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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Maria Ester CARRILLO PENA,

Petitioner,

v.

Jeremy CASEY, Warden, Imperial Regional Detention Facility;
Daniel A. BRIGHTMAN, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement;
David J. VENTURELLA, Acting Director, United States Immigration and Customs Enforcement;
Markwayne MULLIN, Secretary of Homeland Security;
Todd BLANCHE, Acting Attorney General, in their official capacities,

Respondents.

Case No.: '26CV4382 BAS AHG

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS

Petitioner petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

INTRODUCTION

1. Petitioner Maria Ester Carrillo Pena has resided continuously in the United States since March 1999 — more than 27 years. She was apprehended by U.S. Border Patrol agents on May 13, 2026, while walking along State Route 111 near Desert Shores, California, on her way home from work.

2. Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California, and is the subject of pending removal proceedings before the Imperial Immigration Court.

3. Petitioner has no criminal history. Respondents' own Record of Deportable/Inadmissible Alien records her criminal record as "None Known" and states "Negative Criminal."

4. Petitioner is the mother of three United States citizen children. Her adult daughter has autism, and Petitioner was her primary caregiver until the day of her arrest.

5. Petitioner has never been afforded any individualized custody determination, and Respondents maintain that she is not entitled to one.

6. Petitioner is being held without lawful authority for three independent reasons.

7. First, Respondents have no statutory authority to detain Petitioner without any custody process whatsoever. The Executive Office for Immigration Review's current position, as reflected in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and in the U.S. Department of Homeland Security's July 8, 2025, detention guidance, is that noncitizens who entered without inspection are categorically ineligible for bond because they are detained under 8 U.S.C.

§ 1225(b)(2)(A). That provision governs applicants for admission who are seeking entry. Respondents apply it to Petitioner notwithstanding that Respondents' own records establish she entered the United States on or about March 1, 1999, and has lived here ever since.

8. Judges of this Court have repeatedly rejected that reading, most recently 17 days ago. *See Lucas Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC, 2026 WL 2059095 (S.D. Cal. July 16, 2026)(granting the writ and ordering immediate release where the petitioner was "detained . . . in the interior of the United States, after having resided here for over 5 years"); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, 2025 WL 3512410, at *1-2 (S.D. Cal. Dec. 8, 2025); *Bernardo Aquino v. LaRose,* No. 25-cv-02904-RSH-MMP, 2025 WL 3158676, at *3 (S.D. Cal. Nov. 12, 2025). If any statutory authority for Petitioner's detention exists at all, it is 8 U.S.C. § 1226(a).

9. Second, Respondents have deprived Petitioner of her liberty without any pre-deprivation process before a neutral decisionmaker, in violation of the Due Process Clause of the Fifth Amendment. She has now been confined for more than two months without ever being heard on whether her detention is justified.

10. Third, Petitioner was arrested without a warrant and without any individualized determination that she was likely to escape before a warrant could be obtained, as 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) require. Respondents' own narrative of the arrest records a consensual roadside encounter with a cooperative subject and no such assessment.

11. Immediate release, rather than a bond hearing, is the appropriate remedy. As this Court has repeatedly recognized, a post-deprivation bond hearing

cannot remedy an unlawful deprivation of liberty that has already occurred. *See Lucas Gregorio, 2026 WL 2059095, at *2*; *Miranda Guevara v. Mullin*, No. 3:26-cv-02690-RBM-AHG, 2026 WL 1349068 (S.D. Cal. May 14, 2026); *Ramirez v. Mullin*, No. 3:26-cv-01880-RBM-VET, 2026 WL 962658 (S.D. Cal. Apr. 9, 2026); *Perez Solis v. LaRose*, No. 3:26-cv-01532-RBM-AHG, 2026 WL 849304 (S.D. Cal. Mar. 26, 2026); *Rodas-Dieguez v. Noem*, No. 3:26-cv-00976-RBM-MMP, 2026 WL 549910 (S.D. Cal. Feb. 26, 2026).

CUSTODY

12. Petitioner Maria Ester Carrillo Pena is currently in Respondents' legal and physical custody. They are detaining her at Imperial Regional Detention Facility in Calexico, California. She is under Respondents' and their agents' direct control.

JURISDICTION

13. This Court has jurisdiction to consider this habeas petition complaint under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, 2.

VENUE

14. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, and Petitioner's immediate physical custodian is located in this District.

PARTIES

15. Petitioner Maria Ester Carrillo Pena is currently detained by the Respondents at the Imperial Regional Detention Facility, an immigration detention facility in Calexico, California. She is pending removal proceedings and has been in ICE custody since on or about May 13, 2026.

16. Respondent Jeremy Casey is the Warden at the Imperial Regional Detention Facility, where Petitioner is being held. Respondent Casey is Petitioner's immediate custodian. Petitioner sues him in his official capacity.

17. On information and belief, Respondent Daniel A. Brightman is the current Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is Petitioner's legal custodian. Petitioner sues him in his official capacity.

18. Respondent David J. Venturella is the Acting Director of ICE. ICE is a component of the U.S. Department of Homeland Security, 6 U.S.C. § 271, and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Petitioner. Respondent Lyons has custodial authority over Petitioner, who names him in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of the DHS. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Mullin has ultimate custodial authority over Petitioner, who names him in his official capacity.

20. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Immigration and Nationality Act's implementation and enforcement (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for Immigration Review. Petitioner names him in his official capacity.

STATEMENT OF FACTS

21. Petitioner is a 45 year-old citizen and national of Mexico. She was born in Nayarit, Mexico in November 1980.

22. Petitioner has resided continuously in the United States for more than 27 years. Prior to her detention she lived in the Salton Sea community of North Shore, California, and worked as a laborer.

23. Petitioner has three United States citizen children, ages 26, 24, and 21. Her 24 year-old daughter has autism and lived with Petitioner, who was her primary caregiver. Since Petitioner's arrest, her sister, who lives next door, has assumed that caregiving role.

24. Petitioner is a survivor of prolonged and severe domestic violence. She has been married for approximately 20 years to a United States citizen who abused her physically and psychologically over many years. In or around 2015, he shot her in the right palm. Petitioner's relatives called the police, an ambulance transported her to the hospital, and he was prosecuted and is currently serving a 19-year sentence.

25. Petitioner has no criminal history of any kind anywhere in the world.

26. On May 13, 2026, at approximately 2:00 p.m., Supervisory Border Patrol Agent J. Palomo encountered Petitioner as she walked along State Route 111 near Parkside Drive near Desert Shores, California. Ex. B.

27. By the agent's own account, he "initiated a consensual encounter" with Petitioner and asked where she was coming from and going to. Petitioner answered that she was coming from her job and heading to her house. *Id.*

28. When questioned about her immigration status, Petitioner stated that she believed she was a lawful permanent resident but did not have her card with her. Ex. B. She later explained that she had believed for years that she held lawful status and that the card she had been given must have been counterfeit. *Id.*

29. The agent ran record checks by name and date of birth, which returned no immigration status. He then transported Petitioner to the Indio Border Patrol Station and subsequently to the El Centro Centralized Processing Center. *Id.*

30. Petitioner was cooperative throughout the encounter. She answered the agent's questions, did not attempt to flee, and did not resist. Nothing in Respondents' records suggests otherwise. *See* Ex. B.

31. Respondents did not obtain a warrant before arresting Petitioner. Nothing in the Form I-213, its four continuation pages, or any other record produced to date reflects that any officer made an individualized determination that Petitioner was likely to escape before a warrant could be obtained. Ex. B.

32. Respondents served Petitioner with a Form I-200 administrative warrant of arrest at the El Centro Centralized Processing Center, after she had already been seized, transported between two facilities, and processed. *Id.*

33. On May 14, 2026, Respondents served Petitioner with a Notice to Appear charging her under 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I). Ex. A.

34. Petitioner was transferred to the Imperial Regional Detention Facility in Calexico, California, where she remains detained. She has been in Respondents' custody continuously since May 13, 2026 — more than two months.

35. Respondents have never provided Petitioner with any individualized custody determination, and no such determination has been scheduled. At no point has any neutral decisionmaker considered whether her confinement is necessary to prevent flight or protect the community.

36. On June 22, 2026, DHS filed Petitioner's Form I-213 with the Imperial Immigration Court. Ex. B.

37. Undersigned counsel entered an appearance on Petitioner's behalf on July 27, 2026. Petitioner's next master calendar hearing is set for August 10, 2026, before an immigration judge. Her removal proceedings remain pending.

LEGAL FRAMEWORK

The Statutory Framework Governing Petitioner's Detention

38. Congress established separate detention statutes governing different stages of the immigration process. Section 1225 governs applicants for admission seeking entry into the United States. Section 1226 governs the arrest and detention of noncitizens already present in the United States while removal proceedings are pending. Section 1231 governs detention following the entry of a final order of removal. These provisions occupy distinct statutory roles and cannot

be treated as interchangeable. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 (2018).

39. Section 1226(a) authorizes discretionary detention pending a decision on removal and expressly permits release on bond or conditional parole. It is implemented through a custody redetermination process before an Immigration Judge. Section 1225(b)(2)(A), by contrast, provides that an applicant for admission who is not clearly and beyond a doubt entitled to be admitted "shall be detained" for a removal proceeding, and affords no custody hearing.

40. The dividing line between the two provisions is whether the noncitizen is seeking admission at the threshold of entry or is instead already present within the United States. A noncitizen apprehended in the interior years or decades after entry is not an applicant for admission in any ordinary sense of that phrase.

41. In July 2025, ICE issued guidance stating that noncitizens who entered without inspection are ineligible for release on bond and cannot challenge their detention at a bond hearing in immigration court, regardless of how long the individual has lived in the United States.

42. The Board of Immigration Appeals adopted a parallel position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that noncitizens who entered without inspection are detained under § 1225(b)(2)(A) and that Immigration Judges therefore lack jurisdiction to redetermine their custody.

43. Pursuant to that guidance and that decision, Respondents treat Petitioner — a woman who has lived in this country for 27 years, was apprehended in the interior, and has no criminal record — as though she were a

person presenting herself at the border seeking admission. Respondents accordingly take the position that no Immigration Judge may consider her release.

44. The lawfulness of that policy has been squarely litigated. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), *amended and superseded on reconsideration*, 813 F. Supp. 3d 1084 (C.D. Cal. 2025), the district court granted partial summary judgment for the petitioners, holding that noncitizens who entered without inspection but were not apprehended upon arrival are not detained under § 1225(b)(2)(A) and instead fall under § 1226, which provides for custody redetermination by an Immigration Judge.

45. The court thereafter certified a nationwide Bond Eligible Class, defined as "[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Bautista v. Santacruz*, 813 F. Supp. 3d at 1095. On December 18, 2025, the court entered final declaratory judgment for the class. On February 18, 2026, on the class's motion to enforce the judgment, the court vacated *Matter of Yajure Hurtado* and declared the July 2025 guidance unlawful under the Administrative Procedure Act. *Maldonado Bautista v. Santacruz*, 820 F. Supp. 3d 1016 (C.D. Cal. 2026).

46. Respondents appealed. On March 6, 2026, the Ninth Circuit entered an administrative stay of the December 18, 2025, judgment "insofar as [it]

extends beyond the Central District of California," leaving the judgment in place as to that District. On March 31, 2026, following argument, the panel granted a stay pending appeal of the December 18, 2025, class certification order and final judgment and of the February 18, 2026, order vacating *Matter of Yajure Hurtado*. *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, Nos. 25-7958, 26-1044 (9th Cir. Mar. 31, 2026).

47. Petitioner acknowledges that, because of that stay, she cannot presently invoke the class judgment as a source of relief. She was detained in the interior of the Central District of California but is confined in this District, and the class judgment currently operates only as to persons detained in the Central District. Petitioner does not ask this Court to enforce the class judgment.

48. The stay does not, however, weaken Petitioner's claim. The Ninth Circuit granted the stay on jurisdictional grounds, concluding that Respondents had shown a strong likelihood of success on the argument, drawn from *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025), that claims for relief from mandatory detention necessarily imply the invalidity of the claimant's confinement and must therefore be pursued in habeas. The stay thus reflects a determination about the proper vehicle and forum for these claims, not a determination that the underlying statutory reading is wrong. Petitioner has brought precisely the action the panel's reasoning contemplates: an individual petition for a writ of habeas corpus, filed in her district of confinement, challenging her own detention.

Statutory Limits on Warrantless Immigration Arrests

49. Section 1357(a)(2) authorizes an immigration officer to arrest a noncitizen without a warrant only where the officer has reason to believe that the

noncitizen is in the United States in violation of law and "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). The implementing regulation requires the same individualized determination. 8 C.F.R. § 287.8(c)(2)(ii).

50. The "reason to believe" standard is equivalent to the probable cause standard of the Fourth Amendment. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019). An arrest made in violation of the governing regulation is unlawful. *See Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz*, 926 F.3d at 1137.

Due Process Requires Pre-Deprivation Process Before a Neutral Decisionmaker

51. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That protection extends to noncitizens without regard to status. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (the Fifth and Fourteenth Amendments refer to "all persons"); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection"); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

52. Where the Government seeks to detain, it must justify that detention before a neutral decisionmaker by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025).

53. Courts in this Circuit have held that due process requires that process to come *before* the deprivation of liberty, not after. *See Hassanzadeh v. Chestnut*, No. 1:26-cv-00056-DC-CKD, Doc. 14 (E.D. Cal. Mar. 17, 2026) (granting the writ and ordering immediate release; the Due Process Clause requires "a pre-deprivation bond hearing before a neutral arbiter"); *Selis Tinoco v. Noem*, 818 F. Supp. 3d 1141 (E.D. Cal. 2025); *Labrador-Prato v. Noem*, 815 F. Supp. 3d 1113 (E.D. Cal. 2025); *D.L.C. v. Wofford*, No. 1:25-cv-01996-DC-JDP, 2026 WL 25511 (E.D. Cal. Jan. 5, 2026); *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, 2026 WL 309563 (E.D. Cal. Feb. 5, 2026).

54. Other judges of this District have likewise ordered immediate release rather than a post-deprivation bond hearing in materially similar circumstances. *Accord Ortiz Reyes v. LaRose*, No. 25-cv-2938-JLS-VET, 2025 WL 3171743, at *6-7 (S.D. Cal. Nov. 13, 2025)(granting the writ, ordering immediate release, and requiring notice and a hearing before a neutral decisionmaker prior to any re-detention, with the Government bearing the clear-and-convincing burden); *Nieto v. Casey*, No. 26-cv-0186-GPC-AHG, 2026 WL 125602, at *2 (S.D. Cal. Jan. 16, 2026) (ordering immediate release on the bond and conditions previously set by the immigration judge); *Pedraza v. LaRose*, No. 26-cv-2697-LL-MSB, 2026 WL 1484326, at *2-3 (S.D. Cal. May 27, 2026)(concluding that immediate release, rather than a bond hearing, was the appropriate remedy); *Garcia Ayala v. Warden*, No. 26-cv-03907, 2026 WL 2045352, at *2 (S.D. Cal. July 15, 2026)(ordering release within 24 hours and barring re-detention absent a pre-deprivation hearing or material change in circumstances).

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
Detention Under 8 U.S.C. § 1225(b)(2) Is Contrary to the Immigration and Nationality Act

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in paragraphs 1-54 as if fully set forth herein.

56. Respondents have detained Petitioner but have not explicitly stated under which statute she is detained. Instead, they are treating her in a manner consistent with the position that noncitizens who entered the United States without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore categorically ineligible for a custody redetermination hearing before an Immigration Judge.

57. That position is contrary to the text, structure, and purpose of the INA and to the existing case law of this Court.

58. Petitioner is not an arriving applicant for admission. According to Respondents' own records, Petitioner entered the United States on or about March 1, 1999, and thereafter resided continuously in this country for more than 27 years before her arrest. Ex. B. She was apprehended while walking home from work in the interior of California, far from any port of entry. She was living with and caring for her United States citizen children and had established deep community ties before her arrest.

59. Under these circumstances, the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) do not apply. Rather, if any statutory authority exists for Petitioner's detention pending removal proceedings, it must be found at 8 U.S.C. § 1226(a), unless she is subject to another detention provision such as 8 U.S.C. § 1225(b)(1), § 1226(c), or § 1231 — none of which applies to her. Section

1226(a) authorizes discretionary detention and permits review of custody by an Immigration Judge.

60. Courts throughout the country, and repeatedly within this District, have recognized that § 1225(b)(2) does not authorize mandatory detention of individuals who, like Petitioner, had already entered and resided in the United States before their arrest by immigration authorities. *See Bernardo Aquino v. LaRose*, No. 25-cv-02904-RSH-MMP, 2025 WL 3158676, at *3 (S.D. Cal. Nov. 12, 2025) ("The overwhelming majority of courts to address the issue have agreed that Section 1226(a), rather than the mandatory detention provision of Section 1225(b)(2)(A), applies to a noncitizen . . . who has resided in the United States for many years."); *Huerta v. Bondi*, No. 1:25-cv-00941-JLT-HBK (HC), 2026 WL 366709, at *1 (E.D. Cal. Feb. 10, 2026) (petitioner who "entered the United States without inspection and has been residing continuously here for more than 20 years without any contact with immigration authorities . . . is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)"); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484 (S.D.N.Y. 2025); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, 2025 WL 3512410 (S.D. Cal. Dec. 8, 2025).

61. Petitioner's 27 years of continuous residence exceeds that of the petitioners in each of those cases. If § 1225(b)(2)(A) does not reach a noncitizen who has lived here for four or five years, it plainly does not reach one who has lived here since 1999. *Cf. Huerta*, 2026 WL 366709, at *1.

62. Because Petitioner's detention is not authorized by § 1225(b)(2), Respondents are unlawfully depriving Petitioner of the procedural protections

afforded by § 1226(a), including the opportunity to seek release before an Immigration Judge. Respondents therefore lack statutory authority to continue detaining Petitioner.

63. Accordingly, Petitioner respectfully requests that this Court direct Respondents to release Petitioner from immigration custody immediately.

SECOND CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment — Deprivation of Liberty Without Pre-Deprivation Process

64. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in paragraphs 1-55 as if fully set forth herein.

65. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. Because Respondents are federal officers acting under federal authority, Petitioner's due process claim arises under the Fifth Amendment. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments alike "refer to all persons" and are not limited to citizens. *Yick Wo*, 118 U.S. at 369; *Mathews v. Diaz*, 426 U.S. at 77-78; *Plyler*, 457 U.S. at 210; *Wong Wing*, 163 U.S. at 238.

66. Immigration detention is a significant deprivation of physical liberty and must comport with constitutional requirements. *Zadvydas*, 533 U.S. at 690; *Hernandez*, 872 F.3d at 990-91.

67. Petitioner has been continuously present in the United States for more than 27 years. She was seized on May 13, 2026, transported to the Imperial Regional Detention Facility, and has remained incarcerated since, without any opportunity to be heard on the legality or necessity of her confinement.

68. Respondents have afforded Petitioner no custody determination of any kind — not before her detention, and not in the more than two months since. Respondents' stated legal position forecloses any such determination.

69. The procedural safeguards required by the Fifth Amendment are assessed under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Each factor favors Petitioner.

70. First, Petitioner's private interest is extraordinarily weighty. She has been deprived of her physical liberty and separated from her three United States citizen children, including an adult daughter with autism for whom she was the primary caregiver. Every additional day of detention is an ongoing deprivation of a fundamental liberty interest.

71. Second, the risk of erroneous deprivation is substantial. Petitioner's detention rests entirely on Respondents' position that all noncitizens who entered without inspection are categorically subject to mandatory detention under § 1225(b)(2). Numerous federal courts — including multiple judges of this District, and the district court in the nationwide class litigation described *supra*— have rejected that interpretation. The existence of that substantial body of contrary authority demonstrates a significant risk that Petitioner is being detained under an erroneous legal standard, and no procedure exists by which she may test it administratively.

72. Third, the Government has no legitimate interest in withholding constitutionally adequate procedures. If Respondents believe Petitioner presents a danger to the community or a risk of flight, Congress has already supplied a mechanism for making that determination through the custody review procedures

of § 1226(a). Respondents have instead relied upon an erroneous interpretation of the detention statutes to deny those procedures altogether. Petitioner has no criminal history, has lived in the same community for decades, and has three United States citizen children here.

73. Due process requires that the Government justify detention before a neutral decisionmaker by clear and convincing evidence that the noncitizen is a flight risk or a danger to the community. *Singh*, 638 F.3d at 1203-05; *Sadeqi*, 809 F. Supp. 3d at 1095; *see also Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024). Respondents have made no such showing to any decisionmaker at any time.

74. That process must precede the deprivation. *See Hassanzadeh v. Chestnut*, No. 1:26-cv-00056-DC-CKD, Doc. 14 at 1-2 (E.D. Cal. Mar. 17, 2026) (due process requires "a pre-deprivation bond hearing before a neutral arbiter at which the noncitizen's eligibility for bond must be considered"); *Selis Tinoco v. Noem*, 818 F. Supp. 3d 1141 (E.D. Cal. 2025); *Labrador-Prato v. Noem*, 815 F. Supp. 3d 1113 (E.D. Cal. 2025); *D.L.C. v. Wofford*, No. 1:25-cv-01996-DC-JDP, 2026 WL 25511 (E.D. Cal. Jan. 5, 2026); *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, 2026 WL 309563 (E.D. Cal. Feb. 5, 2026).

75. District courts applying the foregoing principles have repeatedly held that an ordinary post-detention bond hearing cannot cure the denial of constitutionally required pre-deprivation process. *See Xiaoming Yang v. Field Office Director*, No. 5:26-cv-02334-AJR, 2026 WL 1387378, at *3 n.2 (C.D. Cal. May 18, 2026); *Anderson v. Chestnut*, No. 1:26-cv-01960-DAD-CKD, 2026 WL 809990, at *4 (E.D. Cal. Mar. 24, 2026); *Tello Vazquez v. Mullin*, No. C26-2039-KKE, 2026

WL 1911507, at *3 (W.D. Wash. July 2, 2026); *Soto v. Bondi*, No. 2:26-cv-00652-BAT, 2026 WL 972731, at *7 (W.D. Wash. Apr. 10, 2026); *A.B.J.C. v. Hermosillo*, No. 2:26-cv-00185-JNW, 2026 WL 497097, at *6 (W.D. Wash. Feb. 23, 2026); *Castellano v. Blanche*, No. 2:26-cv-00124-GMN-BNW, 2026 WL 1414049, at *9 (D. Nev. May 20, 2026); *see also Banol v. Warden*, No. 5:26-cv-00529-CAS-ACCV, 2026 WL 776793, at *4 (C.D. Cal. Mar. 19, 2026).

76. Because Respondents have deprived Petitioner of her liberty without constitutionally sufficient procedures, and because no post-deprivation proceeding can restore the liberty already lost, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment and she is entitled to immediate release.

THIRD CAUSE OF ACTION

Violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) — Warrantless Arrest Without an Individualized Flight Determination

77. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in paragraphs 1-54 as if fully set forth herein.

78. Respondents arrested Petitioner without a warrant and without any individualized finding that she was likely to escape before a warrant could be obtained, as 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) require.

79. The circumstances of the arrest foreclose any such finding. By the arresting agent's own account, Petitioner was walking along a public highway on her way home from work; the agent initiated a consensual encounter; Petitioner stopped, answered his questions, and identified where she had come from and where she was going. She did not flee, resist, or attempt to evade. Ex. B.

80. Respondents' contemporaneous record of the arrest, the Form I-213 and its four continuation pages, contains no statement that any officer considered, much less determined, that Petitioner was likely to escape before a warrant could be obtained. Ex. B.

81. The Form I-200 administrative warrant that Respondents served on Petitioner was issued and served only after her seizure, transport, and processing were complete. Ex. B. A warrant obtained after the fact cannot retroactively satisfy the statutory precondition to a warrantless arrest.

82. The failure to conduct the required individualized assessment renders the arrest unlawful. *See Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

83. Because Congress conditioned warrantless arrests upon an individualized determination that the noncitizen is likely to escape before a warrant can be obtained, Respondents lacked statutory authority to arrest and detain Petitioner absent compliance with § 1357(a)(2).

84. There is accordingly no statutory or regulatory authority to hold Petitioner in immigration detention, and immediate release is required by law. *Urias v. Semaia*, No. 5:26-cv-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026); *Galvez Pantoja v. Sec'y of Homeland Sec.*, No. 5:26-cv-02084-JDE, 2026 WL 1601897, at *4 (C.D. Cal. June 1, 2026); *Ahmed M. v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026); *Lopez-Sanchez v. Blanche*, No. 8:26CV264, 2026 WL 1759557, at *3 (D. Neb. June 18, 2026); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-cv-00479-SDN, 2025 WL 2783642, at

*5 (D. Me. Sept. 30, 2025); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025).

PRAYER FOR RELIEF

Petitioner asks this Court to grant the following relief:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause why the writ should not be granted as to Petitioner within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

3. Enjoin Respondents from transferring Petitioner out of the jurisdiction during the pendency of the habeas petition;

4. Issue a writ of habeas corpus requiring that Respondents release Petitioner without the imposition of any restraints on her liberty such as reporting requirements, GPS, or electronic monitoring;

5. Order Respondents to return to Petitioner, upon her release, all confiscated property and documents, including her identification documents and the funds taken from her at the time of her arrest;

6. Order that Petitioner shall not be re-arrested or re-detained by Respondents absent compliance with constitutional protections, including a minimum of seven days' notice to Petitioner and undersigned counsel and a pre-deprivation hearing before a neutral fact-finder at which Petitioner may be represented by counsel and at which Respondents must demonstrate, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight and that no condition or combination of conditions could reasonably assure her future appearance and the safety of the community;

7. Declare that Petitioner's detention is unauthorized by statute and violates the Due Process Clause of the Fifth Amendment;

8. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

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

Dated: July 31, 2026

Respectfully submitted,

By: /s/ Arwa J.Z. Kakavand
Arwa J.Z. Kakavand
Casa Cornelia Law Center

Attorney for Petitioner

TABLE OF EXHIBITS

Exhibit A: Form I-862, Notice to Appear (served May 14, 2026)

Exhibit B: Form I-213, Record of Deportable/Inadmissible Alien, and continuation pages (filed by DHS June 22, 2026)

Exhibit C: ICE Detainee Locator search results (retrieved July 30, 2026)

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Arwa J.Z. Kakavand, am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. Petitioner is detained at the Imperial Regional Detention Facility and is unable sign this Verification. I have discussed with Petitioner the events described in the Petition and have reviewed relevant records and documents. Based on those discussions and the documents reviewed, I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Dated: July 31, 2026

Respectfully submitted,

By: /s/ Arwa J.Z. Kakavand
Arwa J.Z. Kakavand
Casa Cornelia Law Center

Attorney for Petitioner