on own recognizance."); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953, at *2 (S.D. Cal. Nov. 19, 2025) ("Petitioner was apprehended by immigration officials, released on his own recognizance, and then re-detained without notice or a hearing, which violates the due process to which he is entitled."); *Faizyan v. Casey,* No. 25-cv-02884-RBM-

JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) ("Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole.").

81. Thus, under the first *Mathews* factor, Mr. Lopez has a protected liberty interest in remaining out of immigration custody after his release by DHS on his own recognizance in 2018. Indeed, he has accrued a substantial liberty interest after having been freely and openly living, working, and caring for his family for over eight years since his release on recognizance in May 2018.

82. Second, "without notice and a pre-deprivation hearing, the risk of erroneous deprivation is high." *Espinoza Palacios v. Hermosillo*, No. 2:26-cv-491-JNW, 2026 WL 686138, at *8 (W.D. Wash. Mar. 11, 2026). Indeed, a high risk of erroneous deprivation of this liberty interest exists when the government fails to provide a pre-deprivation hearing to demonstrate a material change in circumstances justifying re-detention. *Pinchi*, 792 F. Supp. 3d at 1035. When a noncitizen "was previously released following a determination that he posed no flight risk or danger to the community, and absent any new evidence showing a material change in circumstances, the risk of erroneous detention without a hearing is substantial." *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025). The requirement of an individualized determination is even stronger in cases of re-detention because, when DHS released the noncitizen in the past, that prior "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *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). *See also* 8 C.F.R. § 236.1(c)(8) (authorizing release of noncitizens under § 1226(a) if they demonstrate to the satisfaction of the officer that their release "would not pose a danger to property or persons," and that they are "likely to appear for any future proceeding"). "To be lawful" their re-detention "must be based on evidence that the circumstances relevant to that original release decision have changed." *Saravia* 280 F. Supp at 1196; *see also Sanchez v. LaRose*, No. 25-cv-2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) ("To satisfy due process, those changed circumstances must represent individualized legal justification for detention." (internal citation omitted)).

83. Mr. Lopez did not receive notice or a pre-detention hearing before his re-arrest and re-detention. On the contrary, he was hunted down by ICE agents early one morning outside his

home as he was taking out the trash bins for pick up and subjected to warrantless arrest. A "post-deprivation hearing cannot serve as an adequate procedural safeguard because [it occurs] after the fact and [thus] cannot prevent an erroneous deprivation of liberty." *E.A. T.-B. v. Wamsley,* 795 F. Supp. 3d. 1316, 1324 (W.D. Wash. Aug. 19, 2025). This second *Mathews* factor therefore weighs in Mr. Lopez's favor

84. Third, "the Government's interest in re-detaining non-citizens previously released without a hearing is minimal: any administrative financial burdens in providing Petitioner a hearing are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *Tesara*, 2025 WL 3288295, at *6, (internal quotation marks omitted), citing *Ortega v. Bonnar*, 415 F. Supp. 3d at 970 ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.").

85. When no evidence of changed circumstances in the record justifies re-detention, the government's interest in re-detention is low. *Chancely Fanfan, et al. v. Noem*, No. 25-cv-3291, 2025 WL 3563739, at *3 (S.D. Cal. Dec. 12, 2025) (citing *Doe v. Chestnut*, No. 1:25-cv-01372-CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26, 2025) (further citations omitted)). Moreover, to the extent that Respondents seek to re-detain a noncitizen such as Mr. Lopez "to meet an administrative quota or because the government has not yet established constitutionally required pre-detention procedures," or because providing pre-deprivation procedures would be "fiscally or administratively onerous," those excuses are not legitimate government interests that outweigh a Petitioner's liberty interest. *Pinchi*, 792 F. Supp. 3d at 1036. The high cost of detaining noncitizens likely exceeds the cost of providing a pre-detention hearing. *Id.*

86. In summary, the three *Mathews* factors favor Mr. Lopez. Mr. Lopez's re-detention without a pre-deprivation hearing to determine whether material changes in his circumstances justify his re-detention violates his procedural Due Process rights. The appropriate remedy is to order the Petitioner's immediate release from Respondents' custody and a return to the status quo ante.[4]

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[4] While Petitioner acknowledges the Ninth Circuit Court of Appeals' recent decision in *Rodriguez Vazquez v.* Bostock, --- F.4th ----, 2026 WL 2196424 (9th Cir. Jul. 30, 2026), holding that unadmitted noncitizens present in the interior of the United States are subject to the INA's discretionary detention regime under 8 U.S.C. § 1226(a),

87. Respondents' re-detention of Mr. Lopez after previously releasing him on recognizance, without providing notice or opportunity to be heard, is in violation of the Fifth Amendment's Due Process Clause, and therefore immediate release is the only appropriate remedy. *See Xie*, 2026 WL 92066, at *1-2; *see also Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Jan. 13. 2026) ("[I]f Petitioner is detained, he will already have suffered the injury he is now seeking to avoid." *quoting Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); *also citing E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[ ] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.")).

88. In the alternative, if the Court deems it appropriate to order a bond hearing in lieu of immediate release as requested, Petitioner asks that the burden of proof be placed on the Department to prove that he is a flight risk or a danger to the community by clear and convincing evidence. *See e.g.*, *Torres Barahona v. Semaia*, 2026 WL 1465141, *2 (C.D. Ca. May 22, 2026) (unpub) ("Moreover, consistent with the form of relief that other detainees have been receiving under *Maldonado Bautista* when enforcing the judgment of that case through individual habeas petitions, the government should bear the burden at a discretionary detention hearing before an immigration judge to prove by clear and convincing evidence whether Petitioner poses a flight risk or danger to the public.") (also collecting cases); *Belto Fuentes v. Warden et al.*, No. 1:26-CV-03886-DJC-CKD, 2026 WL 1637821, at *1 (E.D. Cal.

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immediate release is the only appropriate remedy for a Fifth Amendment due process violation for the reasons explained in ¶ 86 of this petition. In *Xie v. LaRose*, this Court held that the petitioner, who had previously been released on his own recognizance and then re-detained by DHS, was not a "*Bautista*" class member as defined in *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), because he maintained a protected liberty interest in remaining out of custody based following his previous release by DHS on recognizance, and therefore immediate release was the only appropriate remedy. 2026 WL 92066, at *1-2.

June 5, 2026) ("The Government shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or risk of flight."); *Singh v. Andrews, et al.*, No. 1:26-CV-04140-DJC-CSK, 2026 WL 1603740, at *1 (E.D. Cal. June 4, 2026) (same); *Benito v. Warden, et al.*, No. 1:26-CV-04127-MWJS, 2026 WL 1603888, at *2 (E.D. Cal. June 3, 2026) (same).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

a. Order that Petitioner shall not be transferred outside of the Southern District of California while this petition is pending;

b. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;

c. Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner from their custody immediately to the status quo ante, subject to the conditions of his preexisting Order of Release on Own Recognizance;

d. In the alternative, conduct an immediate bonding hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear or convincing evidence;

e. Order that prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for re-detention and a hearing before an immigration judge to determine whether detention is warranted. Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing;

f. Declare that Petitioner's detention is in violation of statute and regulation;

g. Declare that Petitioner's detention violates the Fourth Amendment;

h. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

i. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

j. Grant any other further relief this Court deems just and proper.

DATED: August 19, 2026

s/ Jan Joseph Bejar
Jan Joseph Bejar, Esq.
For: JAN JOSEPH BEJAR,
A Professional Law Corp.

Attorneys for Petitioner

VERIFICATION

I, Jan Joseph Bejar, declare as follows:

I am an attorney admitted to practice law in the State of California.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 19, 2026.

s/ Jan Joseph Bejar
JAN JOSEPH BEJAR
FOR: JAN JOSEPH BEJAR,
A PROFESSIONAL LAW CORP.

Attorney for Petitioner