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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDUARDO RUIZ GARCIA,

Petitioner,

v.

SERGIO ALBARRAN, in official capacity, Acting Field Office Director of ICE's San Francisco Field Office; DAVID J. VENTURELLA, in official capacity, Acting Director of ICE; MARKWAYNE MULLIN, in official capacity, Secretary of the U.S. Department of Homeland Security; TODD BLANCHE, in official capacity, Attorney General of the United States,

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Immigration and Customs Enforcement ("ICE") is detaining Petitioner Eduardo Ruiz Garcia ("Petitioner")[1] despite countless court orders that arrests like his are unconstitutional as violations of the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act ("INA"). In or about April 2026, Petitioner entered the United States without inspection, fleeing extreme violence against Petitioner and his family. Since his arrival, Petitioner established his life here. He worked as a cleaner and a mover, supported himself, and commenced regular mental health treatment for severe depression and Post-Traumatic Stress Disorder ("PTSD"). On October 16, 2026, Petitioner's life came crashing down around him. While on the way to a pizza shop near his home in Emeryville, Petitioner was brutalized and arrested by ICE officers who sat on his chest, fractured six of his ribs, and left him hospitalized, where he remains handcuffed to his bed under ICE guard. The officers never called Petitioner by name or indicated they were looking for him. On information and belief, Petitioner has not been served with a Notice to Appear, and no officer or immigration judge has determined whether he poses a flight risk or a danger.

2. Petitioner's arrest was unconscionable. To remedy his unconstitutional arrest and detention, Petitioner seeks a writ of habeas corpus from this Court that (1) orders his immediate release from ICE custody and (2) prohibits ICE from re-arresting him without a neutral adjudicator first finding that Department of Homeland Security ("DHS") has sustained its burden of showing by clear and convincing

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[1] Petitioner respectfully requests that the Court use his initials, rather than his full name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. *See* Memorandum Re: Privacy Concern Regarding Social Security & Immigration Opinions (May 1, 2018), *available at* https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion_cacm_0.pdf; *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1050 n.1 (N.D. Cal. 2021).

evidence, and in proceedings designed to ensure protection of his due process rights, that he is a flight risk or a danger to the community.

3. In the interim, Petitioner seeks an order from the Court that he not be transferred out of this judicial district or removed from the United States, pending disposition of his petition for writ of habeas corpus.

CUSTODY

4. Petitioner is currently in ICE custody and is being provisionally held at Highland Hospital in Oakland, California, for severe injuries sustained due to ICE agents' use of force. He was arrested by ICE on October 16, 2026, and remains in Respondents' custody, handcuffed to his hospital bed by his injured wrist.

JURISDICTION AND VENUE

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

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant the requested relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the habeas corpus statutes, 28 U.S.C. § 2241 *et seq*.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(e) and 2241(a) because Petitioner is detained in this District, at Highland Hospital in Oakland, California, and the events giving rise to his claims occurred here, in Emeryville, California. Assignment to the Oakland or San Francisco Division is proper under Civil L.R. 3-2(c)–(d).

PARTIES

9. Petitioner Eduardo Ruiz Garcia is a 26-year-old citizen of Honduras. In or about April 2026, Petitioner entered the United States without inspection. On

October 16, 2026, Petitioner was violently arrested by ICE agents near his home in Emeryville, California, without notice or a hearing, and without being shown any warrant. Petitioner is currently being hospitalized and provisionally held at Highland Hospital in Oakland, California for injuries sustained during his arrest.

10. Respondent Sergio Albarran is the Acting Field Office Director responsible for the San Francisco Field Office of ICE Enforcement and Removal Operations, which has immediate physical custody of Petitioner. He is sued in his official capacity.

11. Respondent David Venturella is the Acting Director of ICE and is sued in his official capacity. Respondent Venturella leads ICE, which is the agency responsible for detaining noncitizens and for any transfer or removal of Petitioner outside of this judicial district. Respondent Venturella is a legal custodian of Petitioner.

12. Respondent Markwayne Mullin is the Secretary of DHS and is sued in his official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a). Respondent Mullin is a legal custodian of Petitioner.

13. Respondent Todd Blanche is the Acting Attorney General of the United States and is sued in his official capacity as the head of the Department of Justice. The Attorney General is responsible for the fair administration of the laws of the United States. The Attorney General also oversees the immigration courts and the BIA. 8 U.S.C. § 1103(g). In his official capacity, Respondent Blanche is the ultimate legal custodian of Petitioner.

FACTUAL BACKGROUND

14. Petitioner is twenty-six years old. He is a citizen of Honduras and a [redacted] In or about April 2026, Petitioner entered the United States without inspection, fleeing violence targeting him and his family.

15. Petitioner has not left the United States since he entered.

16. Since his arrival, Petitioner has built a life here. He has worked as a cleaner and a mover, supporting himself.

17. In May 2026, Petitioner was arrested on drug-related charges under Cal. Health & Safety Code §§ 11351 and 11378. He has not been convicted of any crime. On September 21, 2026, the Superior Court of California, County of San Francisco, granted Petitioner pretrial mental health diversion and suspended criminal proceedings. Petitioner was diagnosed with severe depression and post-traumatic stress disorder related to the violence he fled and endured. Petitioner began regular mental health treatment. His clinical evaluator described his "active engagement with the treatment plan" and his "insight into his emotional condition." If Petitioner completes diversion, the charges will be dismissed. Cal. Penal Code § 1001.36(h).

18. On the afternoon of October 16, 2026, Petitioner was walking to lunch at a pizza shop near his home in Emeryville when someone shouted "ICE." Confused and terrified by news reports of people killed and attacked by ICE, Petitioner ran. About four plainclothes agents chased and seized Petitioner. Still unsure who the men were, Petitioner tried to pull free. Although Petitioner was already outnumbered and overpowered, a fifth agent tackled him from behind in a manner Petitioner believed was intended to hurt him, then sat on his chest. Petitioner suffered fractures to six of his ribs, and cuts, abrasions, and bruises across his face, arms, hands, and legs. His next clear memory is of lying in Highland Hospital, struggling to breathe, with ICE agents—including the grinning agent who tackled him—around his hospital bed. The trauma nurse practitioner who treated Petitioner estimates that the agent who sat on Petitioner's chest is around 6 foot 3 inches tall and 280 pounds.

19. No agent used Petitioner's name or indicated they were looking for him. Before that day, Petitioner had never had any contact with immigration authorities.

Two days later, an ICE agent told counsel a warrant existed, but had not been served.[2] To Petitioner's knowledge, the men who arrested Petitioner never asked about Petitioner's residence, work, community ties, or anything else bearing on flight risk or danger.

20. Petitioner remains in ICE custody while at Highland Hospital, where he is handcuffed to his bed by an injured wrist. He struggles to breathe and experiences severe pain. His ribs will take weeks to heal. Already living with severe depression and PTSD, Petitioner is now frightened and anxious, guarded by the agents who hurt him. He cannot access his diversion treatment and risks missing his next November 4, 2026 diversion hearing, which the court ordered him to attend.

21. Meanwhile, ICE confiscated Petitioner's phone and forbade hospital staff from helping Petitioner call a lawyer or his family. Petitioner did not speak with a lawyer until counsel located him at Highland Hospital two days after the arrest.

EXHAUSTION

22. No exhaustion requirement applies. No statute requires exhaustion before challenging the lawfulness of an arrest or detention under § 2241. Prudential exhaustion is not required because it would be futile, and because Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992); *see Hernandez v. Sessions*, 872 F.3d 976, 986–88 (9th Cir. 2017); *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004). On information and belief, Respondents have made no individualized custody determination, and no immigration judge has authority to rule on the lawfulness of Petitioner's arrest or on his constitutional claims. *See Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (immigration judges and the Board "lack jurisdiction to rule upon the constitutionality of the Act and the regulations");

[2] ICE's Form I-200 for Petitioner is dated July 2, 2026, lists no file number, and states that probable cause rests on "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence." But Petitioner never spoke with immigration authorities, and the form does not identify any other evidence.

Zamorano v. Garland, 2 F.4th 1213, 1224 (9th Cir. 2021); *Norberto C.M. v. Warden, Cent. Valley Annex*, No. 26-cv-04674-MWJS, 2026 WL 1992747, at *3–4 (E.D. Cal. July 9, 2026) (constitutional challenges that arise before any bond hearing are beyond the agency's competence, rendering exhaustion futile). No administrative forum exists in which Petitioner could raise his Fourth Amendment or constitutional claims.

23. The need for immediate judicial consideration is intense. Petitioner is hospitalized with six fractured ribs, handcuffed to his bed under ICE's watch, and cut off from the mental health treatment that he needs and on which his pretrial diversion depends. Each additional day of unlawful detention deepens those harms.

LEGAL BACKGROUND

A. Due Process Protects Every Person in the United States from Arbitrary Detention.

24. The Due Process Clause protects "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These protections are both substantive and procedural.

25. "[T]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate governmental objective," *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). "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*, 533 U.S. at 690; *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

26. Substantive due process requires that all civil detention, including immigration detention, bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible purposes for immigration detention: ensuring the noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 531 (2003).

27. Procedural due process prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, "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). "[I]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up).

B. The Fourth Amendment and the INA Strictly Limit Warrantless Immigration Arrests.

28. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. An officer may briefly detain a person for investigation only on a reasonable, particularized, and objective basis for suspecting that the specific person stopped is engaged in unlawful activity. *Terry v. Ohio*, 392 U.S. 1, 21–22, 30 (1968); *Brown v. Texas*, 443 U.S. 47, 51–52 (1979). Reasonable suspicion must rest on the totality of the circumstances and be particularized to the individual stopped—not based on circumstances that would describe a very large category of presumably innocent people. *See Reid v. Georgia*, 448 U.S. 438, 441 (1980) (per curiam). An arrest, in turn, "qualifies as a 'seizure' of a 'person' . . . and so must be reasonable under the

circumstances." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735–36 (2011). A custodial arrest requires probable cause. *Dunaway v. New York*, 442 U.S. 200, 212–16 (1979). And "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause." *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

29. ICE's statutory authority to arrest without a warrant is narrow. Section 1226(a) authorizes arrest and detention "[o]n a warrant issued by the Attorney General." An officer may arrest without a warrant only if the officer has reason to believe both that the person is in the United States unlawfully and that the person "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995). ICE's regulations impose the same requirements. 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained."). The "reason to believe" standard is the equivalent of the Fourth Amendment's probable-cause standard, *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019), and arrests in violation of the governing regulations are unlawful, *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz*, 926 F.3d at 1137. A person arrested without a warrant must also be examined by an officer other than the arresting officer. 8 C.F.R. § 287.3(a). Unlawful presence alone is not evidence of a likelihood of escape, and a noncitizen's failure to dispute his status when confronted "alone is not enough under Section 1357(a)(2) to authorize a warrantless arrest." *Izazaga Cardenas v. Albarran*, No. 26-cv-06435-JD, Dkt. No. 10 (N.D. Cal. July 2, 2026), slip op. at 3; *see Arizona v. United States*, 567 U.S. 387 (2012). A warrant issued after the fact does not cure an unlawful warrantless arrest. *Izazaga Cardenas*, slip op. at 3–4; *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1226 (D. Colo.

2025); *Alfaro v. Mullin*, No. 26-0766 (GRB), 2026 WL 734348, at *5 (E.D.N.Y. Mar. 16, 2026).

30. When "Respondents have failed to justify the warrantless nature of Petitioner's arrest," the petition should be granted. *Reyes v. Santacruz Jr.*, No. ED CV 26-3394-E, 2026 WL 2069974, at *1–2 (C.D. Cal. July 13, 2026); *see also, e.g.*, *Romero-Perez v. Blanche*, No. 2:26-CV-01708-RFB-BNW, 2026 WL 1724752, at *4 (D. Nev. June 15, 2026) ("Respondents have not shown that ICE issued a proper warrant," and "Respondents cannot cure [their] violations by conducting a post-hoc bond hearing. . . . The Court will not bless Respondents' 'detain first, justify later' approach to peoples' liberty"); *Urias v. Semaia*, No. 5:26-CV-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026) ("Respondents violated 8 U.S.C. § 1226(a) . . . when they arrested Petitioner without a valid administrative warrant and without probable cause to believe that he posed a risk of escape.").

C. Section 1226(a) Governs Petitioner's Detention and Requires an Individualized Custody Determination.

31. For nearly three decades after the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, every administration treated noncitizens who entered without inspection and were later arrested in the interior as detained under § 1226(a). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Section 1226(a) requires an individualized custody determination as to whether the noncitizen poses "a danger to property or persons" and is "likely to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). In July 2025, ICE began treating all such noncitizens as mandatorily detained under § 1225(b)(2)(A), and the Board of Immigration Appeals adopted that position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Ninth Circuit has rejected it, holding that § 1225(b)(2)(A) applies to noncitizens entering at the border, while § 1226 governs noncitizens "present in the interior of the United States." *Rodriguez Vazquez v. Bostock*, 183 F.4th 1160, 1172 (9th Cir.

2026). That decision binds this Court notwithstanding the Supreme Court's grant of certiorari in *Rhoney v. Barbosa da Cunha*, No. 26-104 (U.S. Oct. 1, 2026). *See Yong v. INS*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000).

32. Courts in this District have accordingly held that detention of noncitizens arrested in the interior is governed by § 1226(a), and that due process requires release. *Garcia v. Albarran*, No. 26-cv-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026); *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025); *see also Cuy Comes v. DeLeon*, No. 25-cv-09283 (AT), 2025 WL 3206491, at *3–5 (S.D.N.Y. Nov. 14, 2025).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of 8 U.S.C. §§ 1226(a) and 1357(a)(2) and Implementing Regulations

(*Arrest Without a Warrant or an Escape Determination*)

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

34. Under the Fourth Amendment, "[a]n arrest, of course, qualifies as a 'seizure' of a 'person' . . . and so must be reasonable under the circumstances." *al-Kidd*, 563 U.S. at 735–36. Furthermore, Petitioner's arrest, which was not made on any executed warrant, violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. §§ 287.3(a) and 287.8(c)(2)(ii). Section 1357(a)(2) provides that a warrantless arrest may take place only if an officer "has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation *and* is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2) (emphasis added).

35. Respondents arrested Petitioner without executing any warrant and without "reason to believe" that he was "likely to escape before a warrant can be obtained," in violation of 8 C.F.R. § 287.8(c)(2)(ii). The reason-to-believe standard is the probable-cause standard of the Fourth Amendment. *Perez Cruz*, 926 F.3d at

1137. No officer could reasonably have concluded that Petitioner—walking alone to lunch near his home, and under the ongoing supervision of the San Francisco Superior Court—was likely to escape before a warrant could be obtained.

36. ICE agents did not arrest Petitioner on any warrant. Although an agent told counsel two days later that a Form I-200 existed, the arresting agents did not present it, did not call Petitioner by name, and, two days later, had still not served it. Preciado Decl. ¶¶ 8, 14. A warrant sitting in a file does not transform an arrest of an unidentified man on the street into one made "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). On information and belief, the agents did not know who Petitioner was when they seized him and did not arrest him in execution of any warrant. As of the filing of this petition, Petitioner has not been served with a warrant.

37. Arrests in violation of the regulations are unlawful. *Sanchez*, 904 F.3d at 650; *Perez Cruz*, 926 F.3d at 1137. In *Izazaga Cardenas*, where ICE officers arrested men without warrants and without any individualized escape determination, the court held that "each of the arrests violated 8 U.S.C. § 1357(a)(2)" and ordered release. *Izazaga Cardenas*, slip op. at 1–5. Nor can a warrant issued after the fact cure the violation. *Id.* at 3–4; *Ramirez Ovando*, 810 F. Supp. 3d at 1226. And because Petitioner was not arrested "[o]n a warrant issued by the Attorney General," § 1226(a) supplies no authority for his detention, and § 1225 provides no fallback. *Izazaga Cardenas*, slip op. at 4 (citing *Caicedo Hinestroza v. Kaiser*, No. 25-cv-07559-JD, Dkt. No. 8 (N.D. Cal. Sept. 9, 2025)); *Chogllo Chafla v. Scott*, — F. Supp. 3d —, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354, 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025). The appropriate remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

SECOND CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

***(Detention* Without the Custody Determination *§ 1226(a)* Requires)**

38. Petitioner repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth here.

39. Section 1226(a) and its regulations require ICE to make an individualized custody determination as to whether the noncitizen poses a danger to persons or property or is unlikely to appear for future proceedings. 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). On information and belief, no such determination was made here: Petitioner was taken from the street to the hospital, where he remains in ICE custody. There is "nothing to suggest that DHS exercised any discretion at all in detaining [Petitioner] . . . in contravention of the basic procedural requirements of § 1226(a)." *Cuy Comes*, 2025 WL 3206491, at *4 (citation omitted).

40. Respondents' refusal to make an individualized custody determination violates the INA and its implementing regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment

(*Unreasonable *Seizure and Arrest Without Probable Cause)

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

42. The Fourth Amendment prohibits Respondents from seizing or arresting individuals for an immigration violation without reasonable suspicion or probable cause particularized to them. When agents chased Petitioner down and tackled him, they seized him. That seizure was an arrest, which "must be reasonable under the circumstances." *al-Kidd*, 563 U.S. at 735–36.

43. Petitioner was walking to lunch near his home in Emeryville when one of several men in plainclothes on the corner yelled "ICE." No one called his name, asked who he was, or indicated that they were looking for him. When Petitioner ran in fear, about four agents chased and grabbed him, and a fifth tackled him from behind, and sat on his chest.

44. An officer may briefly detain a person only on a reasonable, particularized, and objective basis for suspecting that the specific person is engaged in unlawful activity, *Terry*, 392 U.S. at 21–22, and a custodial arrest requires probable cause particularized to the person arrested, *Ybarra*, 444 U.S. at 91. Nothing suggests that the agents had any particularized information about Petitioner before he walked by them. Petitioner's flight from a group of unidentified plainclothes men shouting "ICE," at a time of widely reported violence by immigration agents, did not supply probable cause to believe that Petitioner, specifically, was removable. And the agents did not conduct a brief investigative stop; they tackled and arrested Petitioner on the spot and fractured six of his ribs. No officer had probable cause, particularized to Petitioner, at the moment of his arrest.

45. Petitioner's detention is the direct product of this unlawful seizure and arrest. Where detention lacks a lawful predicate, the habeas remedy is release. *Munaf*, 553 U.S. at 693 ("The typical remedy for [unlawful executive] detention is, of course, release.").

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process — Detention Without an Individualized Determination)

46. Petitioner repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth here.

47. Petitioner has a weighty liberty interest in freedom from physical restraint. *Zadvydas*, 533 U.S. at 690. Due process requires "adequate procedural

protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up).

48. Respondents may argue that because ICE never previously detained or released Petitioner, he has no liberty interest for the Due Process Clause to protect. Courts in this District have rejected that argument. In *Chaparro Ayala v. Albarran*, No. 26-cv-09430-CRB, 2026 WL 2722780 (N.D. Cal. Sept. 15, 2026), the petitioner lived in the Bay Area for roughly seven years without any encounter with immigration authorities before ICE arrested him. *Id.* at *1. The court held that the government's argument "oversimplifies" the petitioner's due process rights, *id.* at *3, and that the absence of any prior contact with the government "is not determinative," because "individuals can obtain liberty interests even without them," *id.* at *4. Under the government's view, a person's interest in being free "would depend on the government first depriving them of that freedom . . . . That cannot be right." *Id.* "An interest in liberty that could only be bestowed by the government would provide little comfort to those seeking protection from its abuses." *Id.*; *see also Chiguil Chiguil v. Noem*, No. 26-cv-1844 DAD CSK, 2026 WL 913195, at *5 (E.D. Cal. Apr. 3, 2026) (collecting cases); *Norberto C.M.*, 2026 WL 1992747, at *4.

49. A person who lives in the community acquires the "attachments of normal life" that the Due Process Clause protects. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). With the passage of time, "a protectable liberty interest can 'crystallize[ ].'" *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025) (quoting *Hurd v. District of Columbia*, 864 F.3d 671, 683–84 (D.C. Cir. 2017)). Courts therefore "routinely look to factors like the length of a person's residency, their work history, and their community ties—not just whether they were previously released by immigration authorities." *Chaparro Ayala*, 2026 WL

2722780, at *4 (citing *Rico-Tapia v. Smith*, 806 F. Supp. 3d 1166, 1183 (D. Haw. 2025)).

50. Petitioner's circumstances fall within this authority. Although Petitioner arrived in the United States only in or about April 2026, he has built a normal life that the Due Process Clause protects. He lives in Emeryville, where he shares a home with a friend. Preciado Decl. ¶ 12. He has worked steadily as a cleaner and a mover. He is enrolled in mental health treatment through La Clínica de La Raza in Oakland and is under the ongoing supervision of the San Francisco Superior Court, which has set a diversion progress hearing for November 4, 2026. These are the kinds of attachments—residence in a single community, work, and community ties—that led the *Chaparro Ayala* court to find a "significant liberty interest." 2026 WL 2722780, at *4.

51. To counsel's knowledge, Petitioner has received no process at all. No neutral decisionmaker—indeed, no one—has assessed whether he poses a flight risk or a danger. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which courts in this District apply to civil immigration detention, *see Claros v. Albarran*, 811 F. Supp. 3d 1062, 1066 (N.D. Cal. 2025) (collecting cases), his private interest is at its apex; the risk of erroneous deprivation is total when no individualized determination is made, because neither party has had an opportunity to test whether any valid basis for detention exists, *Chaparro Ayala*, 2026 WL 2722780, at *4–5; *Duong v. Kaiser*, 800 F. Supp. 3d 1030, 1040 (N.D. Cal. 2025); and the government has no legitimate interest in detaining him without one, because custody hearings are conducted as a matter of course in immigration proceedings. *See Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020). Courts in this District have repeatedly ordered release where noncitizens were detained without a hearing before a neutral decisionmaker.

See, e.g., Garro *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 n.2 (N.D. Cal. 2025) (collecting cases); *Garcia*, 2026 WL 1454512, at *2.

52. Respondents' detention of Petitioner also violates due process because he has been detained without lawful authority, infringing on his fundamental right to liberty. *Zadvydas*, 533 U.S. at 690.

53. Petitioner's detention without any individualized determination violates the procedural component of the Due Process Clause of the Fifth Amendment.

FIFTH CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process — Detention* Without a Legitimate Purpose*)

54. Petitioner repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth here.

55. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see Bernal*, 2025 WL 3281422, at *6 ("the government may never detain an individual that enjoys the protection of the Due Process Clause without a legal basis to do so").

56. Petitioner is neither a flight risk nor a danger to the community. He lives in Emeryville, has worked steadily since his arrival, and is participating in court-ordered mental health treatment under the supervision of the San Francisco Superior Court, which has set a diversion progress hearing for November 4, 2026. He has not been convicted of any crime. The only charges against him are suspended pending completion of pretrial diversion, and he has every incentive to appear: completing diversion will result in dismissal of those charges. Cal. Penal Code § 1001.36. His detention serves neither permissible purpose, and the government has made no finding that it does.

57. Petitioner's detention therefore bears no "reasonable relation" to any legitimate purpose. *Jackson*, 406 U.S. at 738. Its apparent purpose is "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). It violates the substantive component of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order to show cause directing Respondents to show why the writ should not be granted, returnable within three days, pursuant to 28 U.S.C. § 2243;

(3) Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody immediately, and in any event by the close of business on the day of the Court's order;

(4) Order Respondents to return to Petitioner all property seized at the time of his arrest, including his cellphone;

(5) Declare that Petitioner's arrest and detention violate the Fourth and Fifth Amendments, 8 U.S.C. §§ 1226(a) and 1357(a)(2), and their implementing regulations;

(6) Enjoin Respondents from transferring Petitioner outside the Northern District of California or removing him from the United States while this proceeding is pending, and order that, if he has been transferred, he be returned to this District;

(7) Enjoin Respondents from re-detaining Petitioner unless his detention is ordered at a custody hearing before a neutral decisionmaker at which the government bears the burden of proving, by clear and convincing evidence, that he is a flight risk or a danger to the community, *see Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024);

(8) Award Petitioner his costs and reasonable attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

Dated: October 21, 2026

By: */s/ Lorraine Van Kirk*
Lorraine Van Kirk
Pro Bono Attorney for Petitioner

VERIFICATION STATEMENT PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I declare under penalty of perjury under the laws of the United States of America that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 21, 2026

By: */s/ Lorraine Van Kirk*
Lorraine Van Kirk

Pro Bono Attorney for Petitioner