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Pro Bono Attorneys for Petitioner

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Fulvio Castillo Gomez,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director of  
the San Francisco Immigration and Customs  
Enforcement Office; TODD LYONS, Acting  
Director of United States Immigration and  
Customs Enforcement; KRISTI NOEM,  
Secretary of the United States Department of  
Homeland Security, PAMELA BONDI,  
Attorney General of the United States, acting in  
their official capacities,

Respondents.

CASE No.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner Fulvio Castillo Gomez is a 57-year-old native of El Salvador. He  
3 came to this country in 2005, was detained at the border, and then released by Respondents into  
4 the interior.

5 2. He lives in with his wife, Alma, who is also an asylum seeker. Alma is escaping  
6 domestic violence from her ex-husband, who lives in El Salvador.

7 3. On today's date, around 1 p.m., Petitioner was unlawfully detained by  
8 Immigration and Customs Enforcement (ICE).

9 4. The arrest occurred around outside a Wells Fargo Bank branch at Claremont  
10 Way and Jefferson Street in Napa, California.

11 5. Petitioner has never been convicted of any crime.

12 6. The Due Process Clause applies to "all 'persons' within the United States,  
13 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or  
14 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from bodily restraint has  
15 always been at the core of the liberty protected by the Due Process Clause from arbitrary  
16 governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

17 7. Immigration detention is civil and thus is permissible for only two reasons: to  
18 ensure a noncitizen's appearance at immigration hearings and to prevent danger to the  
19 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner, who has no  
20 criminal history and a pending U visa application, is not a flight risk of danger. His detention is  
21 thus not justified under the Constitution. See *id.*

22 8. Additionally, generally "the Constitution requires some kind of a hearing before  
23 the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127  
24 (1990) (emphasis added).

25 9. Petitioner respectfully seeks a writ of habeas corpus ordering the government to  
26 immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest  
27 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve  
28 this Court's jurisdiction, Petitioner also requests that this Court order the government not to

1 transfer him outside of the District or deport him for the duration of this proceeding.

2  
3 **JURISDICTION AND VENUE**

4 10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal  
5 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),  
6 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension  
7 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706  
8 (Administrative Procedure Act).

9 11. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and  
10 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioners are physically detained within this district.

11 **PARTIES**

12 12. Petitioner Fulvio Castillo Gomez is a man from El Salvador. He is presently in  
13 ICE custody. On information and belief, he is located at 630 Sansome Street in San Francisco.

14 13. Respondent Sergio Albarran is the Field Office Director of the San Francisco  
15 Immigration and Customs Enforcement Office. He is responsible for the administration of  
16 immigration laws and the execution of immigration enforcement and detention policy within  
17 ICE's San Francisco Area of Responsibility, including the detention of Petitioner. He maintains  
18 an office and regularly conducts business in this district. He is sued in his official capacity.

19 14. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official  
20 Performing the Duties of the Director of ICE, he is responsible for the administration and  
21 enforcement of the immigration laws of the United States; routinely transacts business in this  
22 District; and is legally responsible for pursuing any effort to detain and remove the Petitioner.  
23 Respondent Lyons is sued in his official capacity.

24 15. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate  
25 authority over DHS. In that capacity and through her agents, Respondent Noem has broad  
26 authority over and responsibility for the operation and enforcement of the immigration laws;  
27 routinely transacts business in this District; and is legally responsible for pursuing any effort to  
28 detain and remove the Petitioner. Respondent Noem is sued in her official capacity.

17. There is no requirement to exhaust because no other forum exists in which Petitioners can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the constitutionality of an arrest or detention, or challenging a policy under the Administrative Procedure Act. Prudential exhaustion is not required here because it would be futile, and Petitioners will “suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further exhaustion requirements would be unreasonable.

*A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.*

14. 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.

15. 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).

16. 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*

1 *States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from imprisonment—from  
2 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty  
3 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

4 17. Substantive due process thus requires that all forms of civil detention—including  
5 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v.*  
6 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-  
7 punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration  
8 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*  
9 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

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

13 19. Generally, “the Constitution requires some kind of a hearing *before* the State deprives  
14 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in  
15 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing  
16 *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision  
17 requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in  
18 probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole  
19 context).

## 20 FACTUAL ALLEGATIONS

21 22. Petitioner entered the United States in 2005. He lives in the city of Napa with his  
22 wife, Alma.

23 23. Petitioner is listed on his wife’s pending asylum petition. His wife is seeking asylum  
24 on account of domestic violence that she experienced in her native asylum—violence inflicted by her  
25 ex-husband. She states that Petitioner’s support has made an enormous difference in helping her to  
26 feel safe physically; in addition, he has helped connect her with mental health resources.  
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1 24. Petitioner was initially apprehended by Respondents at the border when he entered  
2 the country. He was then released by Respondents and went on to live in the United States for the  
3 next two decades plus.

4 25. For the last seven years, Petitioner has run a cleaning company employing four  
5 people. He has paid taxes.

6 26. On March 2, Petitioner was apprehended by immigration officials outside a bank in  
7 Napa. He is currently in ICE custody.

8 27. Petitioner has never been convicted of a crime.

9 28. Petitioner is afraid to return to El Salvador because of threats of violence he received  
10 there.

11 29. Petitioner is being deprived of his liberty without any permissible justification.

12 30. Petitioner suffers high blood pressure, for which he takes medication daily. Petitioner  
13 does not have access to that medication, because he did not have it when he was arrested. In addition,  
14 Petitioner suffers from sleep apnea is in the process of getting the needed sleep apnea apparatus.

15 31. Petitioner's wife is also at grave risk of suffering irreparable harm from his detention.  
16 Not only does Petitioner support her financially, but he supports her in her medical care. Petitioner's  
17 wife is in treatment for breast cancer, and because she does not drive, Petitioner is the one who takes  
18 her for all her appointments. He also takes her to the doctor's appointments for her diabetes  
19 appointments and her diabetes. Petitioner's wife further suffers from anxiety and depression, and  
20 Petitioner makes sure she gets to the appointments

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of the Fifth Amendment to the United States Constitution**  
24 **(Substantive Due Process—Detention)**

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

27 33. The Due Process Clause of the Fifth Amendment protects all "person[s]" from  
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1 deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from  
2 imprisonment—from government custody, detention, or other forms of physical restraint—lies  
3 at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

4 34. Immigration detention is constitutionally permissible only when it furthers the  
5 government’s legitimate goals of ensuring the noncitizen’s appearance during removal  
6 proceedings and preventing danger to the community. *See id.*

7 35. Petitioner is not a flight risk or danger to the community. Respondents’  
8 detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being  
9 detained in violation of the Due Process Clause of the Fifth Amendment.

10 36. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation”  
11 to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus  
12 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention  
13 appears to be “not to facilitate deportation, or to protect against risk of flight or dangerousness,  
14 but to incarcerate for other reasons”—namely, to meet newly-imposed DHS quotas and enact a  
15 mass deportation campaign. *See Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

## 16 **SECOND CLAIM FOR RELIEF**

### 17 **Violation of the Fifth Amendment to the United States Constitution** 18 **(Procedural Due Process—Detention)**

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

21 38. As part of the liberty protected by the Due Process Clause, Petitioner has a  
22 weighty liberty interest in avoiding re-incarceration after her release. *See Young v. Harper*, 520  
23 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v.*  
24 *Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding  
25 that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s  
26 bond determination).

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

10 40. Petitioners' re-detention without a pre-deprivation hearing violated due process.  
 11 Long after deciding to release Petitioner from custody on her own recognizance, Respondents  
 12 re-detained Petitioner with no notice, no explanation of the justification of her re-detention, and  
 13 no opportunity to contest her re-detention before a neutral adjudicator before being taken into  
 14 custody.

15 41. Petitioner has a profound personal interest in her liberty. Because she received  
 16 no procedural protections, the risk of erroneous deprivation is high. And the government has no  
 17 legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a  
 18 matter of course in immigration proceedings. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL  
 19 783561, at \*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at \*3 (N.D.  
 20 Cal. Aug. 23, 2020) ("the government's concern that delay in scheduling a hearing could  
 21 exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and  
 22 his continued employment during the pandemic as an essential agricultural worker").

### 23 PRAYER FOR RELIEF

24 Petitioner respectfully request that this Court:

- 25 1. Assume jurisdiction over this matter;
- 26 2. Issue a writ of habeas corpus ordering Respondents to immediately release

27 Petitioner from custody;

3. Declare that Petitioner's arrest and detention violates the INA, implementing regulations, and Due Process Clause of the Fifth Amendment.

4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;

5. Enjoin Respondents from re-detaining Petitioner unless is 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 Petitioner is a flight risk or danger to the community;

6. Award Petitioner is 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 7. Grant such further relief as the Court deems just and proper.

Date: March 2, 2026

Respectfully Submitted,

/s/ Jonathan Abel

JONATHAN ABEL (CA SBN #293086),  
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*Attorney for Petitioner*

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

I, Jonathan Abel, am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

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Executed on March 2, at Oakland, California.

/s/Jonathan Abel

Jonathan Abel

PETITION FOR WRIT OF HABEAS CORPUS  
CASE NO. \_\_\_\_\_

Attorney for Petitioner

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