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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

14 Cecilia HERNANDEZ ORTIZ,

) Case No.:

16)
17) Petitioner- Plaintiff,

) **VERIFIED PETITION FOR WRIT OF**
) **HABEAS CORPUS AND COMPLAINT**

18) vs.
19)

20 Polly KAISER, Acting Field Office Director of
21 the San Francisco Immigration and Customs
22 Enforcement Office;
23 Todd LYONS, Acting Director of United States
24 Immigration and Customs Enforcement;
25 Kristi NOEM, Secretary of the United States
26 Department of Homeland Security;
27 Pamela BONDI, Attorney General of the United
28 States, acting in their official capacities;
Christopher CHESTNUT, California City
Correctional Facility Administrator (*de facto*
Warden)

) Respondents-Defendant(s).
)

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1 **INTRODUCTION**

- 2 1. Petitioner, Cecilia Hernandez Ortiz, is a Mexican citizen and national. This Petition
3 challenges her unconstitutional and *ultra vires* detention by Immigration and Customs
4 Enforcement ("ICE") at California City Correctional Facility located in Bakersfield,
5 California.
- 6 2. Petitioner seeks her immediate release from detention at the California City
7 Correctional Facility because ICE unlawfully detained her and continues to imprison
8 her without the issuance of a reasonable bond or demonstrating that she is a flight risk
9 or a danger to the community, as required by the Due Process Clause of the Fifth
10 Amendment.
- 11 3. Immigration detention is civil and thus permissible for only two reasons: to ensure a
12 noncitizen's appearance at immigration hearings, and to prevent danger to the
13 community. However, Respondents did not arrest and detain Petitioner on account of
14 being a high risk of absconding from immigration proceedings, nor as a danger to the
15 community. Instead, Petitioner is a part of a broad immigration enforcement
16 campaign which is systematically detaining immigrants and stripping them of
17 procedural rights, forcing many to forfeit their asylum/withholding applications, and
18 pressuring them into fast-track removal.
- 19 4. Respondents' actions (arresting Petitioner) violate the Due Process Clause of the Fifth
20 Amendment to the U.S. Constitution, the Immigration and Nationality Act, and
21 implementing regulations, such as the Administrative Procedure Act, and the *Accardi*
22 doctrine, which obligate administrative agencies to follow their own rules,
23 procedures, and instructions.
- 24 5. Petitioner respectfully seeks a writ of habeas corpus ordering Respondents to
25 immediately release her from ongoing, unlawful detention, and prohibiting her re-
26 arrest without a hearing to contest that re-arrest before a neutral decision-maker.

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6. In addition, to preserve this Court's jurisdiction and practically ensure timely compliance with all court orders, Petitioner also requests that this Court order Respondents not to transfer her outside of this District, nor deport her, for the duration of this proceeding.
7. Petitioner first entered the United States in February of 1991, then only 12 years old. Petitioner voluntarily returned to Mexico in October of 1999. Petitioner thereafter attempted to re-enter the United States on February 05, 2000, and was issued an Expedited Order of Removal. Petitioner thereafter re-entered the United States without inspection in September 2001 and has remained present in the United States since that time. Petitioner has attended Elementary School, Middle School and High School in the United States. Petitioner (46 years old) has lived in the United States for over 32 years.
8. Petitioner has no criminal record. *See attached FBI Background Check.*
9. In May of 2018, Petitioner was ordered to present herself before the Sacramento ICE Office. Petitioner complied, presenting herself together with Counsel. Petitioner was asked to provide evidence of her October 1999 Voluntary Return to Mexico and Petitioner complied. Counsel for Petitioner spoke with the assigned Deportation Officer, D.O. Kirkegaard (L7386) regarding the anticipated filing of an I-246 Stay of Removal, however, after favorable compliance with the issuance of evidence of Petitioner's October 1999 Voluntary Return, ICE granted Petitioner an Order of Supervision dated May 17, 2018, after which Petitioner was required to report in-person until 2020 when the Sacramento ICE office closed to the public as a result of Covid-19. *See I-871 Notice of Intent to Reinstate Prior Order; See also ICE FORM I-220B Order of Supervision.*
10. On June 29, 2018, Petitioner completed biometrics at the Application Support Center, USCIS Sacramento, for Form I-589 Application for Asylum and Withholding of Removal, in Case No. [REDACTED]

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11. Petitioner complied with the terms of her ICE Order of Supervision from May 17, 2018, until her arrest by San Francisco ICE on November 07, 2025, at the San Francisco ICE Office.
12. Petitioner presented in-person accompanied by Counsel at the San Francisco ICE Office on November 07, 2025, as she was ordered to do, in compliance with completion of her Reasonable Fear Interview. Despite the fact that the San Francisco Asylum Office is located elsewhere in San Francisco (75 Hawthorne Street), and that the Asylum office is responsible for conducting reasonable fear interviews, Petitioner was ordered to complete her interview in person at the San Francisco ICE Office located at 630 Sansome Street (detained facility with holding cells on site). Once checked in, Petitioner was required to complete her Reasonable Fear interview via telephone with an officer located at the Asylum Office in San Francisco, rather than completing the interview at the Asylum Office in person.
13. Petitioner's Witness was not allowed to enter the building nor present himself at the initial Reasonable Fear Determination Interview despite ICE's written instructions stating that Petitioner could bring a witness or provide documents in support of her claim. Petitioner was repeatedly cut-off by the Asylum Officer and not allowed to complete her answer to any given question. Counsel for Petitioner was not allowed to ask any questions at the conclusion of the Asylum Officer's questioning and Counsel explained the need for follow-up on crucial facts asserted in Petitioner's testimony. After Petitioner was told that her interview had concluded, she was thereafter called back for additional questions and then finally her witness was allowed to enter the building (but thereafter only allowed to answer one general question regarding his "statement" and was similarly cut-off before completing his answer and then being excused). The entirety of the Reasonable Fear Interview, the Asylum Officer failed to elicit pertinent information. For example, when Petitioner initially testified that family members had been murdered in 2012, 2013, 2016 and 2017, she was cut-off

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1 before completing her testimony and not asked any follow-up questions regarding
2 names of the deceased, the responsible, manner of death, cause of death, etc. *See*
3 *Motion to Vacate Negative Reasonable Fear Determination*.

4 14. Counsel for Petitioner made oral and written requests with regard to allowing
5 Petitioner's witness to testify; these requests were initially denied. Counsel for
6 Petitioner also submitted many documents in support of Petitioner's Withholding and
7 Convention Against Torture claim, however, the Asylum Officer did not review them
8 or Counsel's Closing Remarks (timely filed according to the Asylum Officer's
9 instructions and time constraints) prior to issuance of her determination.

10 15. Once the Asylum Officer made her negative Reasonable Fear determination, Counsel
11 for Petitioner immediately requested Review by an Immigration Judge (November
12 07, 2025). Petitioner was then approached by three Deportation Officers who blocked
13 the entry of her small interview room and explained that she was going to be
14 handcuffed and incarcerated. Petitioner was arrested without incident. Counsel for
15 Petitioner and Petitioner herself requested an alternative to detention such as ankle
16 monitor or self-reporting check-ins as she was previously allowed from 2018-2025.
17 These requests were denied by the arresting officers (1 female, 2 male officers). The
18 arresting officer (female officer, Colombian heritage) assured Counsel that if an
19 Immigration Judge reversed the negative Reasonable Fear finding, that ICE would
20 then release Petitioner. Thereafter, Petitioner was transferred to California City
21 Correctional Facility and later issued a hearing on November 20, 2025, where the
22 Immigration Court found that Petitioner did, in fact, have a Reasonable Fear, thereby
23 vacating the determination made by the Asylum Officer on November 07, 2025.
24 *Immigration Court Order vacating the decision of the DHS immigration Officer.*
25 Pursuant to 8 C.F.R. Section 1208.31(g)(2), Petitioner was placed in "withholding-
26 only" proceedings on 11/20/2025. Petitioner remains detained at the California City
27 Correctional Facility.
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1 16. Counsel for Petitioner made written requests to both the San Francisco ICE (main
2 office) and Bakersfield ICE sub-office regarding the same, after the Immigration
3 Judge vacated the negative Reasonable Fear Finding, however, ICE has not released
4 Petitioner as they claimed that they would (on November 07, 2025, at the time of
5 Petitioner's arrest), nor have they issued a formal response to this line of inquiry.

6 17. On November 7, 2025, without notice or opportunity to be heard, Petitioner fell prey
7 to ICE's new practice of arresting under the auspices of purported mandatory
8 detention. Petitioner had previously been ordered to complete in person check-ins.
9 Petitioner presents a long history of compliance in responding to in person check-ins,
10 biometrics appointments, and USCIS interview (since May of 2018).

11 18. Petitioner requested a Bond Hearing, but was informed by the Immigration Judge on
12 December 08, 2025, that the Immigration Court lacked jurisdiction to issue a bond
13 under INA Section 241(a) Proceedings where Petitioner is in Withholding Only
14 Proceedings with a prior order of Removal. As a result, Petitioner was allowed to
15 withdraw her bond request.

16 19. Petitioner is currently being detained at the California City Correctional facility
17 located at: 22844 Virginia Boulevard, Bakersfield, CA 93505, approximately 452
18 miles from her home (over 7 hours each direction).

19 20. This Court has repeatedly enjoined the government from continuing to detain people
20 arrested in circumstances like these. *See, e.g., Salazar v. Kaiser*, No. 1:25-CV-01017-
21 JLT-SAB, 2025 WL 2456232, at *10-11 (E.D. Cal. Aug. 26, 2025) (granting
22 preliminary injunction and ordering ICE to stop detaining a petitioner who was
23 released on her own recognizance after entering the United States without
24 inspection); *Singh v. Andrews*, No. 1:25-CV-801, 2025 WL 22 1918679, at *10
25 (E.D. Cal. July 11, 2025) (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-
26 KES-CDB, 2025 WL 2420390, at *4-6 (E.D. Cal. Aug. 21, 2025) (ordering
27 temporary restraining order); *Doe v. Becerra*, No. 2:25-cv-647-DJC, F. Supp. 3d
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2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025); see also *Garro Pinchi v. Noem*, No. 5:25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction* at F. Supp. 3d, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (ordering ICE to free a woman previously released from CBP custody). As the unconstitutional conduct persists, so too does the unrelenting influx of individual petitions for writs of habeas corpus filed in district courts.

21. ICE officers swear an oath to uphold the Constitution, yet the agency's campaign of lawless arrests continues unabated in the face of court decision after court decision releasing the individuals ICE has baselessly arrested burdening both courts and civil legal service providers. ICE's impunity has led to countless calls flooding the phone lines of legal service providers. Petitioner now files her petition and her motion for temporary restraining order will follow in service of not only swift justice but also judicial economy.

PARTIES

Petitioner-Plaintiff

22. Petitioner, Petitioner Cecilia Hernandez Ortiz ("Petitioner"), is a 46-year-old Withholding of Removal and Convention Against Torture seeker from Mexico. She has now lived in the United States for over 32 years. Prior to her detention, Petitioner lived in Chico, California with her husband (Withholding of Removal granted to husband) and children (U.S. Citizen and Lawful Permanent Resident of the U.S.).
23. Petitioner has no criminal history and has not missed any immigration court hearings, or in-person ICE check-ins. Petitioner has also complied with her USCIS biometrics appointment and USCIS Reasonable Fear Interview appointment.
24. On or about November 07, 2025, Petitioner was arrested by San Francisco ICE at the San Francisco ICE Office when she presented for her scheduled in person Reasonable Fear Interview. On that day, Petitioner was accompanied by her attorney of record, Andrea Falone. Prior to that date, Counsel for Petitioner was told that it was preferred

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for Counsel to show up via telephone while Petitioner was required to present in-person.

25. Petitioner is currently detained at California City Correctional Facility in Bakersfield, California ("California City"). Petitioner's immigration court proceedings remain ongoing. Automated Case Information lists the Immigration court address in Adelanto, CA (505 miles from Petitioner's home, and approximately 8 hours driving time with no traffic).

Respondents-Defendants

26. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office. In this capacity, she is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including Petitioner's detention. Respondent Kaiser is sued in her official capacity.
27. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official. Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove Petitioner. Respondent Lyons is sued in his official capacity.
28. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove Petitioner. Respondent Noem is sued in her official capacity.
29. Respondent Pamela Bondi is the Attorney General of the United States and the most

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1 senior official at the Department of Justice. In that capacity and through her
2 agents, she is responsible for overseeing the implementation and enforcement of the
3 federal immigration laws. The Attorney General delegates this responsibility to
4 the Executive Office for Immigration Review, which administers the immigration
5 courts and the Board of Immigration Appeals. Respondent Bondi is sued in her
6 official capacity.

7 30. Respondent Christopher Chestnut is the warden of California City Correctional
8 Facility. He oversees operations at California City, where Petitioner is detained. He is
9 an employee of CoreCivic, a private prison company that contracts with ICE to
10 operate California City.

11 JURISDICTION AND VENUE

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

17 32. Venue of the instant habeas corpus lies in this District because it is the district with
18 territorial jurisdiction over Respondent Christopher Chestnut, the Facility
19 Administrator and *de facto* warden of the ICE contract facility at which Petitioner is
20 currently detained (California City). See *Rasul v. Bush*, 542 U.S. 466, 478 (2004)
21 (holding that “because ‘the writ of habeas corpus does not act upon the prisoner who
22 seeks relief, but upon the person who holds him in what is allege to be unlawful
23 custody,’” proper federal district is dependent on the location of the custodian);
24 *accord Rumsfeld v. Padilla*, 542 U.S. 426, 444-45 (2004) (holding that
25 jurisdiction must be obtained by service within the territorial jurisdiction of the
26 district court); *id.* at 451 (explaining petition “must be filed in the district court
27
28

1 whose territorial jurisdiction includes the place where the custodian is located”)
2 (Kennedy, J., concurring).

3 EXHAUSTION

4 33. There is no requirement to exhaust, because no other forum exists in which Petitioner
5 can raise the claims herein. There is no statutory exhaustion requirement prior to
6 challenging the constitutionality of an arrest or detention or challenging a policy
7 under the Administrative Procedure Act. Prudential exhaustion is not required here
8 because it would be futile, and Petitioner will “suffer irreparable harm if unable to
9 secure immediate judicial consideration of [his] claim.” *McCarthy v. Madigan*, 503
10 U.S. 140, 147 (1992). Additionally, since the Court’s preliminary injunction decision
11 in *Rodriguez Vazquez*, the BIA has issued a precedential decision, *Matter of Yajure*
12 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), holds that that individuals present in the
13 United States without admission fall under §1225(b)(2) and therefore cannot seek
14 bond from an Immigration Judge. Although this decision presently controls in
15 immigration court, its reach remains contested in federal litigation, such as in
16 *Maldonado and Rodriguez Vazquez*, that challenge the Board’s interpretation and
17 have, in some jurisdictions, resulted in court-ordered bond hearings. In a subsequent
18 federal district court decision *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-
19 SSS-BFM (C.D. Cal.) the court issued declaratory relief clarifying that individuals
20 detained under government’s “no bond” policy must instead be treated as detained
21 under INA § 236(a) and thus bond eligible. However, despite this ruling,
22 implementation has been inconsistent. Many immigration judges continue to decline
23 bond requests for lack of jurisdiction, relying on *Matter of Yajure Hurtado*.

24 LEGAL BACKGROUND

25 A. The Constitution Protects Noncitizens from Arbitrary Arrests and Detention.

26 34. The Constitution establishes due process rights for “all persons” within the United
27 States, including [noncitizens], whether their presence here is lawful, unlawful,
28

temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These due process rights are both substantive and procedural.

35. 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).
36. 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.
37. 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).
38. Second, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.
39. Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinerman 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).

40. 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*, 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.*
41. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border, like Petitioner. After all, noncitizens living in the United States 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. The Accardi Doctrine Requires Agencies to Follow Internal Rules.

42. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

43. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

44. Where a release notification issued alongside an order of supervision instructs that a non-citizen with a final order of removal will be given an opportunity to prepare for an “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure).

C. The Recently Enacted Laken Riley Act Does Not Impact This Court’s Habeas Jurisdiction of the Lawfulness of Petitioner’s Detention

45. Congress recently enacted the Laken Riley Act of 2025 (“LRA”), which expands the categories of noncitizens subject to mandatory immigration detention. Under the Act, individuals who are inadmissible (i.e. entered without inspection, committed immigration fraud, or made a false claim to US citizenship) may be subject to mandatory detention if they are also arrested, charged with, convicted of, or who admit to having committed certain theft-related crimes, assault on a law-enforcement officer, or a crime resulting in serious bodily injury. The Act also restricts the possibility of discretionary release (humanitarian parole).

46. The Act does not alter the statutory detention framework. Nothing in the Laken Riley Act limits the habeas jurisdiction of federal courts or displaces the constitutional

principles governing unlawful or prolonged immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). The questions before this Court concern the legality of Petitioner’s arrest and continued custody following a reasonable fear determination that was later overturned by an immigration judge. Accordingly, the Laken Riley Act has no bearing on the lawfulness of Petitioner’s present detention, or the relief sought in this habeas petition.

D. Legal Standard

47. The Constitution guarantees the availability of the writ of habeas corpus “to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3). Historically, “the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court’s habeas jurisdiction includes challenges to immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

48. Because civil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community, *see Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023), petitioner argues that the Due Process Clause bars the government from re-detaining him without first providing a hearing where it must prove he is a flight risk or danger.

49. “It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” *Zadvydas*, 533 U.S. at 693 (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259,

269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950)). “But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; see *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (“[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority.”).

50. Petitioner challenges her re-detention without a hearing; she does not challenge in this habeas action any determination regarding her admissibility. See *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170–72 (W.D. Wash. 2023) (discussing *Thuraissigiam* 591 U.S. at 107; and explaining the distinction between a challenge to admission and a challenge to detention); *Hernandez*, 872 F.3d at 981 (“[T]he government’s discretion to [detain] non-citizens is always constrained by the requirements of due process.”).

51. “Although the Supreme Court has described Congress’s power over the ‘policies and rules for exclusion of aliens’ as ‘plenary,’ and held that this court must generally ‘defer to Executive and Legislative Branch decision-making in that area,’ it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority”—through detention or otherwise. *Hernandez*, 872 F.3d at 990 n.17 (citing *Kleindienst*, 408 U.S. at 769; *Zadvydas*, 533 U.S. at 695). The Due Process Clause protects petitioner, a person inside the United States, from unlawful detention. See *Zadvydas*, 533 U.S. at 693.

52. As other courts have explained in considering *Demore v. Kim*, 538 U.S. 510 (2003)), its conclusion that § 1226(c)’s mandatory detention scheme is constitutional in some of its applications “does not mean that the Court does not have the power to grant petitions for habeas corpus raising *as-applied* constitutional challenges to [] detention without a bond hearing.” *Perera v. Jennings*, 598 F. Supp. 3d 736, 744 (N.D. Cal.

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2022). Here, petitioner presses an *as-applied* constitutional challenge: she argues that she has a protected liberty interest under the Due Process Clause due to her release on ICE supervision for over seven years, and that such liberty interest bars the government from re-detaining her without a bond hearing. Petitioner’s *as-applied* constitutional challenge is analyzed “in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

a. Liberty Interest

A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. See *id.* (due process requires pre-deprivation hearing before revocation of pre parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). To determine 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).

In *Morrissey*, the Supreme Court explained that parole from a criminal conviction “enables [the parolee] 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, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. “Though the [government] properly subjects [the parolee] to many restrictions not applicable to

1 other citizens," such as monitoring and seeking authorization to work and travel, his "condition is
 2 very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an
 3 implicit promise that parole will be revoked only if he fails to live up to the parole conditions."
 4 *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.*
 5 (quotations omitted). Therefore, a parolee possesses a protected interest in his "continued
 6 liberty." *Id.* At 481–84.

7 Petitioner's grant of an ICE Order of Supervision (for over seven years) is similar. For
 8 over seven years, this allowed her to establish ties in the community while pursuing relief in the
 9 form of Withholding of Removal. She was able to assist her husband in running their family-
 10 owned business and in supporting their family. She and her husband raised their children and
 11 attended church. These actions were made possible by petitioner's freedom, which is "the most
 12 elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).
 13 at 6–7.

14 While immigration officials may have had discretion over the initial decision to
 15 detain or release petitioner, their decision to release an individual from custody creates "an
 16 implicit promise" upon which an individual may rely: that her liberty "will be revoked only
 17 if [he] fails to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482. As
 18 other courts have found in similar circumstances, "even when ICE has the initial discretion
 19 to detain or release a noncitizen pending removal proceedings, after that individual is
 20 released from custody, she has a protected liberty interest in remaining out of custody."
 21 *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); see also *Hernandez v.*
 22 *Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate
 23 non-citizens is always constrained by the requirements of due process").

24 The petitioner has a protected liberty interest in her release. See *Guillermo M. R. v.*
 25 *Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025) (recognizing that "the liberty interest
 26 that arises upon release [from immigration detention] is *inherent* in the Due Process
 27 Clause"); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June
 28

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1 26, 2025) (collecting cases finding that noncitizens who have been released have a strong
 2 liberty interest).

3 b. Mathews Factors

4 Due process "is a flexible concept that varies with the particular situation." *Zinerman*
 5 *v. Burch*, 494 U.S. 113, 127 (1990). The procedural protections required in a given situation
 6 are evaluated using the *Mathews v. Eldridge* factors:
 7

8 First, the private interest that will be affected by the official action;
 9 second, the risk of an erroneous deprivation of such interest through
 10 the procedures used, and the probable value, if any, of additional or
 11 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 requirement would entail.

12 *Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); see *Hernandez v. Sessions*, 872
 13 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

14 Turning to the first factor, petitioner has a significant private interest in remaining free
 15 from detention. "Freedom from imprisonment—from government custody, detention, or
 16 other forms of physical restraint—lies at the heart of the liberty that [the Due Process]
 17 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner had been out of
 18 custody for over seven years, and she established ties in the community, contributed to a
 19 family owned business, and helped to support her family. Her detention denies her that
 20 continued freedom.

21 Second, "the risk of an erroneous deprivation [of liberty] is high" where "[the
 22 petitioner] has been denied a bond hearing." *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO,
 23 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Here, Petitioner was informed by the
 24 Immigration Court that it has no jurisdiction to conduct a bond hearing because she is under INA
 25 Section 241(a) proceedings. Civil immigration detention, which is "nonpunitive in purpose and
 26 effect[.]" is justified when a noncitizen presents a risk of flight or danger to the community. See
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1 *Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d at 1172. It does not “necessarily follow that
 2 Petitioner can be detained for violations without a hearing. That the Government may believe it
 3 has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention
 4 in a manner that comports with due process.” *E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025
 5 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025). Similarly, here, as there were no procedural
 6 safeguards to determine if petitioner’s re-detention was justified, “the probable value of
 7 additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.

8 Third, although the government has a strong interest in enforcing the immigration laws,
 9 the government’s interest in detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*,
 10 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC,
 11 2025 WL 691664, at *6 (E.D. Cal. March 3, 2025); see also *Morrissey*, 408 U.S. at 483. In
 12 immigration court, custody hearings are routine and impose a “minimal” cost. *Doe*, 2025 WL
 13 691664, at *6. “If the government wishes to re-arrest [petitioner] at any point, it has the power
 14 to take steps toward doing so; but its interest in doing so without a hearing is low.” *Ortega*, 415
 15 F. Supp. 3d at 970.

16 On balance, the *Mathews* factors show that petitioner is entitled to a hearing before a
 17 neutral decision maker to discern whether she is a flight risk or a danger to the community.
 18 Absent this showing, Petitioner should be released.

19 c. Bond Hearing and Burden of Proof

20 The burden of proof for a bond hearing is more appropriately placed on the
 21 government. See *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1107 (W.D. Wash. 2019);
 22 *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC,
 23 2025 WL 2099343, at *8 (E.D. Cal. July 25, 2025).

24 In *Singh v. Holder*, the Ninth Circuit held, in the context of hearings provided for
 25 those detained under § 1226(c), that “the substantial liberty interest at stake” warranted
 26 placing the burden on the government to “prove by clear and convincing evidence that an
 27 alien is a flight risk or a danger to the community to justify denial of bond.” *Singh v. Holder*,
 28

1 638 F.3d 1196, 1203 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*,
 2 583 U.S. 281 (2018); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199 (9th Cir.
 3 2022) (explaining that *Singh* was based on general principles of due process). “Because it is
 4 improper to ask the individual to ‘share equally with society the risk of error when the
 5 possible injury to the individual’—deprivation of liberty—is so significant, a clear and
 6 convincing evidence standard of proof provides the appropriate level of procedural
 7 protection.” *Id.* at 1203–04 (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)). These
 8 same concerns are present here.

9 The Ninth Circuit later extended these principles to bond hearings for those detained
 10 under § 1225(b) and § 1231(a). See *Diouf v. Napolitano*, 634 F.3d 1081, 1082 (9th Cir.
 11 2011); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (“*Rodriguez*”). Although
 12 the Supreme Court subsequently held in *Jennings* that the constitutional avoidance canon
 13 could not be used to read a bond hearing requirement into the statute, it did not address an as-
 14 applied constitutional due process challenge. *Jennings*, 583 U.S. at 304–06, 312 (“Because
 15 the Court of Appeals . . . had no occasion to consider respondents’ constitutional arguments
 16 on their merits[.], . . . we do not reach those arguments.”). *Singh* “relied on the Due Process
 17 Clause in determining” who should bear the burden of proof at those bond hearings.
 18 *Rodriguez Diaz*, 53 F.4th at 1202; see *Singh*, 638 F.3d at 1203–06. The issue of the burden
 19 of proof at a hearing required by due process therefore appears to remain governed by
 20 *Rodriguez* and its extension of *Singh*’s requirements to bond hearings for § 1225(b)
 21 detainees. See *Maliwat v. Scott*, No. 2:25-CV-00788-TMC, 2025 WL 2256711, at *10 (W.D.
 22 Wash. Aug. 7, 2025) (applying *Singh* in § 1225(b) case); *Banda*, 385 F. Supp. 3d at 1107
 23 (same); *Abdul-Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *8 (same).

24 **FACTUAL ALLEGATIONS**

25 ***A. Petitioner was Unlawfully Arrested and Detained Pursuant to New DHS Policies.***

26 1. Petitioner is 46 years old. She is a Mexican national that fled her native country due
 27 to the ongoing political persecution targeting her family there. Petitioner left her
 28

home in Mexico due to repeated violent physical and murderous attacks on the lives of her extended family, as well as threats against their lives, on account of their actual and imputed political opinions as members of [REDACTED]

2. Petitioner's father-in-law was granted asylum as a result of the same on February 04, 2000 [REDACTED] his wife and many of his children received asylum as derivatives.
3. Petitioner's spouse [REDACTED] was granted Withholding of Removal as a result of the same on April 24, 2019.
4. On November 20, 2025, Immigration Judge Denise Hunter found that Petitioner has a Reasonable Fear, and she was placed into withholding only proceedings.
5. On November 7, 2025, the Asylum Officer found Petitioner credible.
6. Petitioner's detained immigration court proceedings remain ongoing.
7. The Immigration Court has asserted that it does not have jurisdiction to grant Immigration Bond (INA 241(a) proceedings).
8. Because Petitioner has never been determined to be a flight risk or danger to the community, her ongoing detention is not related to either of the permissible justifications for civil immigration litigation. Her detention does not further any legitimate government interest.
9. Petitioner has no criminal record (likewise no record of conviction).
10. Petitioner has not been provided with any further information regarding the reason for her detention, nor an opportunity to contest it.
11. To date, Counsel for Petitioner has still not received any response to phone and email requests to communicate with Petitioner's Deportation Officer or the Bakersfield ICE Field Office.

12. The arresting ICE officer explained that Petitioner would be released if the Immigration Judge issued a positive Fear determination; however, this has not occurred.
 13. Petitioner has not been provided any information regarding what will happen to her next while in detained court proceedings. Petitioner has not been informed how long she may expect to be detained.
- B. As a Result of Her Arrest and Detention, Petitioner is Suffering Irreparable Harm.***
14. Petitioner is being deprived of her liberty without any permissible justification. The government previously released her on her own recognizance because she did not pose sufficient risk of flight or danger to the community to warrant detention. Petitioner has no criminal record, and there is no basis to assert that she poses any public safety risk. Moreover, the circumstance of her arrest demonstrates that she is not a flight risk—she responded to all immigration related engagement received including ICE check-ins, USCIS interview appointments, USCIS biometric appointments, and registered her address as required. Petitioner has not moved since she was initially placed on the ICE Supervision program in 2018. Petitioner has every reason to continue forward with her immigration case (removal proceedings) as she maintains deep roots and fosters many community ties as a result of her 32 years spent in this country.
 15. While detained, Petitioner faces challenges in: meaningfully assisting in her defense, as well as difficulty in obtaining privileged attorney-client meetings where the detention facility schedules confidential attorney-client phone appointments weeks out and therefore makes confidential communication difficult if not impossible. Hiring an attorney to travel 8-10 hours to request in-person meeting would cause tremendous financial hardship and would detract from Petitioner's ability to hire counsel to represent her for full detained

1 removal proceedings on the merits. While detained, Petitioner cannot facilitate her
 2 defense, gather evidence and/or witnesses to support her Withholding/CAT claim,
 3 procure funds in order to pay for a private defense, or obtain the continuous support
 4 of her family whom reside hundreds of miles away (7 hour drive one-way) from her
 5 location of detention.

6 16. Now that she is detained, Petitioner cannot freely contact her attorney or nonprofit
 7 organizations at will. She also lacks access to internet to research attorneys and
 8 organizations that she would ordinarily be able to contact at will.

9 17. Petitioner is suffering from isolation from her family, partner, and loved ones from
 10 whom he used to seek basic emotional support. Petitioner did not live in Bakersfield
 11 prior to her detention, so it causes a great hardship to have her family visit her
 12 approximately seven hours away in each-direction (total travel time approximately
 13 fourteen hours per visit from Chico to Bakersfield). Even if her family wishes to visit
 14 her, they are limited to scheduled timeframes per week as facilitated by the ICE
 15 Detention Facility. Petitioner feels alone.

16 18. Petitioner was not able to make any phone calls until money was put into her account
 17 at California City Correctional Facility ("California City"), something that was not
 18 possible to do until after she was located post a transfer from San Francisco ICE.

19 19. Any contact that Petitioner makes from inside of California City costs money.
 20 Domestic phone calls cost at least \$0.07 per minute, and international calls cost at
 21 least \$0.35 per minute. To make calls to family or legal services organizations,
 22 Petitioners must place money onto their "books", unless the recipient phone lines
 23 have been pre-designated as attorney-client privileged, their phone calls are
 24 monitored and recorded. Even attorneys wishing to schedule a phone visit with their
 25 clients are waitlisted for weeks on end.

26 20. Petitioner has also suffered from inadequate food, both in quality and quantity. There is
 27 limited access to fresh fruit and vegetables at California City. The food offered by the
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1 facility is processed, and for Petitioner, often inedible. Petitioner's only other access
 2 to food is through California City's commissary, which offers products like ramen
 3 noodles, chips, and candy.

4 21. The medical care offered to Petitioners at Mesa Verde is also inadequate. Worse
 5 still, the California Department of Justice ("Cal DOJ") recently found that at Mesa
 6 Verde, "does not acquire and review offsite care and medical records in a timely
 7 manner to ensure adequate treatment." Cal. Dept. of Justice, Office of the Attorney
 8 General, Immigration Detention in California (Apr. 2025), at pp. 80,
 9 <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf>. Cal DOJ
 10 also found that "[d]etainees experience prolonged wait times for some out-of-
 11 facility care for health care issues." *Id.*

12 22. Petitioner is enduring almost complete isolation.

13 CLAIMS FOR RELIEF

14 FIRST CLAIM FOR RELIEF

15 Violation of Substantive Due Process

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

18 24. The Due Process Clause of the Fifth Amendment protects all "person[s]" from
 19 deprivation of liberty "without due process of law." U.S. Const. amend V.
 20 "Freedom from imprisonment—from government custody, detention, or other
 21 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
 22 Clause protects." *Zadvyda v. Davis*, 533 U.S. 678, 690 (2001).

23 25. Immigration detention is constitutionally permissible only when it furthers the
 24 government's legitimate goals of ensuring the noncitizen's appearance during
 25 removal proceedings and preventing danger to the community. *Id.*

26 26. Petitioner is not a flight risk. She complied with ICE check-ins for over seven
 27 years. Petitioner demonstrated her interest in complying with and pursuing a
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1 legal pathway in the U.S. by I-589 Application for Asylum or Withholding of
 2 Removal, ZDF1805754500 (Notice date 06/08/2018, biometrics completed
 3 06/29/2018). Petitioner not only presented for in-person ICE report dates, but
 4 also USCIS interview(s) and biometrics appointments.

5 27. Similarly, Petitioner is not a danger to the community. She has no criminal
 6 history anywhere in the world. Before her detention, she assisted her husband in
 7 running his self-owned landscaping company. Petitioner is a family woman and
 8 regularly attends church. She is an active member of the Jehovah's Witness
 9 church.

10 28. Moreover, Petitioner's detention is punitive and bears no "reasonable relation"
 11 to any legitimate government purpose (finding immigration detention is civil
 12 and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of
 13 Petitioner's detention appears to be "not to facilitate deportation, or to protect
 14 against risk of flight or dangerousness, but to incarcerate for other reasons" –
 15 namely, to meet newly-imposed DHS quotas. *Demore v. Kim*, 538 U.S. at 532-
 16 33 (Kennedy J., concurring) (2003).

17 SECOND CLAIM FOR RELIEF

18 Violation of Procedural Due Process

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

21 30. As part of the liberty protected by the Due Process Clause, Petitioners have a
 22 weighty liberty interest in avoiding re-incarceration after their initial release
 23 from DHS custody. See *Young v. Harper*, 520 U.S. 413, 146-147 (1997);
 24 *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S.
 25 471, 482-83 (1972); see also *Ortega*, 415 F. Supp. 3d at 969-70 (holding that a
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1 noncitizen has a protected liberty interest in remaining out of custody following an
 2 Immigration Judge's bond determination).

3 31. Accordingly, "[i]n the context of immigration detention, it is well-settled that due
 4 process requires adequate procedural protections to ensure that the
 5 government's asserted justification for physical confinement outweighs the
 6 individual's constitutionally protected interest in avoiding physical restraint."
 7 *Hernandez*, 872 F.3d at 990; *Zinemon*, 494 U.S. at 127 (Generally, "the
 8 Constitution requires some kind of a hearing before the State deprives a person
 9 of liberty or property.") In the immigration context, for such hearings to comply
 10 with due process, the government must bear the burden to demonstrate, by clear
 11 and convincing evidence, that the noncitizen poses a flight risk or danger to the
 12 community. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); see also
 13 *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

14 32. Petitioner's detention without a pre-deprivations hearing violated due process.

15 Over seven years after deciding to release Petitioner from custody, Respondent's
 16 re-detained Petitioner without notice, without explanation of the justification of
 17 the re-detention, and without an opportunity to contest her re-detention before a
 18 neutral adjudicator before being taken into custody. The only known basis for
 19 her subsequent detention was a negative fear finding by an ICE officer that has
 20 since been overturned by an Immigration Judge. The Court has found
 21 Petitioner's claim sufficiently viable to place her in Withholding only
 22 proceedings.

23 33. Petitioner has a profound personal interest in her liberty. She did not receive
 24 procedural protections, the risk of erroneous deprivation is high, and the
 25 government has no legitimate interest in detaining him without a hearing. Bond
 26 hearings are conducted as a matter of course in immigration proceedings, and
 27
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nothing in Petitioner's record suggest that she would abscond or endanger the community before a bond hearing can be carried out.

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution

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

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

36. 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.")

37. 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).

38. DHS agents arrested Petitioner after she entered the United States, charged her with a violation of civil immigration law, and released her on her own recognizance under an Order of Supervision on May 17, 2018. Petitioner self-reported for in-person ICE check-ins and appeared as instructed and diligently pursued an application for relief from removal in the form of withholding of removal and Convention against Torture.

39. Respondents re-arrested Petitioner last month while she was complying with a USCIS Interview (Reasonable Fear Determination), based on nothing more than the civil charges of violating immigration law for which she was answering. Petitioner was entitled to Review by an Immigration Judge of the Negative Reasonable Fear Finding issued by an Asylum Officer. Petitioner requested this review, and the Immigration Judge vacated the Asylum Officer's negative finding. Petitioner's case remains pending in immigration court. Petitioner did not engage in any conduct in the intervening circumstances justifying Petitioner's re-arrest and continued detention.

40. Petitioner's arrest and detention by Respondents after she had already appeared at all scheduled ICE check-ins on her civil immigration charges and absent any material change in circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

FOURTH CLAIM FOR RELIEF

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Right

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

42. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

43. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

44. Petitioner's liberty was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. The officer simply informed Petitioner that she was being arrested.

45. Before revoking the order, Respondents did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute.

46. Even if regulations purporting to offer additional justifications for revocation of his liberty are not *ultra vires*, respondents did not comply with them. Respondents could not make findings that Petitioner's conduct indicated release would no longer be appropriate or that Petitioner violated any condition of release, because she had not.

47. Nor did the Respondents give Petitioner notice of the reasons for the detention and an opportunity to be heard.

48. The detention should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

FIFTH CLAIM FOR RELIEF

Violation of the *Accardi* Doctrine

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

50. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v.*

Shaughnessy, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing]).

51. Respondents violated agency regulations governing who and upon what findings it may properly be re-detained. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Petitioner "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Moniz*, 296 F. Supp. 3d 386, 386-89); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so).

52. Under *Accardi*, Respondents' re-detention and decision to ignore instructions in the release notification should be set aside for violating agency procedures, rules, or instructions.

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 detention violates the Due Process Clause of the Fifth Amendment;
4. Declare that Petitioner's re-arrest and detention violates the Fourth Amendment;
5. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
6. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden

of proving, by clear and convincing evidence, that he is a flight risk or danger to the community.

7. Award Petitioner her costs and reasonable attorneys' fees in this action as provided by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
8. Grant such further relief as the Court deems just and proper.

Date: December 10, 2025

Respectfully Submitted,

/s/ Andrea Fatone
/s/ Mayra Acevedo

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Date: December 10, 2025

Respectfully Submitted,

/s/ Andrea Fatone
/s/ Mayra Acevedo

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