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5
6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8 **FRESNO DIVISION**

9 Nicolas Daniel MIRASOL MORALES,

10 Petitioner,

11 v.

12 RON MURRAY, Facility Administrator of Mesa
13 Verde Detention Center; ORESTES CRUZ,
Field Office Director of the San Francisco
14 Immigration and Customs Enforcement Office;
DAVID J. VENTURELLA, Acting Director of
15 United States Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
16 Secretary of the United States Department of
Homeland Security, TODD BLANCHE,
17 Attorney General of the United States, acting in
18 their official capacities,

19 Respondents.

CASE NO. 1:26-at-02673

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1
2 1. Nicolas Daniel Mirasol Morales (“Petitioner”) is a noncitizen who is currently
3 detained by Immigration and Customs Enforcement (“ICE”) in Respondents’ custody at Mesa
4 Verde Detention Center.

5 2. Petitioner is a 32-year-old citizen of Argentina, lawfully admitted to the United
6 States on a B-2 visitor visa in August 2020. Petitioner’s visa status expired in early 2021, during
7 the global COVID-19 pandemic, when international travel restrictions made departure from the
8 United States impossible. Unable to travel home and strapped for money, when he was offered an
9 employment opportunity, he could not turn it down.

10 3. He has resided continuously in the United States since that time, maintaining good
11 moral character and establishing strong family and community ties in the San Francisco Bay
12 Area. Petitioner has no criminal history in the United States or anywhere in the world. He lives
13 with and supports his wife and United States citizen infant who rely entirely on Petitioner for
14 financial support. Prior to his arrest, Petitioner was working two jobs, at a restaurant as a
15 bartender and at a café as a barista. In the time he has lived in the United States, he has developed
16 good credit history that has enabled him to have both a car and housing lease. As a passionate
17 soccer lover, he also established strong relationships with friends whom he regularly plays soccer
18 in a competitive community league in Alameda.

19 4. Prior to his detention, Petitioner lived in Oakland, CA. Respondents Department
20 of Homeland Security (DHS) and/or its component agencies, including Immigration and
21 Customs Enforcement (“ICE”), Customs and Border Protection (“CBP”), and/or U.S. Citizenship
22 and Immigration Services (“USCIS”) knew about Petitioner. Respondents had previously
23 encountered Petitioner upon his arrival at a U.S. port of entry with a visitor visa as he was legally
24 required to undergo an inspection by an immigration officer who determined his admissibility
25 and granted his entry. Respondents had chosen to allow Petitioner to remain non-detained, upon
26 a determination that Petitioner was neither dangerous nor a flight risk.

27 5. Since Respondents’ prior determination that Petitioner was neither dangerous nor
28 a flight risk, there has been no material change in Petitioner’s individual circumstances as to

1 dangerousness or flight risk. Petitioner lived a law-abiding life in the United States since August
2 2020, has established strong family and community ties in California and is married and has a
3 United States citizen infant child.

4 6. Despite the lack of materially changed circumstances as to Petitioner's
5 dangerousness or flight risk, on June 27, 2026, around midnight, while at the gate in the Oakland
6 International Airport waiting to board a plane, he was arrested. He was scheduled to take a
7 domestic round-trip flight to Dallas, Texas to watch a world cup match, his final outing with his
8 friend before repatriating to Argentina. Petitioner and his family planned to leave the United
9 States on October 24, 2026, the day after his housing lease ends.

10 7. Notwithstanding Petitioner not being in removal proceedings or aware of any
11 order of removal issued against him, at the time of the arrest, Respondents did not provide notice
12 of charges or a lawful basis for his arrest and confinement. ICE rapidly transferred Petitioner to
13 a distant detention facility, far from his family and support system. Being detained in the middle
14 of the night and over the weekend, also made it extremely difficult to exercise his constitutional
15 and statutory rights as legal representation could not be secured sooner.

16 8. Immigration detention is civil. It is permissible for only two reasons: to ensure a
17 noncitizen's appearance at immigration hearings and to prevent danger to the community.
18 Petitioner's arrest cannot be explained by either justification: Respondents previously determined
19 that Petitioner is neither dangerous nor a flight risk, and Petitioner's conduct while free confirmed
20 Respondents' determination was correct.

21 9. Moreover, the Constitution protects Petitioner—and every other person present in
22 this country—from arbitrary deprivations of their liberty and guarantees them due process of law.
23 The government's power over immigration is broad, but as the Supreme Court has declared, it "is
24 subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
25 "Freedom from bodily restraint has always been at the core of the liberty protected by the Due
26 Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

27 10. The Fourth Amendment prohibits the re-arrest of immigrants without a "material
28 change in circumstance." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd*

1 *sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). For a re-arrest to comport
2 with the Fourth Amendment, the government must have new probable cause separate from the
3 probable cause that supported a person's initial arrest. *Id.*

4 11. Petitioner has now been detained by U.S. Immigration and Customs Enforcement
5 (ICE) for 5 days. To the extent that Petitioner was re-arrested, the re-arrest violated the Fourth
6 Amendment because it was not supported by a new probable cause.

7 12. Furthermore, Petitioner may be a member of the certified class in *Garro Pinchi v.*
8 *Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025). That litigation challenges DHS's new policy of re-
9 detaining class members despite no change in their individual circumstances as to their
10 dangerousness or flight. *Garro Pinchi* found that DHS adopted that new re-detention policy in or
11 around May 2025, and held the policy is likely unlawful under the Administrative Procedure Act
12 (APA). *Id.* At 995-96, 1036. The court granted "Plaintiffs' motion to stay DHS's re-detention
13 policy pending final resolution of their APA claims," and "postpone[d] the effective date of the
14 judgment in this action." *Id.* At 1040.

15 13. To the extent that Petitioner is a member of the *Garro Pinchi* class, Respondents
16 appear to have re-detained Petitioner in violation of the *Garro Pinchi* order cited above, which
17 remains in effect. Accordingly, Petitioner's ongoing detention is unlawful.

18 14. Petitioner's arrest and detention have caused him ongoing, irreparable harm. Every
19 additional day Petitioner spends unlawfully detained subjects him to compounding harm.

20 15. Petitioner is entitled to immediate release.

21 16. Petitioner respectfully requests a writ of habeas corpus ordering the government to
22 immediately release him from their ongoing, unlawful detention, and prohibiting their re-arrest
23 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
24 this Court's jurisdiction, Petitioner also requests that this Court order the government not to
25 transfer him outside of the District but to release him from custody to properly and legally wind
26 down his affairs in the United States prior to repatriating to Argentina as he had planned to.

27 JURISDICTION

28 17. Petitioner is in the physical custody and under the direct control of Respondents

1 and their agents. Petitioner is imprisoned at Mesa Verde Detention Center, an immigration
2 detention facility located in Bakersfield, CA.

3 18. This action arises under the Due Process Clause of the Fifth Amendment to the U.S.
4 Constitution. Court has subject matter jurisdiction to entertain this habeas petition under 28 U.S.C.
5 § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory
6 Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution
7 (Suspension Clause), and the Due Process Clause of the Fifth Amendment.

8 **VENUE**

9 19. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
10 U.S.C. § 1391(b)(2) and (c)(1) because Petitioner is physically detained within this district,
11 Petitioner's immediate physical custodian is in this district, at least one Respondent is in this
12 district, and a substantial part of the events giving rise to the claims in this action took place in this
13 district.

14 **REQUIREMENTS OF 28 U.S.C. § 2243**

15 20. The Court should grant the petition for writ of habeas corpus “forthwith,” as the
16 Petitioner's unlawful detention constitutes compounding and irreparable harm. 8 U.S.C. § 2243.

17 21. Furthermore, to the extent Petitioner is a member of the *Garro Pinchi* class, the
18 legal issues have already been resolved for *Garro Pinchi* class members.

19 22. Habeas corpus is “perhaps the most important writ known to the constitutional law
20 . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
21 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
22 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
23 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
24 F.3d 1116, 1120 (9th Cir. 2000) (citation modified).

25 **PARTIES**

26 23. Petitioner is a 32-year-old citizen of Argentina, lawfully admitted to the United
27 States on a B-2 visitor visa in August 2020 with no criminal history anywhere in the world.
28 Petitioner is currently detained by Respondents at Mesa Verde Detention Center, an immigration

1 detention facility. Petitioner has been civilly detained in ICE custody since June 27, 2026, when
2 he was arrested at Oakland International Airport, while he waited to board a plane.

3 24. Respondent, Ron Murray (or current or acting warden), is the Facility
4 Administrator of Mesa Verde Detention Center, a private, for-profit detention facility that
5 contracts with ICE to detain individuals suspected of civil immigration violations. Respondent
6 Murray is Petitioner's immediate physical custodian. Respondent Murray is sued in his official
7 capacity.

8 25. Respondent Orestes Cruz (or current or acting) is the Field Office Director of the
9 San Francisco ICE Field Office. In this capacity, he is responsible for the administration of
10 immigration laws and the execution of immigration enforcement and detention policy within ICE's
11 San Francisco Area of Responsibility, including the detention of Petitioner. Respondent Cruz
12 maintains an office and regularly conducts business in this district. Respondent Cruz is sued in his
13 official capacity.

14 26. Respondent David J. Venturella (or current or acting) is the Acting Director of ICE.
15 As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the
16 administration and enforcement of the immigration laws of the United States; routinely transacts
17 business in this District; and is legally responsible for any effort to detain and remove the
18 Petitioner. Respondent Venturella is sued in his official capacity.

19 27. Respondent Markwayne Mullin is the Secretary of Homeland Security and has
20 ultimate authority over DHS. In that capacity and through his agents, Respondent Mullin has broad
21 authority over and responsibility for the operation and enforcement of the immigration laws;
22 routinely transacts business in this District; and is legally responsible for pursuing any effort to
23 detain and remove the Petitioner. Respondent Mullin is sued in his official capacity.

24 28. Respondent Todd Blanche is the Acting Attorney General of the United States and
25 the most senior official at the Department of Justice. In that capacity and through his agents, he is
26 responsible for overseeing the implementation and enforcement of the federal immigration laws.
27 The Attorney General delegates this responsibility to the Executive Office for Immigration
28 Review, which administers the immigration courts and the BIA. Respondent Blanche is sued in

1 his official capacity.

2 **EXHAUSTION**

3 29. In habeas claims, exhaustion of administrative remedies is prudential, not
4 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). As applicable here, a
5 court may waive the prudential exhaustion requirement if “administrative remedies are inadequate
6 or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury
7 will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370
8 F.3d 994, 1000 (9th Cir. 2004) (citation modified)). Here, exhaustion is not required because no
9 other forum exists in which Petitioner can raise their claims, exhaustion would be futile, there is
10 no requirement to exhaust before challenging the constitutionality of an arrest or detention, and
11 Petitioner will “suffer irreparable harm if unable to secure immediate judicial consideration of
12 [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

13 **LEGAL BACKGROUND**

14 30. The Constitution establishes due process rights for “all ‘persons’ within the United
15 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
16 permanent.” *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas*, 533 U.S. at 693). These due process
17 rights are both substantive and procedural. These rights protect Petitioner from arbitrary arrest
18 and detention.

19 31. *First*, the procedural component of the Due Process Clause prohibits the
20 government from imposing physical restraints without adequate procedural safeguards.

21 32. Generally, “the Constitution requires some kind of a hearing before the State
22 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is
23 so even where that freedom is lawfully revocable. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782
24 (1973) (re-detention after release on probation requires pre-deprivation hearing); *Morrissey v.*
25 *Brewer*, 408 U.S. 471 (1972) (same, for parole); *see also Johnson v. Williford*, 682 F.2d 868, 873
26 (9th Cir. 1982) (returning to prison a person even *mistakenly* released on parole would violate
27 due process).

28 33. After an initial release from custody on conditions, even a person paroled

1 following a conviction for a criminal offense for which they may lawfully have remained
2 incarcerated has a protected liberty interest in that conditional release. *Morrissey*, 408 U.S. at
3 482. As the Supreme Court recognized, “[t]he parolee has relied on at least an implicit promise
4 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* “By whatever
5 name, the liberty is valuable and must be seen within the protection of the [Constitution].” *Id.*

6 34. This reasoning applies with equal, if not greater, force to people previously
7 released from civil immigration detention, like Petitioner. Noncitizens living in the United States
8 like Petitioner have a protected liberty interest in their ongoing freedom from confinement,
9 regardless of their immigration status. *See Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil
10 context [of immigration detention], [the] liberty interest [of noncitizens released from custody]
11 is arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970
12 (N.D. Cal. 2019); *see also Viela v. Robbins*, No. 1:25-cv-01393-KES-HBK (HC), 2025 WL
13 3101334, at *6 n.5 (E.D. Cal. Nov. 6, 2025).

14 35. *Second*, “[t]he touchstone of due process is protection of the individual against
15 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
16 exercise of power without any reasonable justification in the service of a legitimate government
17 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

18 36. These protections extend to noncitizens facing detention, as “[i]n our society
19 liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”
20 *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from
21 imprisonment—from government custody, detention, or other forms of physical restraint—lies
22 at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

38. *Finally*, the Fourth Amendment prohibits law enforcement, including immigration officers, from re-arresting people who have been previously arrested absent a new intervening cause. *Saravia*, 280 F. Supp. at 1196. Immigration authorities may not conduct re-arrests without new probable cause so as to avoid “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting re-arrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to “limit” scope of immigration agents’ seizure authority); *Gonzalez v. ICE*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context).

STATEMENT OF FACTS

A. ICE Begins Arresting and Detaining Noncitizens Previously Released or Previously Permitted to Live in the Community, Without Any Materially Changed Circumstances

39. The Immigration and Nationality Act and implementing regulations govern Respondents’ authority to detain or release noncitizens pending removal proceedings. Release is available only after an immigration agent or immigration judge (“IJ”) first determines that a noncitizen is neither a flight risk nor a danger to the community. *See, e.g.*, 8 C.F.R. §§ 212.5(b), 236.1(c)(8), 1236.1(c)(8); 8 U.S.C. § 1226(c)(4); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

40. Moreover, the authority to arrest is always subject to the Fourth Amendment’s requirement of probable cause.

41. For more than 40 years, Respondents’ practice was to arrest and detain noncitizens who had been released or whom Respondents had previously allowed to live in the community, only *after* making an individualized determination that the noncitizen’s circumstances had materially changed, such that the noncitizen posed a flight risk or danger to the public. *See generally Garro Pinchi*, 813 F. Supp. 3d at 994-95.

42. In the second Trump administration, that changed. Respondents began arresting and

1 detaining noncitizens who had been previously released or whom Respondents had previously
2 permitted to live in the community, without first making any individualized determination of
3 changed circumstances. Many of these arrests occurred without notice, after noncitizens appeared
4 for removal proceedings at immigration courthouses, check-ins with ICE or ICE's Intensive
5 Supervision Appearance Program (ISAP), or scheduled immigration-related interviews. *Id.* at 996.

6 43. Dozens, if not hundreds, of federal courts in California have found these arrests and
7 detentions are, or likely are, unconstitutional. *See, e.g., R.A.N.O. v. Wofford*, 820 F. Supp. 3d 1094,
8 1105 (E.D. Cal. 2026) (E.D. Cal. Jan. 6, 2026); *Huang v. Albarran*, 818 F. Supp. 3d 1154, 1166
9 (E.D. Cal. 2026); *Meneses v. Santacruz*, 811 F. Supp. 3d 1158, 1163 (C.D. Cal. 2025);
10 *Kharitonova v. Albarran*, No. 3:26-CV-01362-JSC, 2026 WL 531441, at *4 (N.D. Cal. Feb. 25,
11 2026); *E.E.O.H. v. Noem*, No. 1:26-CV-01266-JLT-SAB, 2026 WL 850363, at *5 (E.D. Cal. Mar.
12 26, 2026), report and recommendation adopted, No. 1:26-CV-01266 JLT SAB, 2026 WL 967670
13 (E.D. Cal. Apr. 9, 2026). This district has been flooded with such challenges, and judges have
14 overwhelmingly concluded that Respondents' new practice of arresting and detaining individuals
15 without an individualized determination of materially changed circumstances violates the
16 Constitution and the law.

17 ***B. Respondents Arrest and Detain Petitioner Despite No Material Change in***
18 ***Circumstances to Justify Arrest or Detention***

19 44. Petitioner last entered the United States in August 2020 on a tourist visa, intending
20 to comply with the conditions of his nonimmigrant status.

21 45. Petitioner presented himself at a port of entry, and an immigration agent lawfully
22 permitted Petitioner to physically enter the United States. In granting Petitioner entry into the
23 interior of the country, Respondents necessarily determined that he posed no or little risk of flight
24 or dangerousness to the community.

25 46. Petitioner's visa status expired in early 2021, during the global COVID-19
26 pandemic, when international travel restrictions made departure from the United States impossible.
27 Unable to travel home and strapped for money, when he was offered an employment opportunity,
28 he could not turn it down.

1 47. Petitioner settled into life in the United States and has resided continuously in the
2 United States since that time, maintaining good moral character and establishing strong family and
3 community ties in the San Francisco Bay Area.

4 48. During his time in the United States, he started a family. He lived with, cared for
5 and supported his wife and his seven-month-old United States citizen infant, both of whom rely
6 entirely on Petitioner for financial support.

7 49. Prior to his arrest, Petitioner worked regularly to provide for his needs and those
8 of his family. He was working two jobs, one at a restaurant as a bartender and another at a café
9 as a barista.

10 50. Because of this hard work and responsibility, in the time he has lived in the United
11 States he has developed a good credit history that enabled him to qualify for a loan to purchase
12 a vehicle.

13 51. Petitioner was also able to show his reliability and enter into a contract to rent a
14 home in his name. That contract is due to end on October 23, 2026. However, since despite his
15 best efforts in his time in the United States he has been unable to find a clear pathway to lawful
16 permanent residence, Petitioner had been deep in the process of getting his affairs in order to
17 permanently leave the country and repatriate to Argentina. He had already purchased plane
18 tickets for himself and his family for October 24, 2026 prior to embarking on his round-trip to
19 Dallas, evidence of which he presented to ICE agents when prompted to after his arrest. Petitioner
20 urgently needs to be released from detention to be able to finalize the winding-down of what had
21 been his life in the United States for more than half a decade in a responsible manner before
22 leaving the country.

23 52. As a passionate soccer lover, he also established strong relationships with friends
24 whom he regularly plays soccer in a competitive community league in Alameda. Petitioner has
25 no criminal history in the United States or anywhere in the world.

26 53. Respondents knew Petitioner was present in the United States and allowed
27 Petitioner to remain at liberty. At the time of his arrest, Petitioner was not in removal proceedings,
28 aware of any order of removal issued against him by the Department of Homeland Security

1 (“DHS”) or the Executive Office for Immigration Review (“EOIR”). Respondents did not
2 provide notice of charges or a lawful basis for his arrest and confinement.

3 54. Petitioner has no criminal record whatsoever in the United States or anywhere in
4 the world, and there is no basis to believe they pose a danger to the community.

5 55. Petitioner consistently resided, worked and socialized in the Bay Area, and never
6 showed any intention to abscond, hide or flee immigration enforcement. And when he realized that
7 there appeared to not be any possibilities to gain lawful status to remain in this country, he
8 promptly began to enact his plan to leave permanently.

9 56. For the reasons explained above, Petitioner was neither a flight risk nor a danger to
10 the community while Respondents allowed Petitioner to live in the community.

11 57. Despite Petitioner’s constitutionally protected interest in his liberty and lack of
12 materially changed circumstances as to dangerousness or flight risk, Respondents arrested and
13 detained Petitioner on June 27, 2026, in Oakland, CA.

14 58. The facts surrounding Petitioner’s arrest and detention are as follows: immigration
15 agents dressed in plainclothes appear to have been following Petitioner throughout the airport from
16 the moment he scanned his passport at Oakland International Airport. They followed him to the
17 terminal where his roundtrip flight was to take off from and eventually detained him around
18 midnight in the waiting area prior to boarding the plane to Dallas, Texas, where he was traveling
19 to with a friend to watch a world cup match. They did not present him with an arrest warrant or
20 any other documentation, but they identified him by name. Petitioner was completely taken aback
21 by this arrest because about three months or so prior to this date, he has traveled with his family
22 to Miami without incident. When he learned that he was being arrested, he informed the
23 immigration agents that he and his family already had plans to leave the country permanently and
24 submitted the information of their upcoming international one-way flights to Argentina scheduled
25 for October 24, 2026 as proof of these plans for repatriation.

26 59. Petitioner is being deprived of liberty without permissible justification.
27 Respondents previously encountered Petitioner and allowed him to live in the community, upon a
28 determination that he was neither a flight risk nor danger to the community to warrant detention.

1 Nothing material has changed to justify altering that initial determination. Therefore, Petitioner's
2 ongoing detention is not related to either of the permissible justifications for civil immigration
3 detention: flight risk or danger. Petitioner's ongoing detention furthers no legitimate government
4 interest.

5 60. To the extent Respondents re-arrested Petitioner without any material change in
6 circumstances, the re-arrest was without new probable cause, in violation of Petitioner's Fourth
7 Amendment right against unreasonable seizures.

8
9 ***C. Garro Pinchi v. Noem Litigation and Order of Preliminary Relief***

10 61. Petitioner brings to the Court's attention that he may be a member of the
11 provisionally certified class in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025).

12 62. In October 2025, three plaintiffs filed a complaint under the Administrative
13 Procedure Act (APA) challenging DHS's new policy of re-detaining previously released
14 noncitizens without materially changed circumstances as to dangerousness or flight risk. *Garro*
15 *Pinchi*, No. 5:25-cv-05632-PCP, Dkt. No. 38 (Class Action Complaint and Amended Petition for
16 Writ of Habeas Corpus) (N.D. Cal. filed Oct. 10, 2025). The plaintiffs filed a motion to "stay" the
17 challenged policy pending final judgment on their claims and a motion for provisional class
18 certification. *Id.* at Dkt. No. 48 (Notice of Motion and Motion to Stay Effective Date of Agency
19 Action or Preserve Status or Rights) (N.D. Cal. filed Oct. 16, 2025).

20 63. On December 19, 2025, the *Garro Pinchi* court issued an order granting the
21 plaintiffs' motions to provisionally grant class certification and stay agency action. *Garro Pinchi*,
22 813 F. Supp. 3d at 1039–40.

23 64. *Garro Pinchi* certified the following class: "All noncitizens in the jurisdiction of
24 the San Francisco ICE Field Office who (1) entered or will enter the United States without
25 inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have
26 been or will be released from DHS custody; and who (3) are in removal proceedings under 8 U.S.C.
27 § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not
28

1 administratively final; and (4) are not subject to detention under 8 U.S.C. § 1226(c).” *Id.* at 1010–
2 11.

3 65. Relevant to the class definition, the jurisdiction of the San Francisco ICE Field
4 Office covers California from the Oregon border to (and including) Kern County; Hawaii; Guam;
5 and the Northern Mariana Islands. Within California, the Sacramento, Stockton, San Jose/Morgan
6 Hill, Fresno, and Bakersfield sub-field ICE offices are all within the San Francisco Area of
7 Responsibility.¹

8 66. *Garro Pinchi* certified the following subclass: “All members of the Class whose
9 release from DHS custody was or will be on bond, conditional parole, or their own recognizance
10 under 8 U.S.C. § 1226(a) and/or 8 C.F.R. § 236.1(c)(8).” *Id.*

11 67. On the merits, *Garro Pinchi* held that the new re-detention policy is likely arbitrary
12 and capricious because, based on the preliminary record: Respondents failed to provide a reasoned
13 explanation for their new policy at the time of its implementation; any post hoc rationalization
14 Respondents provided for the new policy was based on legal error; Respondents failed to consider
15 released noncitizens’ serious reliance interests when implementing the new policy; and
16 Respondents failed to adequately consider noncitizens’ protected liberty interests when
17 implementing the new policy. *Id.* at 1027.

18 68. The *Garro Pinchi* court held that the DHS’ new interpretation of 8 U.S.C.
19 § 1225(b)(2) did not justify the agency’s adoption of the new policy. *Id.* at 1028-33. The court held
20 that the new policy was likely unlawful regardless of whether the underlying statutory authority
21 for re-detention was 8 U.S.C. § 1225(b)(2) or § 1226(a), and stayed the policy from applying to
22 any class member detained under color of either statute. *Id.* at 1037.

23 69. *Garro Pinchi* further concluded that class members would suffer irreparable harm
24 without preliminary relief, and that the balance of equities and public interest favored such relief.
25 *Id.* at 1018.

26 70. Accordingly, *Garro Pinchi* granted preliminary relief and stayed Respondents’ new
27

28 ¹ A map depicting the geographic the jurisdiction of the San Francisco ICE Field Office is
available at <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf>.

1 re-detention policy, effective immediately. *Id.* at 1040. The order has the effect of requiring
2 Respondents to revert to their longstanding prior policy of *not* re-arresting and re-detaining class
3 member without an individualized determination that there are materially changed circumstances
4 as to the class member's dangerousness or flight risk. *See Paulsen v. Daniels*, 413 F.3d 999, 1008
5 (9th Cir. 2005) ("The effect of invalidating an agency rule is to reinstate the rule previously in
6 force.").

7 ***D. Petitioner is Experiencing Irreparable family***

8 71. Petitioner's arrest and detention are causing them ongoing irreparable harm.
9 Respondents previously encountered Petitioner and allowed him to live in the community,
10 necessarily entailing a determination that Petitioner was neither a danger to the community nor
11 a flight risk to warrant detention. No material change in circumstances warranted departing from
12 that previous determination.

13 72. Due to Petitioner's ongoing detention, he is suffering irreparable harm, and
14 every additional day he spends in unlawful detention subjects him to further irreparable harm.

15 73. Petitioner is being irreparably harmed in the following ways: he is separated from
16 his family, particularly from his infant child during what we know to be a critical developmental
17 phase in the life of a child during which even a few days of separation can result in toxic stress; he is
18 also being separated from his social network that has been his support during his time in this
19 country; it interrupted the wrap up process before relocation making it very difficult to ensure a
20 responsible exit from the country; and his detention has placed a significant psychological and
21 emotional strain on his wife who has struggled to find a lawyer to represent Petitioner during this
22 unexpected detention.

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**

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

26 **(Procedural Due Process—Detention)**

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

1 75. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty
2 liberty interest in avoiding re-incarceration after Respondents encountered them and allowed them
3 to live in the community. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*,
4 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*,
5 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining
6 out of custody following an IJ’s bond determination).

7 76. Accordingly, “[i]n the context of immigration detention, it is well-settled that due
8 process requires adequate procedural protections to ensure that the government’s asserted
9 justification for physical confinement outweighs the individual’s constitutionally protected
10 interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*, 494
11 U.S. at 127 (explaining that generally, “the Constitution requires some kind of a hearing *before*
12 the State deprives a person of liberty or property.”).

13 77. In the immigration context, for such hearings to comply with due process, the
14 government bears the burden to demonstrate, by clear and convincing evidence, that the
15 noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196,
16 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

17 78. Petitioner’s detention without a pre-deprivation hearing violated due process.
18 After encountering Petitioner and allowing him to live in the community because custody was
19 not required to protect against flight risk or dangerousness, Respondents detained Petitioner with
20 no notice, no explanation of the justification of his detention, and no opportunity to contest his
21 detention before a neutral adjudicator before being taken into custody.

22 79. Petitioner has a profound personal interest in his liberty. Because Petitioner
23 received no procedural protections, the risk of erroneous deprivation is high. And the government
24 has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted
25 as a matter of course in immigration proceedings, and nothing in Petitioner’s record sufficiently
26 shows that he would abscond or endanger the community before a bond hearing could be held.
27 *See, e.g., Jorge M.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, at *3 (N.D. Cal.
28 Mar. 1, 2021); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal.

1 Aug. 23, 2020) (“[T]he government’s concern that delay in scheduling a hearing could exacerbate
2 flight risk or danger is unsubstantiated in light of petitioner’s strong family ties and his continued
3 employment during the pandemic as an essential agricultural worker.”).

4 **SECOND CLAIM FOR RELIEF**

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

6 **(Substantive Due Process—Detention)**

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

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

13 82. Immigration detention is constitutionally permissible only when it furthers the
14 government’s legitimate goals of ensuring the noncitizen’s appearance during removal
15 proceedings and preventing danger to the community. *See id.*

16 83. Petitioner is neither a flight risk nor a danger to the community. Respondents’
17 detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being
18 detained in violation of the Due Process Clause of the Fifth Amendment.

19 84. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation” to
20 any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly
21 “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention appears to be “not
22 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for
23 other reasons,” *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring)—namely, to effectuate
24 Respondents’ unlawful new policy of detaining individuals whom they previously encountered
25 and permitted to live in the community, without any materially changed circumstances to justify
26 detention.

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution

(Petitioner's Re-Arrest Constitutes an Unreasonable Seizure)

85. **Only to the extent that Petitioner was re-arrested,** Petitioner re-alleges and incorporates by reference the paragraphs above and brings this Claim.

86. The Fourth Amendment protects the right of all persons present in the United States to be free from unreasonable seizures by government officials. Petitioner therefore has the right to be free from unreasonable seizures.

87. As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charge without a material change in circumstances.

88. Petitioner was re-arrested on the same charge without a material change in circumstances. Petitioner's re-arrest violated the Fourth Amendment.

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act / Unlawful Application of Stayed Policy:

(Request for Relief Pursuant to *Garro Pinchi v. Noem*)

89. **Only to the extent that Petitioner is a *Garro Pinchi v. Noem* class member,** Petitioner re-alleges and incorporates by reference the paragraphs above and brings this Claim.

90. In *Garro Pinchi v. Noem*, 813 F. Supp. 3d at 973, the court issued an order on December 19, 2025, granting preliminary relief pending final adjudication off the class's claims. The court held that Respondents' new policy of re-detaining people without an individualized determination of materially changed circumstances is likely unlawful as arbitrary and capricious. The order stayed the new policy, prohibiting Respondents from re-arresting and re-detaining previously released noncitizens without an individualized determination that materially changed circumstances as to flight risk or dangerousness warrant re-detention.

91. Despite the *Garro Pinchi* order, Respondents re-arrested and re-detained Petitioner even though Petitioner had no materially changed circumstances as to flight risk or dangerousness to warrant re-detention.

92. As Petitioner is a member of the certified class in *Garro Pinchi*, Petitioner's

1 ongoing detention is unlawful and Petitioner is entitled to immediate release.

2 93. Every moment Respondents continue to detain Petitioner and deprive him of his
3 liberty, Respondents violate the Administrative Procedure Act and the court's order in *Garro*
4 *Pinchi*.

5 **FOURTH CLAIM FOR RELIEF**

6 **Violation of the Administrative Procedure Act**

7 **(Unlawful Detention)**

8 94. Petitioner realleges and incorporates by reference all preceding paragraphs as if
9 fully set forth herein.

10 95. Formal removal proceedings are strictly governed by procedural requirements.
11 Specifically, 8 U.S.C. § 1229(a) provides that a removal proceeding is commenced only when
12 the DHS files a Notice to Appear ("NTA") with the Immigration Court. The filing of an NTA is
13 the threshold event that initiates proceedings and establishes the jurisdiction of the Immigration
14 Court over the noncitizen.

15 96. The Ninth Circuit has emphasized the centrality of this procedural step in
16 *Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009), holding that "removal proceedings
17 commence only upon the filing of a Notice to Appear with the immigration court." Until an NTA is
18 properly filed, no removal proceedings exist, and the government lacks authority to detain a
19 noncitizen on the basis of removability or inadmissibility.

20 97. In Petitioner's case, at the time of arrest, Petitioner was not in removal
21 proceedings, and if an NTA had been filed, he was unaware of its existence as it had not been
22 served. Petitioner was arrested and detained in the waiting area of the gate from which he was to
23 board his roundtrip flight to Texas, prior to any formal commencement of removal proceedings.
24 He was not provided with any document stating the justification for his arrest. Because there
25 was no pending NTA, ICE lacked the legal authority to justify the detention as part of a removal
26 proceeding. Consequently, the detention is not incident to any lawful removal action, and any
27 claims of deportability or inadmissibility asserted after the fact are procedurally invalid.

28 98. Because no NTA had been filed and served at the time of arrest, no lawful

1 removal proceedings had been initiated, and ICE's detention lacked any statutory or regulatory
2 foundation. Petitioner's continued confinement therefore is arbitrary, unlawful, and in direct
3 contravention of the APA, warranting immediate release.

4 **PRAYER FOR RELIEF**

5 Petitioner respectfully requests that this Court:

- 6 1. Assume jurisdiction over this matter;
- 7 2. Issue a writ of habeas corpus ordering Respondents to immediately release
8 Petitioner from custody on the same conditions that governed their liberty prior to
9 Petitioner's current detention, or in the alternative, issue a writ of habeas corpus
10 ordering Respondents to show cause within three (3) days why Petitioner should
11 not be released from custody;
- 12 3. Declare that Petitioner's arrest and ongoing detention violate the Due Process
13 Clause of the Fifth Amendment;
- 14 4. **Only to the extent that Petitioner was re-arrested,** declare that Petitioner's re-
15 arrest and ongoing detention violate the Fourth Amendment;
- 16 5. **Only to the extent that Petitioner is a Garro Pinchi class member,** declare that
17 Petitioner's arrest and ongoing detention violate the order granting preliminary
18 relief to the *Garro Pinchi* class;
- 19 6. Declare that Petitioner's arrest and ongoing detention violate the Administrative
20 Procedures Act;
- 21 7. Enjoin Respondents from re-detaining Petitioner absent further order of this Court;
22 *or, in the alternative,* unless Respondents provide at least 14 days' notice to
23 Petitioner that they will seek a pre-deprivation bond hearing before a neutral arbiter
24 at which the government bears the burden of proving, by clear and convincing
25 evidence, that Petitioner is a flight risk or danger to the community;
- 26 8. Order Respondents to return all of Petitioner's property confiscated during their
27 arrest and processing into detention, including but not limited to personal
28

1 identification, medical insurance cards, money, documents related to any legal
2 proceedings, and personal effects;

3 9. Enjoin Respondents from transferring Petitioner outside this District during the
4 pending these proceedings;

5 10. Award Petitioner his costs and reasonable attorneys' fees in this action as provided
6 for by the Equal Access to Justice Act, as amended; 28 U.S.C. § 2412; and on any
7 other basis justified by the law; and

8 11. Grant such further relief as the Court deems just and proper.
9
10

11 Date: July 3, 2026

Respectfully Submitted,

12 /s/ Jazmín Preciado-Medina

13 Jazmín Preciado-Medina (SBN 342328)

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