Zachary Nightingale (California Bar # 184501)
Lorena C. Castillo (California Bar # 349604)
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

Attorneys for Petitioner-Plaintiff
Luis Mendoza de la Cruz

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Luis MENDOZA DE LA CRUZ,

Petitioner-Plaintiff,

v.

Sergio ALBARRAN, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

David VENTURELLA, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Markwayne MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd BLANCHE, in his Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No. 5:26-cv-10648

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

INTRODUCTION

1. Petitioner, Luis Mendoza de la Cruz ("Mr. Mendoza" or "Petitioner"), by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") from returning him to immigration detention without first providing him a due process hearing before a neutral adjudicator, namely a federal district Court, where the government bears the burden of demonstrating whether circumstances have changed such that his re-detention would be justified—that is, whether he poses a danger or a flight risk.

2. Mr. Mendoza was released on an immigration bond in January 2016 that was set by the Immigration Court. He has been living at liberty with his family and community since then, while his removal case before the immigration court continues to be pending. In 2018, Mr. Mendoza pled no contest to California Penal Code § 242. Despite this, ICE never attempted to revoke his bond, allowing Mr. Mendoza to continue living at liberty. On August 31, 2026, ICE officers attempted to forcefully detain Mr. Mendoza after claiming they had a warrant that they never showed him. On September 4, 2026, ICE sent Mr. Mendoza's bond obligor, his brother, a letter requesting that he deliver Mr. Mendoza to the ICE office. This combination of events shows Respondents' specific intention to detain Mr. Mendoza in the very near future.

3. By statute and regulation, ICE can revoke a noncitizen's bond through an order from an Immigration Judge if circumstances change so that an individual is now a flight risk or danger to the community. That authority is not unilateral, however, and it is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Mendoza's case, due process requires notice and a hearing before a neutral adjudicator, which must be this Court, *prior to any re-detention*, at which the government bears the burden of demonstrating whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk), and he is afforded the opportunity to advance his arguments as to why he should not be re-detained.

4. Here, during his over ten-year period of release, and while his removal case continues to be pending before the Immigration Court, Respondents have created a reasonable expectation that Mr. Mendoza is permitted to live and work in the United States without being subject to arbitrary arrest and removal. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

5. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Mendoza was *already* previously released from ICE detention in 2016 on a bond set by the Immigration Court. Since then, his removal case has continued to be pending.

6. Therefore, at a minimum, in order to lawfully re-arrest Mr. Mendoza following his release by the Immigration Court, Respondents must first establish before a truly neutral decision maker, which must be a federal district court, whether circumstances have changed such that his re-detention would be justified (whether he poses a danger or a flight risk), such that his re-detention is necessary. Current regulations and administrative limitations on Immigration Courts do not allow the DOJ attorneys who have the title of "Immigration Judge ("IJ")" to be neutral adjudicators for purposes of due process.

CUSTODY

7. Petitioner Mr. Mendoza is currently released from ICE custody on bond, set by an Immigration Judge. Since his release January 2016, the terms of his release have required him to appear in immigration court as scheduled, and he has done so. He next hearing is scheduled for

May 31, 2029. Castillo Decl. at Exhibit C. He also has to comply with other conditions of release, including updating his address which has done. Such stringent requirements "impose[] conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that comparable supervision requirements constitute "custody" sufficient to support habeas jurisdiction).

JURISDICTION

8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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).

10. 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).

11. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

VENUE

12. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California; because Petitioner Mr. Mendoza is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California;[1] and because there is no real property involved in this action.

INTRADISRICT ASSIGNMENT

13. Petitioner Mr. Mendoza lives in San Jose, and any decision to re-arrest and re-detain him will be made by the San Francisco Field Office of ICE. Therefore, the assignment to the San Jose Division of this Court is proper under Local Rule 3-2(d).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. 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 Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner Mr. Mendoza asserts that exhaustion is satisfied as there is no administrative jurisdiction over this detention status because he already has a final order of removal.

15. No statutory exhaustion requirements apply to Petitioner Mr. Mendoza's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-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

[1] U.S. Immigration and Customs Enforcement, *ICE Field Office*, https://www.ice.gov/contact/field-offices (stating the San Francisco ICE Field Office's area of responsibility is, as relevant here, "Northern California.").

review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

16. Petitioner Luis Mendoza de la Cruz was born in Mexico and last entered the United States in 2000. He was first detained by ICE in November 2015 and later released on a $10,000 bond in January 2016.

17. Respondent Sergio ALBARRAN is the Acting Field Office Director of ICE, in San Francisco, California and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner Mr. Mendoza.

18. Respondent David VENTURELLA is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner Mr. Mendoza.

19. Respondent Markwayne MULLIN is the Secretary of DHS and is named in his official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In his capacity as Secretary, Respondent Mullin has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Mullin is the ultimate legal custodian of Petitioner Mr. Mendoza.

20. Respondent Todd BLANCHE is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in his official capacity. He has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

STATEMENT OF FACTS

21. Mr. Mendoza is a Mexican citizen who has been in the country since 2000. Castillo Decl. He has two U.S. citizen children. He currently resides with his daughter [redacted] in San Jose, California, where he also runs a construction company. *Id.*

22. On November 13, 2015, ICE arrested Mr. Mendoza at his home, and DHS charged him as removable for entering without inspection. *Id.* at Exhibit B. On January 28, 2016, the Immigration Judge granted release on bond for $10,000. *Id.* at Exhibit A. Mr. Mendoza's brother, Armando Mendoza, paid this bond. Castillo Decl. His case remains pending before the Immigration Court. He has a pending withholding of removal application pending and has an individual calendar hearing before the immigration judge scheduled for May 31, 2029. *Id.* at Exhibit C.

23. In April 2018, Mr. Mendoza pled nolo contendere California Penal Code § 242 and was issued a 10 day stay-away order, which is the only criminal conviction since his release from custody on bond.

24. On August 31, 2026, at approximately 5:40 a.m., Mr. Mendoza was on his way to work in his vehicle. Castillo Decl. After stopping at a stop light, two officers got out of a vehicle and approached Mr. Mendoza at his driver's seat window. *Id.* Mr. Mendoza slightly lowered his window to speak with the officers who did not identify themselves when they asked him to lower the window and leave the vehicle. *Id.* Mr. Mendoza repeatedly asked the reason for the stop. When he showed his license through the window, the officers then identified themselves as ICE and told him that they had a warrant for his arrest. *Id.* Mr. Mendoza asked to see the warrant, but an officer told him that he would show him the warrant after he left the vehicle. *Id.* Mr. Mendoza adamantly told the officers that he would not leave the vehicle until they showed him a warrant, which the officers refused to do. *Id.* One of the officers broke one of the windows of Mr. Mendoza's car, while other officers tried to break the other windows. *Id.* at Exhibit E. Mr. Mendoza repeatedly requested to see the warrant. Castillo Decl. When the officers were at a proper distance, Mr. Mendoza slowly drove away. *Id.*

25. When Mr. Mendoza got to work, an ICE officer called him and identified himself as ICE. *Id.* The officer told Mr. Mendoza that they were revoking his bond. *Id.* The same officer said that

they were going to give Mr. Mendoza "one more chance" to turn himself in or they would "hunt" him down. *Id.* The officer never specified the address for him to appear or a date and time to appear. *Id.* Mr. Mendoza stated that he would first speak to his attorney before taking further action. *Id.*

26. On September 3, 2026, Mr. Mendoza's brother received a letter, as the bond obligor, requesting that he produce Mr. Mendoza at the ICE office in 630 Sansome Street, San Francisco, California, 94111 on October 1, 2026, at 8:00 a.m. *Id.* at Exhibit D.

27. Intervention from this Court is therefore required to ensure that Mr. Mendoza is not unlawfully re-arrested, re-detained, and subjected to irreparable harm and further violation of his rights.

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

28. In Mr. Mendoza's particular circumstances, the Due Process clause of the Constitution makes it unlawful for Respondents to re-detain him without first providing a pre-deprivation hearing before a neutral decisionmaker to determine whether circumstances have changed since his release from immigration custody in 2016 on a bond set by an immigration judge such that detention would now be warranted on the basis that he is a danger or a flight risk.

29. An immigration bond is a financial deposit that allows a detained noncitizen in removal proceedings to be released from custody pending the resolution of those proceedings. 8 U.S.C. § 1226. While this allows a noncitizen to be released from custody, this release is not permanent nor guaranteed, as the individual must maintain any conditions set forth on their release. *See* 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions. 8 C.F.R. § 103.6(e).

30. When this occurs, ICE has the authority to re-detain, but this authority is not limitless. Federal district courts in California and throughout the country have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain a noncitizen both require a pre-deprivation hearing *before* re-detention by ICE. *See M.R. v. Kaiser*, et al., 25-cv-05436-RFL (N.D. Cal. July 17, 2025) (TRO prohibiting government from re-detaining the

petitioner without notice and a hearing before a neutral adjudicator); *Rodriguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D. Cal. June 14, 2025) (same); *T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025) (same); *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR (E.D.C.A. July 14, 2025) (same); *Singh v. Andrews, et al.,* 1:25-cv-00801-KES-SKO (HC) (E.D.C.A. July 11, 2025) (same); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025) (same); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

Petitioner's Protected Liberty Interest in His Release

31. Petitioner Mr. Mendoza's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

32. Since 2016, Mr. Mendoza has exercised that freedom pursuant to his bond. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration, which is not diminished by the supervised nature of his release. *Zadvydas*, 533 U.S. at 679 ("[A] noncitizen's liberty interest is not diminished by their lack of a legal right to live at large, for the choice at issue here is between imprisonment and supervision under release conditions that may not be violated and their liberty interest is strong enough to raise a serious constitutional problem with indefinite detention."); *see also Young v. Harper*, 520 U.S. 143, 146–

47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972).

33. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481–82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

34. This basic principle—that individuals have a liberty interest in their release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

35. In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

36. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Mendoza's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

37. Some district courts have held that a noncitizen released on immigration bond/conditional liberty acquires a liberty interest in their continued release. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Momtazian v. Noem*, No. 5:25-cv-03432-AH-KES, 2025 U.S. Dist. LEXIS 266022, at *6–8 (C.D. Cal. Dec. 25, 2025) (granting unopposed TRO); *Viengkhone S. v. Albarran*, No. 25-cv-01505, 2025 WL 3521302 at *7, 2025 U.S. Dist. LEXIS 253472, at *17–18 (E.D. Cal. Dec. 8, 2025) ("For nearly twenty years, [the government] allowed [the petitioner] to live at liberty in the United States, even though under an order of supervision. Among other things, petitioner raised his two U.S. citizen children and worked. ... The Court finds that petitioner has a protected liberty interest in his release."); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025) ("[I]ndividuals conditionally released from detention have a protected interest in their 'continued liberty.'").

38. **Even in cases where an individual breaks conditions of their release, the government still creates a continued liberty interest if they delay in their decision to re-arrest.** *See Llanes*

Tellez v. Bondi, 826 F. Supp. 3d 1141, 1153 (N.D. Cal. 2025), *appeal dismissed*, No. 26-1003, 2026 WL 2445624 (9th Cir. June 17, 2026) ("Indeed, that the government learned of Mr. Llanes Tellez's DUI arrest by no later than February 2025 but chose not to detain him until October 2025, nearly eight months later, provided him with a reasonable expectation that he would remain at liberty notwithstanding that violation."); *See also Pham v. Becerra*, 717 F. Supp. 3d 877, 886 (N.D. Cal. 2024) (holding that a noncitizen's liberty interest does not depend on the length of time the federal government knew of the conviction and failed to initiate removal proceedings – what matters is the actual period of freedom the person enjoyed); *Duong v. Kaiser*, 800 F. Supp. 3d 1030, 1039 (N.D. Cal. 2025) (citing *Perera v. Jennings*, 598 F. Supp. 3d 736 (N.D. Cal. 2022)) ("In fact, because Perera had not been taken directly from criminal custody into immigration detention, his liberty interest went "far beyond that present in a typical detention situation under § 1226(c). Unlike the typical section 1226(c) detainee, Perera had spent six years after his release taking classes, building a career, getting married, and having a child. The fact that Perera was six years overdue for immigration detention did not diminish his liberty interest, but increased it.")

39. Since his release in 2016, Mr. Mendoza has been focused on rebuilding his life, including maintaining a stable relationship with his children and a successful business.

Petitioner's Liberty Interest Mandates a Due Process Hearing Before any Re-Detention

40. Petitioner Mr. Mendoza asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for ten years while his removal case remains pending before the Immigration Court, (3) where no change in circumstances occurred since 2018 that would justify his detention, and (4) where the only circumstance that has changed recently is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before this Court, as a neutral adjudicator, *prior* to any re-arrest.

41. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355–56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481–82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient

administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

42. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

43. Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner Mr. Mendoza with notice and a hearing *prior* to any re-detention. *See Morrissey*, 408 U.S. at 481–82; *Haygood*, 769 F.2d at 1355–56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and requires a pre-deprivation hearing before this Court.

Petitioner's Private Interest in His Liberty is Profound

44. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Mendoza, who have been released after civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891–92; *Hurd*, 864 F.3d at 683. Thus, Mr. Mendoza retains a truly weighty liberty interest even though he is under conditional release.

45. What is at stake in this case for Mr. Mendoza is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

46. Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334–35.

Petitioner has a Protected Interest in a Neutral Adjudicator, and the Proper Neutral Adjudicator is This Court

47. Due process requires a neutral adjudicator. In this case, that must be this Court or at least

a federal district court. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than DHS alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091–92 (9th Cir. 2011).

48. This is not to say that the Immigration Court would not make the effort to be neutral but rather that, due to the nature of the fact that the Immigration Court is ultimately is bound by the supervision of the executive branch, (1) Mr. Mendoza recognizes the undue pressure this Court is likely under and (2) to protect Mr. Mendoza's due process rights, the proper neutral adjudicator is the federal district court, all for reasons stated below.

49. Due process requires that a pre-deprivation hearing occur before this Court, because the Immigration Court will not likely be able to provide neutral adjudication. *See L.G.M. v. Larocco*, No. 25-CV-2631-PKC, 2025 WL 2173577 (E.D.N.Y. July 31, 2025) (conducting bond hearing); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) (collecting cases where district court conducted bond hearing). *See also Roman*, 977 F.3d at 941 ("Once a [constitutional] right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

50. The policies in place today build on the inherent lack of fairness in the Immigration Court system. For a while now, there has been significant evidence that bond hearings in immigration court were regarded as "law-free zones" and "implicit bias minefields." Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs are by definition not independent adjudicators. They are career attorneys who are employed by the DOJ and thus report to the Attorney General, an appointee of the executive branch, making them "very susceptible to pressure from above to decide cases in a certain way." *Accord* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as "a prosecutor masquerading as a judge.").

51. Since the current presidential administration took office in early 2025, it has fired IJs *en masse*, "many seemingly because their judicial philosophies did not align with the administration's priorities."[2] One recently fired IJ who served in that position for twenty years observed:

> I think the current administration . . . does not see the immigration courts as neutral decision-makers. I think that they see immigration courts as a tool for this administration to advance its policy objectives.[3]

52. Similarly, former Immigration Judge Dana Leigh Marks states the following:

> In my opinion, due process is no longer the norm in the immigration court system. Current IJs cannot be relied on to act as neutral arbiters. This is a structural flaw and not an accusation against any particular sitting judge. Since the beginning of 2025, the administration has fired over 100 IJs for their failure to align with the administration's priorities. I personally know and have worked with many veteran judges who have been terminated without good cause, violating their established civil service protections. They are, without exception, hard-working, knowledgeable, and fair jurists. While no stated reason was given to these judges for their terminations, the observable trend is that judges with high asylum grant rates and professional backgrounds defending immigrants are the ones being fired *en masse*. **In other words, the administration is not interested in maintaining a qualified, fair bench, but in finding "deportation judges" to advance its policy agenda.**
>
> In addition to mass firings, the administration has taken extraordinary other steps to send a message to IJs that they must rule consistently with the administration's anti-immigrant agenda. For example, the administration issued a policy memorandum on June 27, 2025, stating that "there are some Immigration Judges who appear to believe – based on their own personal policy preferences – that exhibiting bias is justifiable in certain situations, as long as that bias is in favor of an alien and against the Department of Homeland Security (DHS)." **The message in that policy memo is clear: side with DHS, or lose your jobs.** Castillo Decl. at Exhibit F. (Previously Filed Declaration from Former Immigration Judge Dana Marks) (emphasis added).

53. Shira Levine, one of the immigration judges who was fired during this administration, states the following:

> **The first time I received guidance attempting to influence my decisions in the courtroom outside of such binding legal precedent was in 2025.** Over the months I

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[2] Levin, Sam, "'Hell on earth': immigrants held in new California detention facility beg for help," THE GUARDIAN (Sept. 27, 2025), https://www.theguardian.com/us-news/2025/sep/27/immigrants-california-detention-facility

[3] Bennett, Geoff and Ali Schmitz, "Ousted immigration judge describes deepening court backlog" PBS NEWS HOUR (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.

> served as an immigration judge in 2025, I received a series of publicly available policy memorandums that indicated how cases should be decided. At the same time, judges at the San Francisco Immigration Court began to be fired without cause or explanation. **The guidance we received from the Agency along with the termination of immigration judges created the understanding that decisions which did not further the executive branch's enforcement priorities could put a judge's employment at risk.** Despite these pressures, I did not change how I ruled on case. I was fired without cause or explanation.
>
> Prior to my termination, EOIR issued a policy memorandum that indicated that the way judges ruled could be used to justify their termination. EOIR Policy Memorandum 25-42 (Aug. 22, 2025). This memorandum ignored that appeals are the procedural means of challenging legal decisions. Fewer than three percent of my cases were appealed during the four years I was on the bench and none of those cases were reversed while I was an immigration judge. Nonetheless, the policy memorandum focused on case outcomes. Many of the judges, including myself, who were targeted for termination had above average grant rates. **To me, this indicated that terminations targeted judges who were not furthering the Agency's immigration enforcement policies but were instead seeking to evenly interpret the law in each case.** Castillo Decl. at Exhibit G. (Previously Filed Declaration from Former Immigration Judge Shira Levine) (emphasis added).

54. At the same time, the administration is actively recruiting for attorneys to become new immigration judges, whose employment would be even more clearly based on the pleasure of the Attorney General. Among these new hires are military lawyers who are being recruited to sit as IJs after minimal training.[4] The move alarms legal experts for myriad reasons, including because of the president's outsized influence over the military. *Id.* The administration has even widely issued policy guidance admitting the DHS (its enforcement arm) is actively coordinating with the DOJ (under which the BIA and IJs sit) to expand mandatory detention.[5] The DOJ has also launched a campaign to hire new IJs that advertises the position as "deportation judges" and describes it as an opportunity to "[b]ring the hammer down on criminal illegal aliens . . . Defend your communities, your very way of life."[6] *See National TPS Alliance, et al. v. Noem, et al.*, 25-5724,

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[4] Villarreal, Alexandra, "Hiring of military lawyers as immigration judges alarms law experts" THE GUARDIAN (Sept. 22, 2025), https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges.

[5] Interim Guidance from U.S. Department of Homeland Security to All ICE Employees Re: "Detention Authority for Applications for Admission" (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[6] *See* Gutierrez, Hilda and Michael Bott, "'An all-out attack on immigration court:' SF immigration judges speak out after firings" NBC BAY AREA (Nov. 25, 2025),

(9th Cir. 2026) ("I find it necessary to address the ample evidence of racial and national origin animus in the record, which reinforces the district court's conclusion that the Secretary's actions were preordained and her reasoning pretextual. This case presents one of the rare situations where the strong showing of bad faith needed to look beyond the administrative record is easily met.") This is evidence that the Immigration Court cannot be a neutral adjudicator when one of the parties before the Court is the same branch of the government that also supervises the Court itself, and has made its displeasure known regarding judges whose decisions it did not like by terminating their employment.

55. Nor does appellate review by the BIA "play a corrective role[,] because it is subject to essentially the same institutional constraints as IJs." Musalo, 65 B.C. L. Rev. at 2756. After taking office, the current administration purged BIA members from twenty-six to nine.[7] This allowed for a smaller majority to publish decisions and thus highlighted the agency's lack of independence.[8] Indeed, since January 20, 2025, the BIA has issued at least sixty-three precedent decisions.[9] All but one of these decisions found against the noncitizen[10]; all involving bond proceedings ruled against the noncitizen; some reversed prior grants and called for re-detention.[11] By contrast, in all of 2024 the BIA issued just fourteen precedent decisions, some of which were in favor of the DHS while others favored the noncitizen.[12]

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https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

[7] *See* Catholic Legal Immigration Network, Inc., "Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals" (Aug. 22, 2025), https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals.

[8] *Id.*

[9] *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 29*, online at https://www.justice.gov/eoir/volume-29 (last accessed Dec. 15, 2025).

[10] The one decision purportedly in favor of the noncitizen described the methods in which an IJ can pretermit an application for relief prior to any evidentiary hearing, and remanded the case back to the IJ to follow that method. *See* Catholic Legal Immigration Network, Inc., "Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals" (citing *Matter of C-A-R-R-*, 29 I&N Dec. 13 (BIA 2025)).

[11] *Id.*

[12] *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 28*, online at https://www.justice.gov/eoir/volume-28.

56. Moreover, the administration's copious precedential decisions are largely published *post hoc* to defend the administration's policies, rather than proceeding from neutral adjudication of controversies. As one example in the bond context, the BIA has issued a series of bond decisions that now subjects vast swaths of noncitizens mandatory detention. *See, e.g.*, *Matter of Q. Li*, 29 I&N Dec. 66; *Matter of Yajure Hurtado*, 29 I&N Dec. 216. These decisions upend decades-long understanding of federal law, as federal judges have repeatedly found.[13] Notably, they come as the DHS has received exorbitantly more money to detain immigrants in for-profit immigration detention centers.[14] For example, CoreCivic received $13.5 million to open CCDF earlier this year.[15]

57. On February 6, 2026, the DOJ issued a new rule that effectively guts any remaining due process protections in the form of appellate review of the Immigration Judge adjudications.[16] The new rules once they go into effect allows the BIA, the agency that reviews IJ decisions, to simply dismiss all such appeals unless in the rare event that the full panel of Board members (who are also employees of the DOJ) vote to review the appeal on its merits.[17] This means that the vast majority of all appeals from the Immigration Court to the BIA will be simply dismissed without consideration of the merits of the appeal. Further, the process itself is being changed to create barriers to such appeals even being properly filed. Under the newly announced procedures, appeals must be filed within 10 days of the Immigration Judge decision (many of which are issued on paper and delivered across the country by U.S. mail), or else the non-citizen foregoes any option for administrative or federal circuit court review.[18] Furthermore, the new rule allows the Board to

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[13] Gerstein, Josh and Kyle Cheney, "Immigration appeals court expands mandatory detention for millions" POLITICO (Sept. 5, 2025), https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660.

[14] Dickerson, Caitlin, "ICE's Mind-Bogglingly Massive Blank Check" THE ATLANTIC (July 31, 2025), https://www.theatlantic.com/politics/archive/2025/07/ice-budget-immigration-enforcement/683678/.

[15] Levin, Sam, "'Hell on earth': immigrants held in new California detention facility beg for help," THE GUARDIAN.

[16] Appellate Procedures for the Board of Immigration Appeals, 91 FR 5267 (Feb. 6, 2026) (effective Mar. 9, 2026). Available at https://public-inspection.federalregister.gov/2026-02326.pdf

[17] *Id.*

[18] *Id.*

dismiss appeals within fifteen days of timely filing unless majority Board members agree to hear the case.[19]

58. Overall, the message here and in other federal cases is clear: the government can no longer receive the presumption of regularity in that their public officers would properly discharge their duties. *United States v. Chemical Foundation*, Inc., 272 U.S. 1, 14–15, 47 S.Ct. 1, 71 L.Ed. 131 (1926); see *Latif v. Obama*, 677 F.3d 1175, 1178-181 (D.C. Cir. 2011) (same); *Paracha v. Trump*, Civil Action No. 04-2022 (PLF), 2019 WL 5296839, at *2 (D.D.C. Oct. 18, 2019). Meaning IJs and the BIA, employees of the DOJ, cannot be trusted as neutral adjudicators. [20]

59. The above, exacerbated by the new Board rule, severely undermines the idea that the IJ can be a neutral adjudicator. Mr. Mendoza no longer has the due process rights of a neutral adjudicator. Therefore, this Court is the proper neutral adjudicator for any subsequent pre-deprivation hearing for Mr. Mendoza.

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[19] *Id.*

[20] *United States v. Oregon*, 6:25-cv-01666-MTK, Dkt. 73 (D. Or Feb. 6, 2026) ("The presumption of regularity that has been previously extended to Plaintiff that it could be taken at its word—with little doubt about its intentions and stated purposes—no longer holds"); *In re Search of One Device and Two Individuals under Rule 41*, Search Warrant No. 25-0082 (ZMF), 784 F.Supp.3d 234, 244 n.10 (D.D.C. May 29, 2025) ("Blind deference to the government? That is no longer a thing. Trust that had been earned over generations has been lost in weeks. Numerous career prosecutors have had to resign instead of taking actions that they believe violated their oath of office, or worse, were fired for upholding that oath."); *Washington v. Trump*, Civil Action No. 25-0127 (JCC), Verbatim Report of Proceedings (W.D. Wash. Jan. 24, 2025) [Dkt. No. 53] at 13:13–15 ("I've been on the bench for over four decades. I can't remember another case where the question presented was as clear as this one is. This is a blatantly unconstitutional order."); *New Hampshire Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102, 109 (D.N.H. 2025) ("[T]he Executive Order contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it."); *Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*, 774 F. Supp. 3d 86, 89 (D.D.C. 2025) ("The retaliatory nature of the Executive Order at issue here is clear from its face ...."); *Perkins Coie LLP v. U.S. Dep't. of Justice*, Civil Action No. 25-716 (BAH), 783 F.Supp.3d 105, 120 (D.D.C. May 2, 2025) ("In a cringe-worthy twist on the theatrical phrase 'Let's kill all the lawyers,' EO 14230 takes the approach of 'Let's kill the lawyers I don't like,' sending the clear message: lawyers must stick to the party line, or else.") (emphasis in original); *United States v. Adams*, 77 F. Supp. 3d 185, 192 (S.D.N.Y. 2025) (The implication "that public officials may receive special dispensation if they are compliant with the incumbent administration's policy priorities .... is fundamentally incompatible with the basic promise of equal justice under law").

The Government's Interest in Re-Detaining Petitioner Without a Hearing is Low and the Burden on the Government to Refrain from Re-Detaining Him Unless and Until he is Provided a Hearing That Comports with Due Process is Minimal

60. The government's interest in re-detaining Mr. Mendoza without a due process hearing is low, and when weighed against Mr. Mendoza's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-detaining Mr. Mendoza unless and until the government demonstrates that circumstances have changed such that he is now a danger or a flight risk. It becomes abundantly clear that the *Mathews* test favors Mr. Mendoza when the Court considers that the process he seeks— notice and a hearing prior to his re-detention—is a standard course of action for the government. Providing Mr. Mendoza with a hearing before a neutral decisionmaker to determine whether Mr. Mendoza's liberty should be curtailed by re-detaining him and there is evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in Mr. Mendoza's similar circumstances. 8 C.F.R. § 241.4(e)–(f) and routinely conducts bond hearings.

61. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for re-detaining Mr. Mendoza when he has lived at liberty since 2016. They certainly cannot assert a basis despite his 2017 arrest because ICE had almost ten years to revoke his bond but never did. Nothing has changed since 2017 that would warrant re-detention. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

62. As to flight risk, Mr. Mendoza's post-release conduct in the form of compliance with his bond conditions, continued employment and residence further confirms that he is not a flight risk and that he is likely to present himself at any future appearances, as he always has done. The

government's interest in detaining him at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[21]

63. Moreover, the "fiscal and administrative burdens" that a pre-deprivation hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334–35. Mr. Mendoza does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated.

64. In the alternative, providing Mr. Mendoza with a hearing before a neutral decisionmaker regarding detention is a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, this Court would have the opportunity to determine whether circumstances have changed sufficiently such that he is now a danger or a flight risk and his re-detention is warranted. But there is no justifiable reason to re-incarcerate Mr. Mendoza prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

65. Enjoining Mr. Mendoza's re-arrest until he is provided a hearing before this Court is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

66. Providing Mr. Mendoza with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Mendoza can be lawfully detained, he must

[21] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

be provided with a hearing before a neutral adjudicator at which the government is held to show that whether circumstances have changed such that he is a danger to the community or a flight risk.

67. Under the process that ICE currently attempts to do to Mr. Mendoza—which affords Mr. Mendoza no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Mendoza will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him.

68. By contrast, the procedure Petitioner Mr. Mendoza seeks—a hearing before this Court *before* any re-arrest—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side").

69. In this case, the evidence already indicates the high probability that ICE plans to detain him. First, ICE officers attempted to detain him in public while he was driving his car, claimed they had a warrant that they never showed him, and broke his car windows in the process. Next, an officer who identified himself as from ICE called Mr. Mendoza to direct him to turn himself in to ICE. Finally, ICE issued a notice to the bond obligor directing him to produce Mr. Mendoza at an ICE office. All of that together strongly indicates the intention of ICE to detain Mr. Mendoza.

FIRST CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Indefinite Detention

U.S. Const. amend. V

70. Petitioner Mr. Mendoza re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

71. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

72. Mr. Mendoza has a vested liberty interest in his supervised release. Due Process does not permit the government to strip him of that liberty without a hearing before a neutral adjudicator,

namely this Court. *See Morrissey*, 408 U.S. at 487–488.

73. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator which is a federal district court and not an adjudicator who is employed by the executive branch of the government. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether circumstances have changed such that he now poses a danger or a flight risk. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

74. Petitioner Mr. Mendoza re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

75. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

76. Mr. Mendoza has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

77. Since 2016, Mr. Mendoza has been waiting for his removal case which remains pending, fully complied with the terms of his bond by appearing at all hearings, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

78. For these reasons, Mr. Mendoza's re-arrest without first being provided a hearing would violate the Constitution.

79. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, this Court would evaluate, *inter*

alia, whether circumstances have changed such that he now poses a danger or a flight risk. During any custody redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention when determining whether Petitioner's re-incarceration is warranted.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from re-arresting Petitioner unless and until a hearing is held before this Court or a federal district court (and not an adjudicator who is employed by the executive branch of the government) to determine whether his re-detention would be lawful because the government has shown that circumstances have changed such that he is now a danger or a flight risk;

(3) Award Petitioner reasonable costs and attorney fees; and

(4) Grant such further relief as the Court deems just and proper.

Dated: September 17, 2026

Respectfully submitted,

/s/ Lorena C. Castillo
Zachary Nightingale
Lorena C. Castillo
Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this September 17, 2026, in San Francisco, California.

/s/ Lorena C. Castillo
Zachary Nightingale
Lorena C. Castillo
Attorneys for Petitioner