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**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

DIANA CAROLINA RIVERA MENDOZA,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, Attorney General of the United States; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; FERETI SEMAIA; Warden, Adelanto ICE Processing Center; ERNESTO SANTACRUZ, Acting Field Office Director of the Los Angeles Immigration and Customs Enforcement Office in their official capacities,

Respondents.

Case No. 5:25-CV-03227-MWF-AGR

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

**VERIFIED PETITION**

**PETITIONER'S DHS NO:** A[redacted]

## INTRODUCTION

1. In violation of her constitutional and statutory rights, Diana Carolina Rivera Mendoza ("Petitioner") is being unlawfully detained by Respondents at the Adelanto U.S. immigration and Customs Enforcement ("ICE") Processing Center ("Adelanto").[1]

2. Petitioner, a mother of two children, ages ten and fourteen, fled Nicaragua to seek asylum in the United States after crossing the Texas border on Dec. 14, 2022. Ex. A; LeRoy Decl. at ¶ 4. On that same day, United States Border Patrol (USBP) took Petitioner into custody "for unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States" presumably under 8 U.S.C. § 1182(a)(6)(A)(i). Ex. A; LeRoy Decl. at ¶ 4. On August 25, 2025, Petitioner was charged under Section 1182(a)(7)(A)(i)(I) as an immigrant who is "not in possession of a valid unexpired immigrant visa ... or other valid entry document." Exs. A, J; LeRoy Decl. at ¶ 4.

3. On December 15, 2022, USBP released Petitioner "due to detention capacity at the Central Processing Center in El Paso, TX." Ex. A; LeRoy Decl. at ¶¶ 4, 5. In doing so, the immigration officials necessarily determined that Petitioner did not present a risk of flight or danger to the community. See 8 C.F.R. § 1236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act [Immigration and Nationality Act], under the conditions at section 236(a)(2) and (3) of the Act; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to

[1] Facts asserted in this petition are drawn from the attached declaration of Carrie LeRoy, counsel for Petitioner, and from exhibits to that declaration ("LeRoy Decl.," Dkt. No. 1) and the supplemental declaration of Carrie LeRoy filed herewith and the exhibit thereto ("Supplemental LeRoy Decl.," Dkt. No. 14).

appear for any future proceeding.").

4. The records relating to Petitioner's immigration status do not indicate that the decision to release her from custody on December 15, 2022 was in accordance with the mandatory detention provisions of 8 U.S.C. § 1225(b)(2), which permit release solely "for urgent humanitarian reasons or significant public benefit." Ex. A; LeRoy Decl. at ¶ 5. To the contrary, Respondents specified in Form I-213 that Petitioner's release in 2022 was due to detention center "capacity" limitations. Ex. A. Petitioner was given notice that if she failed to comply with her legal requirements, she could be arrested, but she was not given notice that if she complied with such requirements, she could also be arrested. Ex. D; LeRoy Decl. at ¶ 5.

5. Respondents have not alleged in any immigration proceedings that Petitioner has a criminal record or intends to disregard her obligations under immigration law or, prior to her re-arrest and re-detention on August 25, 2025, that she presented a flight risk. LeRoy Decl. at ¶¶ 4, 5. Respondents specifically confirmed on DHS Form I-213 that Petitioner "does not have any criminal history." Ex. A; LeRoy Decl. at 8.

6. Letters of support for Petitioner from her employer and friends in the United States demonstrate that she is a well-regarded, law-abiding and hard-working mother who has integrated into her community and has strong ties and support in the United States. Exs. F, G; LeRoy Decl. at 8.

7. Petitioner is seeking asylum in the United States because she was persecuted by the Nicaraguan government for her opposition to its authoritarian, repressive regime and has a credible fear that she will be imprisoned, tortured or executed because of her political beliefs if forced to return to Nicaragua. Ex. B; LeRoy Decl. at ¶¶ 6, 7.

8. Petitioner filed Form I-589, Application for Asylum and for

Withholding of Removal (Ex. B; LeRoy Decl. at ¶ 7) and on September 10, 2024, she obtained a DHS-issued social security number and DHS-issued class C08 work authorization permitting her to work in the United States pending proceedings in her asylum case. Ex. C; LeRoy Decl. at ¶ 6. Since November 12, 2024 until her sudden re-detention without notice on August 25, 2025, Petitioner, had been gainfully employed at a fast-food restaurant in Lancaster, California. Ex. F; LeRoy Decl. at ¶ 6. Prior to her arbitrary re-detention on August 25, 2025, Petitioner had been working and building her life in the United States for over two years, enjoying an invaluable liberty interest.

9. On November 14, 2025, Respondents moved the immigration court to terminate Petitioner's asylum claim to facilitate her removal to a third country, Honduras, where Petitioner has no family, community ties, work or other connections. Ex. E; LeRoy Decl. at ¶ 7.

10. Petitioner has now sought and been denied bond twice in immigration court—once because the immigration judge claimed he was jurisdictionally-barred from hearing Petitioner's bond request and a second time on December 16, 2025 pursuant to this Court's order of December 15, 2025 (Dkt. No. 13). *See* Ex. A to the Supplemental LeRoy Decl.;Supplemental LeRoy Decl. at ¶¶ 2, 3. The individualized bond hearing that was ordered by this Court involved the immigration judge checking a box that finds that Petitioner is a "flight risk" without reference at the bond hearing or in the immigration court's order to any acts or omissions of Petitioner at or before the time that she was re-arrested and re-detained on August 25, 2025 or that would otherwise demonstrate that Petitioner ever was or currently is a flight risk. *See id.*

11. The December 16, 2025 immigration court bond hearing did not provide an individualized assessment of whether Petitioner presented a flight risk on or prior to her re-arrest and re-detention on August 25, 2025, as such re-arrest

and detention were not mentioned. Also, no burden of proof was mentioned, and no evidence was cited or considered (apart from the immigration court's order granting Respondents' November 14, 2025 motion to pretermit Petitioner's asylum claim without consideration of the merits in favor of deportation to Honduras). *See id.*

12. Respondents were required to establish material changed circumstances to re-arrest Petitioner on August 25, 2025. Instead, they re-arrested her without notice or cause when she attended her ICE check-in appointment and have apparently now taken the position that post-deprivation immigration court proceedings initiated by Respondents to deport Petitioner to Honduras while Petitioner's asylum claim and her appeal of an immigration court order granting Respondents' motion to pretermit her asylum claim are pending constitute sufficient and material "changed circumstances" to provide a retroactive justification for her re-arrest and re-detention on August 25, 2025.

13. Petitioner is experiencing mental anguish and physical pain related to her detention, including emotional distress regarding her inability to speak regularly with her two children while in detention and severe back pain. Ex. I; LeRoy Decl. at ¶ 10. Petitioner was receiving care for back pain prior to her detention, but Adelanto has not provided her with treatment that is sufficient to relieve her pain. Ex. I; LeRoy Decl. at ¶ 10. Petitioner has extreme difficulty sleeping as a result of such pain. LeRoy Decl. at ¶ 10. Petitioner is the primary financial and emotional support for her two children and she and her children are both suffering from her inability to communicate regularly. LeRoy Decl. at ¶ 10.

14. Prior to her detention, Petitioner would help her children with their homework and check in with them regularly. LeRoy Decl. at ¶ 10. Petitioner is desperate to restore her relationship with her children after several months of limited communications with them in detention, in particular because one of her two children expressed concern to her that her absence might mean that she is abandoning them.

LeRoy Decl. at ¶ 10.

15. Petitioner presents no flight risk and has no criminal history to justify her arrest or detention. Ex. A; LeRoy Decl. at ¶ 8. Indeed, Respondents specifically indicated on DHS Form I-213 that Petitioner "does not have any criminal history." Ex. A; LeRoy Decl. at ¶ 8. Petitioner obtained work authorization and a corresponding social security card issued by DHS on September 10, 2024, applied for asylum in the United States and was employed, residing and working in Lancaster, California when she attended an ICE check in on August 25, 2025 in Los Angeles, California. Exs. A, B, C.

16. Respondents now arbitrarily seek to deport Petitioner to a third country, Honduras, in which Petitioner has no family members, community ties or connections whatsoever. Ex. E; LeRoy Decl. at ¶ 7. The merits of her asylum claim have not been heard. LeRoy Decl. at ¶ 7. Petitioner is appealing the immigration court's decision to pretermit her asylum claim and finding that she is eligible for deportation to Honduras. Supplemental LeRoy Decl. ¶ 5.

17. The initial basis for Petitioner's re-detention appears to be both arbitrary and unclear, as the August 25, 2025 charging document in her case refers to her as an "arriving alien" (Ex. J) as if she had not already been present in the United States since December 15, 2022, the date of her release from ICE custody after she had been charged with "unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States." (Ex. A; LeRoy Decl. at ¶ 4).

18. The record in Petitioner's immigration case demonstrates that Petitioner is a well-regarded, law-abiding and hard-working mother who has integrated into her community and has strong family support and in the United States. Exs. F, G; LeRoy Decl. at ¶ 8.

19. Petitioner's re-arrest had nothing to do with her individual case, as she is neither a flight risk, has no criminal record and is not a threat to others. Ex. A; LeRoy Decl. at ¶ 8. Instead, her arrest and re-detention are part of a new, nationwide DHS strategy of sweeping up migrants who attend their immigration court hearings and ICE check-ins, detaining them, and seeking to re-route them to fast-track deportations. Since mid-May of 2025, DHS has implemented a coordinated practice of immigration detention to strip people like Petitioner of their due process rights and pressure them into deportation, which could amount to a death sentence in Nicaragua for Petitioner. This coordinated operation is aimed at dramatically accelerating deportations to meet ICE deportation quotas.

20. Petitioner's summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without a pre-deprivation bond hearing and without making any affirmative showing of material changed circumstances, Respondents violated Petitioner's procedural due process rights. At the very least, prior to her re-detention, she was constitutionally entitled to a hearing before a neutral decisionmaker prior to August 25, 2025 at which the government should have justified her re-detention—or been ordered to release her. Instead, Petitioner has been detained at Adelanto since August 25, 2025, her bond requests, including one ordered by this Court, have not resulted in her release and her next immigration court hearing in detention is not until February 6, 2026—nearly six months after her unlawful detention at Adelanto commenced. LeRoy Decl. at ¶ 9; Supplemental LeRoy Decl. at ¶ 4.

21. The mandatory detention provisions of Section 1225(b)(2)(A)

do not apply to Petitioner. Petitioner was unquestionably detained in the interior of the country at her ICE check in, years after initially entering the United States; thus, she is not suddenly an "arriving alien" or "seeking admission" at the time of her re-detention. Thus, her detention is governed by section 1226(a). *See, e.g., Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025).

22. As a result of her arrest and detention, Petitioner is suffering irreparable and ongoing harm. LeRoy Decl. at ¶ 10. Petitioner has lost the ability to earn income to support her two children, has been separated from her loved ones and from her community and has experienced severe physical pain and emotional distress resulting from her detention. Ex. I, LeRoy Decl. at ¶ 10.

23. All individuals within the United States have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

24. Petitioner, who was arrested while appearing for an ICE check-in appointment, is not a flight risk. To the contrary, Petitioner is actively seeking to comply with her ICE and immigration obligations and her overall compliance for the three years since she arrived in the United States demonstrates that she is not a flight risk. Nor do immigration case proceedings in November of 2025 provide a proper or constitutionally sufficient basis for finding that Petitioner was a flight risk prior to her re-arrest in August of 2025 or otherwise. *See* Supplemental LeRoy Decl. at ¶¶ 2, 3.

25. Respondents' stated position at the December 16, 2025 immigration court bond hearing amounts to an impermissible post-hoc justification for Petitioner's re-arrest. *See e.g., Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025

U.S. Dist. LEXIS 178531, at *12 (N.D. Cal. Aug. 29, 2025) (declining to consider post-hoc rationalization for detention raised for the first time in litigation). Respondents' internal documentation of Petitioner's re-arrest on August 25, 2025 makes no mention of a determination of revocation, much less the reason for any revocation or changed circumstances.

26. If Respondents may simply re-arrest a non-citizen without notice or cause and then later file a motion in immigration court that provides a procedural basis for the contention that the detainee, months after her unlawful detention commenced, suddenly presents a flight risk, Respondents would be incentivized to trample on the due process and statutory rights of all paroled non-citizens for which there are no changed circumstances at the time of their re-arrest and re-detention. Accordingly, Petitioner seek a writ of habeas corpus requiring that Petitioner be immediately released from her unlawful detention.

## JURISDICTION AND VENUE

27. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

28. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 78, 484, 493- 500 (1973). Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Central District of California.

## REQUIREMENTS OF 28 U.S.C. § 2243

29. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 20 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

## PARTIES

30. Petitioner is a law-abiding mother of two children who has applied for political asylum in the United States after crossing the border and being released by ICE in December 2022. She has been wrongfully re-detained at Adelanto since August 25, 2025.

31. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioner. She is sued in her official capacity.

32. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review, and the BIA and immigration court system it operates, is a component agency. She is sued in her official capacity.

33. Respondent Todd Lyons is the Acting Director of Immigration and

Customs Enforcement, a federal law enforcement agency within the Department of Homeland Security. ICE's responsibilities include operating the immigration detention system. In his capacity as ICE Acting Director, Respondent Lyons exercises control over and is a custodian of persons held at ICE facilities nationally. He is Petitioner's immediate custodian and is responsible for Petitioners' detention . He is sued in his official capacity.

34. Respondent Ernesto Santacruz is the Acting Director of the Los Angeles Field Office, where Petitioner was unlawfully arrested and sent to Adelanto. He is sued in his official capacity.

35. Respondent Fereti Semaia is the Warden of Adelanto, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued In his official capacity.

**EXHAUSTION**

36. Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) her continued detention results in irreparable harm.

37. There is no requirement to exhaust administrative remedies because no other forum exists in which Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the constitutionality of a re-arrest or detention or challenging a policy under the Administrative Procedure Act. Only an order of this Court could effectively grant Petitioner relief.

38. Prudential exhaustion is not required here because it would be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). 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." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)); *Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025). Furthermore, prudential exhaustion is not required in Petitioner's case because appeals to the Board of Immigration Appeals ("BIA") would be futile, as the BIA has effectively taken the position in violation of federal law that mandatory detention without the possibility of parole applies to all 8 U.S.C. § 1226(a) detainees. *See Zaragoza Mosqueda v. Noem*, No. 5:25-CV-2304-CAS-BFM, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025).

## LEGAL BACKGROUND.

### A. Due Process Violations

39. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

40. *First*, "[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 government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

41. These protections extend to noncitizens facing detention, as "[i]n 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). Accordingly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that

[the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Substantive due process thus requires that all forms of 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 non-punitive purposes for immigration detention: ensuring a 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 at 519–20, 527–28, 31 (2003).

42. *Second*, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.

43. 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). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

44. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he 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.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

45. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border with no criminal record, like

Petitioner. Noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

**B. Statutory Violations**

46. Individuals previously released by DHS, like Petitioner, have necessarily been deemed neither a flight risk nor a danger. 8 C.F.R 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they "would not pose a danger to property or persons," and are "likely to appear for any future proceeding"); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding.").

47. In cases of individuals previously released by DHS, re-detention under Section 1226(a) requires an individualized determination of a material change in circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances." (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec. 637, 640 (B.I.A. 1981). Absent a material change in circumstances, the re-detention of noncitizens previously released by DHS violates the INA because it does not serve the purpose of the statute.

48. The specific permissible grounds for re-detaining an individual subject to 8 U.S.C. § 1226(a) require a "material change of circumstances" *Duong v. Kaiser,* 2025 U.S. Dist. LEXIS 185024, *22 (N.D. Cal. Sept. 19, 2025) (requiring "'material change of circumstances' before bond can be revoked or modified" (citations omitted)). Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed

circumstances – namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.

49. Pursuant to 8 U.S.C. § 1226(a), parolees may be re-arrested and re-detained if (1) they violate a term or condition of their release, (2) they sustain a new criminal conviction; or (3) removal proceedings are concluded such that they are no longer subject to detention under § 1226(c) and instead is subject to detention under 8 U.S.C. § 1231(a). None of the foregoing permissible grounds for re-detaining a parolee pursuant to 8 U.S.C. § 1226(a) applied to Petitioner when she was re-arrested in August 2025 and do not apply after four months of unlawful detention or because the immigration judge checked a box that says she is a "flight risk" based on the procedural posture of her case on December 16, 2025. Like thousands of similarly-situated refugees in the current political climate, Petitioner was simply re-arrested for attending her routine ICE check-in appointment.

50. Due process required that Respondents provide Petitioner with notice and a pre-deprivation bond hearing *prior* to revocation of her parole. *See, e.g.*, *Mata Velasquez v. Kurzdorfer*, WL 1953796 at *17 (W.D.N.Y. 2025) ("To mitigate the risk of erroneous deprivation, due process requires, at a minimum, the opportunity for Mata Velasquez to submit evidence relevant to whether the government should revoke his parole before it makes a revocation decision"); *Valdez v. Joyce*, 2025 WL 1707737, *4 (S.D.N.Y. 2025) ("In the context of revocation of civil release, an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing") (internal quotation marks omitted); *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10–12 (D. Or. July 9, 2025) (explaining the parole process in immigration cases and noting that *before* parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons supporting the

revocation decision); *See also, Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process.").

51. Petitioner was re-arrested for simply showing up at a routine ICE check-in appointment. She was served with a Notice to Appear that states that she is charged with being an "arriving alien" who does not have a "valid unexpired immigrant visa." *See* LeRoy Decl., Ex J. This is not a "material change of circumstances" on August 25, 2025—it describes Petitioner's exact status when she crossed the U.S. border three years ago. Nothing has changed.

52. Respondents' position, adopted by the immigration judge in Petitioner's case, that immigration proceedings pending Petitioner's appeal demonstrate that Petitioner is a flight risk is absurd. Even assuming the procedural posture of her case where removal proceedings have not concluded could be understood as evidence of flight risk, such a finding on December 16, 2025 cannot justify Petitioner's re-arrest on August 25, 2025. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ *prior* to re-detention.") (emphasis added).

53. Parolees released on their own recognizance are entitled to notice and an opportunity to contest their re-detention *prior* to any re-detention. *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing).

## FACTUAL ALLEGATIONS

54. On January 20, 2025, the day that President Trump took office for his second term. That day, President Trump signed Executive Order 14159, "Protecting the American People Against Invasion," the purpose of which was "to faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people." Exec. Order No. 14,159, 90 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take various actions "to ensure the efficient and expedited removal of aliens from the United States." *Id.*

55. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This coordinated operation is aimed at dramatically accelerating deportations" by arresting people at the courthouse or their ICE check-in appointments.

56. DHS's aggressive tactics at immigration courts appear to be motivated by the Administration's imposition of a new daily quota of 3,000 ICE arrests. In part as a result of this campaign, ICE's arrests of noncitizens with *no criminal record* have increased more than 800% since before January.

57. The new arrest and detention campaign is a sharp break from DHS's previous practices, when immigration officers avoided arrests at ICE check-in appointments and courthouses given the concern that such enforcement actions would deter people from appearing for their proceedings and complying with court orders.[2]

58. The government's new campaign is also a significant shift from previous DHS practice of re-detaining noncitizens only after a material change in

[2] Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

circumstances. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice); *see also, Duong v. Kaiser,* 2025 U.S. Dist. LEXIS 185024, *22 (N.D. Cal. Sept. 19, 2025) (requiring "'material change of circumstances' before bond can be revoked or modified" (citations omitted)).

59. Petitioner's detention is a result of DHS's new unlawful enforcement campaign. Petitioner arrived in the United States on Dec. 14, 2022, after crossing the Texas border. On December 14, 2022, United States Border Patrol took Petitioner into custody "for unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States" presumably under 8 U.S.C. § 8 U.S.C. 1226(a)(2)(B). Ex. A; LeRoy Decl. at ¶ 4. On December 15, 2022, Petitioner was released from custody by ICE. The notices provided by Respondents do not indicate that she was released on December 15, 2022 in accordance with the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) "for urgent humanitarian reasons or significant public benefit." Ex. A; LeRoy Decl. at ¶ 5. Rather, Respondents specified that Petitioner's release in 2022 was due to detention center "capacity" limitations. Ex. A; LeRoy Decl. at ¶ 5.

60. Petitioner was arrested and re-detained on August 25, 2025 when she attended a routine check in with ICE in Los Angeles, California. Ex. A; LeRoy Decl. at ¶ 3. On August 25, 2025, Petitioner was charged by Respondents under Section 1182(a)(7)(A)(i)(I) as an immigrant who is "not in possession of a valid unexpired immigrant visa ... or other valid entry document" and she was identified as "an arriving alien," as if she had not been living in the interior of the United States for nearly three years. Exs. A, J; LeRoy Decl. at ¶ 4. Respondents did not inform Petitioner of any changed circumstances or other reason for Respondents' decision to re-detain her. Exs. A, J; LeRoy Decl. at ¶ 4.

61. Petitioner presents no flight risk and has no criminal history to justify her arrest or re-detention. Ex. A; LeRoy Decl. at ¶ 8. Indeed, Respondents specifically indicated on DHS Form I-213 that Petitioner "does not have any criminal history." Ex. A; LeRoy Decl. at ¶ 8. Petitioner obtained work authorization and a corresponding social security card issued by DHS on September 10, 2024, applied for asylum in the United States and was employed, residing and working in Lancaster, California when she attended an ICE check in on August 25, 2025 in Los Angeles, California. Exs. A, B, C. Respondents now arbitrarily seek to deport Petitioner to a third country, Honduras, in which Petitioner has no family members, community ties or connections whatsoever. Exs. A, E; LeRoy Decl. at ¶ 7. The merits of her asylum claim have not been heard. LeRoy Decl. at ¶ 7. Petitioner is appealing the immigration court's decision to pretermit her asylum claim and finding that she is eligible for deportation to Honduras. Supplemental LeRoy Decl. at ¶ 5.

62. Meanwhile, conditions have deteriorated in Nicaragua for opponents of the authoritarian regime. Petitioner has a credible fear that she will be imprisoned, tortured or executed because of her political beliefs if forced to return to Nicaragua. Ex. B; LeRoy Decl. at ¶¶ 6,7.

63. Petitioner's arrest had nothing to do with her individual case, as she is neither a flight risk, has no criminal record and is not a threat to others. Ex. A; LeRoy Decl. at ¶ 8. Instead, her arrest and re-detention are part of a new, nationwide DHS strategy of sweeping up migrants who attend their immigration court hearings and ICE check-ins, detaining them, and seeking to re-route them to fast-track deportations. Since mid-May of 2025, DHS has implemented a coordinated practice of immigration detention to strip people like Petitioner of their due process rights and pressure them into deportation, which could amount to a death sentence in Nicaragua for Petitioner. This coordinated operation is intended

to dramatically accelerate deportations to meet DHS deportation quotas. Although DHS regulations do not permit re-detention absent a showing that the "[c]ircumstances of the case have changed," 8 C.F.R. § 239.2(a)(7), (c), DHS is arbitrarily re-detaining asylum seekers such as Petitioner in violation of their due process rights.

64. Petitioner attended an ICE check in on August 25, 2025—only to be arbitrarily re-arrested and sent to Adelanto, where she has been unlawfully detained for over three months. The only "justification" for her re-detention on August 25, 2025 appears to be the preposterous fiction created by Respondents by checking the box "arriving alien" on the applicable 2025 charging document (Ex. J) that an asylum seeker residing in the interior of the United States for over two years after being released because DHS determined in 2022 that she was neither a flight risk or threat to others can suddenly and without changed circumstances be made subject to mandatory detention as an "arriving alien" seeking admission to the United States.

65. Petitioner is being deprived of her liberty without any permissible justification. The government previously released her on her own recognizance in 2022 because she did not pose sufficient risk of flight or danger to the community to warrant detention. None of that has changed. Petitioner has no criminal record, and there is no basis to believe that she poses any public-safety risk. Nor is Petitioner, who was arrested *while appearing for an ICE check-in appointment*, conceivably a flight risk. Nor does the fact that, four months after Petitioner's unlawful detention commenced, the immigration judge in her case checked a box that says she is now a "flight risk" based solely on the procedural posture of her case on December 16, 2025 justify her detention on August 25, 2025.

## CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

**Violation of the Fifth Amendment to the United States Constitution**

**(Substantive Due Process—Detention)**

66. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

67. 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. *See id.*

68. Petitioner was not on August 25, 2025 and is not a flight risk or danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

69. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be not "to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas. *See Demore v. Kim*, 538 U.S. 510 at 532–33 (Kennedy, J., concurring).

**SECOND CLAIM FOR RELIEF**

**Violation of the Fifth Amendment to the United States Constitution**

**(Procedural Due Process—Detention)**

70. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

71. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after her release. *See 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, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

72. Accordingly, "[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); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

73. Petitioner's re-detention without a pre-deprivation hearing violated due process. Over two years after deciding to release Petitioner from custody, Respondents re-detained Petitioner with no notice, no apparent justification for her re-detention, and no opportunity to contest her re-detention before a neutral adjudicator before being taken into custody.

74. The December 16, 2025 immigration court bond hearing ordered by this Court did not provide an individualized assessment of whether Petitioner presented a flight risk on or prior to her re-arrest and re-detention on August 25, 2025, as such re-arrest and detention were not mentioned. In addition, no burden of proof was mentioned, and no evidence was cited or considered (apart from the order granting Respondents' November 14, 2025 post-deprivation motion to pretermit Petitioner's asylum claim without consideration of the merits in favor of deportation to Honduras). *See* Supplemental LeRoy Decl. at ¶¶ 2, 3.

75. Petitioner has a profound personal interest in her liberty. Because she received no procedural protections prior to her re-arrest on August 25, 2025 and the December 16, 2025 immigration court bond hearing ordered by this Court was procedurally deficient and did not even include an inquiry with respect to changed circumstances in August 2025, the risk of erroneous deprivation is high. The government had no legitimate interest in re-detaining Petitioner without a material change of circumstances on or before the date of her re-arrest on August 25, 2025.

76. Respondents cannot constitutionally manufacture "changed circumstances" with retroactive effect by filing a motion to pretermit her asylum claim in immigration court months after the date of Petitioner's unlawful re-arrest. Such maneuvers are gamesmanship intended to meet current DHS deportation quotas rather than to serve any legitimate government interest. Similar to merely being in removal proceedings, the procedural posture of Petitioner's asylum case--rather than any acts or omissions of Petitioner--does not establish that she is a flight risk or was a flight risk when she was re-arrested on August 25, 2025.

**THIRD CLAIM FOR RELIEF**

**Violation of the Fourth Amendment to the United States Constitution**

**(Unlawful Arrest)**

77. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

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

79. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause. It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable. . . . [T]he primary purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee appears before the court, the purpose of the initial seizure has been accomplished. Further seizure requires a court order or new cause; the original probable cause determination is no justification. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (cleaned up); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.").

80. In the immigration context, this prohibition means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom.*, *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261

(7th Cir. 1971).

81. ICE agents arrested Petitioner in 2022 after she entered the United States, charged her with a violation of civil immigration law and released her from custody. Petitioner adhered to all immigration law requirements, filed an asylum application and obtained a government-issued work authorization. She had not engaged in any conduct in the intervening time that made her a flight risk or danger to the community. No material change in circumstances justified Petitioner's re-arrest on August 25, 2025.

82. Petitioner's re-arrest and detention by Respondents on August 25, 2025 after she had complied with all applicable immigration law and DHS requirements and absent any material change in circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

**FOURTH CLAIM FOR RELIEF**

**Violation of the Administrative Procedure Act**

83. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

84. The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A).

85. The government's policy targeting people attending their immigration hearings and required ICE check-in appointments for arrest is arbitrary and capricious, in violation of 5 U.S.C. § 706(2)(A). The government's arbitrary quota-driven arrest policy is therefore in excess of its statutory authority in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C). The government has provided no reasoned or adequate explanation for the policy, which is a dramatic shift from recent and longstanding agency policy and practice.

86. Petitioner's arrest and re-detention without cause on August 25, 2025 pursuant to the government's policy is a final agency action that violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

**FIFTH CLAIM FOR RELIEF**

**Violation of the Immigration and Nationality Act (INA)**

**(8 U.S.C. § 1226(a))**

87. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

88. Petitioner was re-detained in the interior of the United States at an ICE check-in appointment and thus is currently detained under 8 U.S.C. § 1226(a). Detention under 8 U.S.C. § 1226(a) must serve a legitimate government purpose of mitigating danger or preventing flight. *See Zadvydas*, 533 U.S. at 690; 8 U.S.C. § 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

89. Petitioner's prior release by DHS in 2022 necessarily reflects a determination that the noncitizen is neither a flight risk nor a danger to the community. 8 C.F.R. 1236.1(c)(8) (outlining requirements for release on recognizance); 8 C.F.R. 212.5(b) (outlining requirements for parole).

90. Thus, her re-detention pursuant 8 U.S.C. § 1226(a) required an individualized determination of a material change in circumstances *on or before* August 25, 2025 going to flight risk or danger in order for her re-detention to serve a legitimate regulatory purpose.

91. Petitioner's re-detention commencing on August 25, 2025 violated the INA, given that she was not afforded an individualized determination of a material change in circumstances related to flight risk or danger to justify re-detention on or before her arrest on August 25, 2025. The only bond hearing that Petitioner obtained 1) was ordered by this Court on December 15, 2025 (Dkt. No. 13)—nearly four months after her unlawful detention commenced and 2) did not

even include an inquiry into the basis for Petitioner's re-arrest and re-detention on August 25, 2025 or provide any evidence of flight risk relating thereto. *See* Supplemental LeRoy Decl. at ¶¶ 2, 3.

**PRAYER FOR RELIEF**

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
3. Declare that Petitioner's re-arrest and re-detention on August 25, 2025 violated the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the Administrative Procedure Act and the Immigration and Nationality Act, 8 U.S.C. § 1226;
4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-arresting and re-detaining Petitioner in violation of her constitutional rights and 8 U.S.C. § 1226 and specifically, without adequate evidence of changed circumstances at the time of her re-arrest—namely, that (1) Petitioner has violated a term or condition of her release, (2) Petitioner has sustained a new criminal conviction; or (3) removal proceedings are concluded such that Petitioner is no longer subject to detention under § 1226(c) and instead is subject to detention under 8 U.S.C. § 1231(a);
6. Set aside Respondents' unlawful practice pursuant to 5 U.S.C. §706(2) as contrary to law, contrary to constitutional right, and in excess of statutory authority;
7. Award Petitioner her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412;

and

9. Grant such further relief as this Court deems just and proper.

Date: December 22, 2025

Respectfully submitted,

/s/ Carrie LeRoy
Carrie LeRoy
Pro Bono Attorney for Petitioner

**VERIFICATION**

I, Carrie LeRoy, declare as follows:

I am an attorney admitted to practice law in the State of California. Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on her behalf. I have read the foregoing First Amended Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 22, 2025.

/s/ Carrie LeRoy
Carrie LeRoy

Pro Bono Attorney for Petitioner