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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ROSE MIRTHA FRANCOIS
Plaintiff and Petitioner,
vs.

CHRISTOPHER LAROSE, Warden of the Otay Mesa Detention Center; GREGORY ARCHAMBEAULT, Director of the San Diego Field Office, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, United States Department of Homeland Security, TODD BLANCHE, Attorney General, United States Department of Justice; DAVID VENTURELLA, Acting Director of the United States Immigration and Customs Enforcement; and DOES 1-5

Defendants-Respondents

Case No.: '26CV4667 LEK GC

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States; the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570 [hereinafter 'INA']; and Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq* [hereinafter "APA"].

2. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as Petitioner is presently in the physical custody of Respondents at the Otay Mesa Detention Facility under color of the authority of the United States and such custody is in violation of the Constitution, laws, or treaties of the United States.

3. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

4. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq..

5. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention or the denial of constitutional rights. *See INS v. St. Cyr,* 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

6. This Court has the ability to enjoin federal officials pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619–21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S. 536, 545 (1926) (same).

7. Plaintiff-Petitioner has exhausted all administrative remedies to the extent available and required by law.

8. Venue properly lies within the Southern District of California, because each named Defendant-Respondent is present in this district and a substantial part of the events or omissions giving rise to this action occurred and continue to occur in this District. *See* 28 U.S.C. §1391(b). Petitioner, **ROSE MIRTHA FRANCOIS** [hereinafter "Petitioner" or "Ms. Francois"] is currently detained within this district to wit, the Otay Mesa Detention Facility located at 7488 Calzada De La Fuente, San Diego, CA 92154. Accordingly, the "restraint complained of" is occurring within the Court's territorial jurisdiction. *See* 28 U.S.C. § 2241(a)

9. No court has reviewed the legality of Petitioner's detention.

PARTIES

10. Plaintiff-Petitioner **ROSE MIRTHA FRANCOIS** is a 41-year-old national and citizen of Haiti and a single mother of two daughters, ages five and six, who was arrested and re-detained by ICE on or about 6 August 2026. Ms. Francois was previously conditionally paroled out of ICE custody and placed on an Order of Recognizance (OREC). She has no criminal or prior immigration history. Petitioner was re-detained without a warrant, without a notice of violation of her

parole or prior release, without an opportunity to be heard, or present evidence that she is not subject to re-detention.

11. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States.

12. ICE is an agency within DHS with the primary mission of arresting, detaining, and removing non-citizens physically present within the territory of the United States. ICE is also responsible for the custody and care of all detained non-citizens awaiting resolution of their immigration cases or removal after a final order of removal had been entered.

13. Defendant Markwayne Mullin is the Secretary for DHS. In this capacity, Mr. Mullin has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103(a), has authority over ICE and its field offices, and has authority to order the release of Plaintiff-Petitioner. At all times relevant to this Complaint, Defendant Mullin was acting within the scope and course of her position as the Secretary for DHS. Defendant Mullin is sued in his official capacity.

14. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice and its component the Executive Office for Immigration Review and the immigration court system. He is sued in his official capacity

15. Defendant-Respondent David Venturella is the Acting Director and Senior Official Performing the Duties of the Director of ICE. Defendant Venturella is

responsible for the implementation of all ICE's policies, practices, and procedures, including those relating to detention of non-citizens. Defendant Venturella is a legal and immediate custodian of Plaintiff. At all times relevant to this Complaint, Defendant Venturella was acting within the scope and course of his position as an ICE official. He is sued in his official capacity.

16. Defendant-Respondent Gregory Archambeault is the Director of the San Diego Field Office of ICE, which has immediate custody of Plaintiff-Petitioner. He is sued in his official capacity.

17. Defendant Christopher LaRose is the warden of Otay Mesa Detention Facility in San Diego County, where Plaintiff-Petitioner is currently detained. Defendant LaRose is the immediate, physical custodian of Plaintiff. He is named in his official capacity.

18. The true names or capacities, whether individual, corporate, associate or otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such fictitious names, and Plaintiff will amend this Complaint to show their true names and capacities when ascertained. Does 1 through 5 are the immediate, physical custodians of Plaintiff.

FACTS RELEVANT TO ALL CAUSES OF ACTIONS

19. Ms. Francois is a 41-year-old national and citizen of Haiti who entered without inspection on or about 14 January 2022 with her two daughters. See Exhibit 1. Petitioner has resided in the United States ever since.

20. Soon after entering Petitioner was apprehended, processed by Respondents, and placed in section 240 removal proceedings. See Exhibit 1. On 16 January 2022 Petitioner was granted a conditional parole and released on order of recognizance. See Exhibit 2 & 3.

21. Respondents issued a Notice to Appear [NTA] charging Petitioner as a non-citizen "present in the United States without having been inspected or paroled" and as inadmissible under section 212(a)(6)(i) with the immigration. See Exhibit 1.

22. Petitioner has appeared for all her regularly scheduled ICE and USCIS appointments.

23. On or about 6 August 2026 Ms. Francois went to pick up a friend and co-worker and drive them to work. See Exhibit 4. Near the friend's house Petitioner was cut off by Respondents' vehicles and boxed in. See Id. Ms. Francois then saw several men on foot rushing toward her vehicle. Id. Respondents' officers opened the door of Petitioner's car, ordered her to get out, and handcuffed her. See Id.

24. At the time of her 6 August 2026 arrest Respondents provided no explanation, warrant, a notice of revocation of her parole or and release on own recognizance, and but took Ms. Francois into custody without an opportunity to rebut, be heard by a neutral adjudicator, or receive the assistance of her immigration counsel. When the officers took Petitioner into custody, they knew that no Order of Removal had been entered against Petitioner and that she had not violated any condition or term of her conditional parole and OREC.

25. Respondents' officers who re-detained Petitioner never showed her a warrant, and they did not ask her any questions to ascertain whether she was a flight risk, danger to society, or that any circumstances had changed since her release on 16 January 2022. *Id.*

26. Petitioner believes and hereby asserts that she was targeted solely on account of her nationality and Respondents' quest to punish citizens of Haiti who had been paroled and/or granted authorized stay in the US.

27. The Respondents have refused to release Petitioner from custody asserting that she is subject to the mandatory detention under section 1225(b)(2) and that at the time of her initial apprehension and to the present she remains an applicant for admission.

28. There is no order of removal in effect against Petitioner. See Exhibit 5.

29. Plaintiff-Petitioner was not interviewed and the deportation officer who Allegedly "revoked" her section 240 parole and order of recognizance provided no reason for the revocation nor did he allowed Petitioner to contact a counsel of record, or to provide a response and rebut the grounds for her re-detention.

30. Based on information and belief the officer who revoked Petitioner's order of own recognizance was not the Executive Associate Director of ICE and did not have a lawfully delegated authority to revoke orders of supervision nor the section 240 conditional parole; did not first refer the case to the ICE Executive Associate Director, did not make findings that revocation was in the public interest and that

circumstances did not reasonably permit referral to the Executive Associate Director.

31. Upon his arrest Ms. Francois was sent to and she is currently detained at the Otay Mesa Detention Center, Otay Mesa, CA. See Exhibit 5.

32. Petitioner's section 240 Removal Proceedings are pending before the EOIR. See Exhibit 6.

33. Petitioner's two minor children have been left without a custodial parent and suffering extreme hardship. See Exhibit 4.

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RELEVANT IMMIGRATION STATUTORY SCHEME

Warrantless Arrests

34. The Immigration and Nationality Act provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2); *see also Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The strict limitations on warrantless arrests are further codified in regulations. *See* 8 C.F.R. § 287.8(c)(2)(ii).

35. An immigration officer can make an arrest without a warrant only if they have probable cause to believe that the individual "is in the United States in violation of any [immigration] law or regulation," and (2) the individual "is likely to escape before a warrant can be obtained" for his arrest. § 1357(a)(2); § 287.8(c)(2)(ii) (same); *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). The requirement that officers establish probable cause of flight risk before conducting a warrantless arrest requires a particularized finding of likelihood of escape. *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995).

36. Since June 2025, however, Respondents have implemented an uniform policy and practice of effectuating warrantless arrests without making any individualized flight risk determinations and requiring officers to abide by this policy.

37. Victims and witnesses of such warrantless arrests have uniformly described Respondents and their officers as just grabbing people randomly without asking any questions.

38. Arrests pursuant to an I-200 must be based on an existing Notice to Appear ("NTA"), the charging document for removal proceedings. 8 C.F.R. § 236.1(b)(1) (specifying that an administrative warrant of arrest can be issued "[a]t the time of issuance of the [NTA], or at any time thereafter," not before); 8 U.S.C. § 1229 (legal requirements for NTA). This requirement is necessary because the use of Form I-200 is dependent on the arrest occurring "pending a decision" on removal. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 239.2(e) (explaining an I-200 warrant of arrest is *automatically canceled* when a NTA is canceled or removal proceedings terminated)

39. The arresting officers here did not have a warrant to arrest Petitioner and did not ask her any questions to assess individualized flight risk or her immigration status prior effectuating the actual arrest.

40. Also, the arresting immigration officer, at the time of arrest, must identify himself or herself as an immigration officer authorized to execute an arrest and state that the person is under arrest and the reason for the arrest. Id. at § 287.8(c)(2)(iii). The arresting officer failed to do so in this case.

Immigration Detention

41. The INA governs the use of immigration detention both pre- and post-final order. Post-final-order immigration detention is governed by 8 U.S.C § 1231(a); pre-final-order detention by 8 U.S.C. § 1226.

42. In 8 U.S.C. §§ 1226 and 1231 Congress created different, but interrelated, comprehensive frameworks for detaining criminal and non-criminal non-citizens.

43. Section 1226 authorizes the detention of non-citizens during removal proceedings: section 1226(a) controls non-criminal aliens' detentions, while section 1226(c) controls criminal aliens' detentions. *See* 8 U.S.C. § 1226(a)&(c). Once a non-citizen's removal proceedings are completed ICE's detention authority is controlled by section 1231, which also distinguishes between non-criminal and criminal non-citizens. *See* 8 U.S.C. § 1231.

Section 1226(a) and Non-Criminal Non-citizens During Removal Proceedings

44. The Attorney General has discretion to detain a non-criminal non-citizen "pending a decision on whether the alien is to be removed from the United States." *See* 8 U.S.C. § 1226(a). The Attorney General may detain the non-citizen for the duration of the removal proceedings or release him on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2).

45. In connection with § 1226(a), the DHS promulgated regulations setting out the process by which a non-criminal non-citizen may obtain release. The regulations provide that, in order to obtain bond or conditional parole, the "alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See* 8 C.F.R. § 1236.1(c)(8).

Section 1226(c) and Criminal Non-citizens During Removal Proceedings

46. Although the Attorney General has broad discretion to release non-criminal non-citizens during the pendency of their removal proceedings, the INA limits the

Attorney General's discretion in the case of criminal non-citizens. Specifically, section 1226(c) mandates that "[t]he Attorney General shall take into custody any alien who . . . is deportable by reason of having committed [certain specified offenses]." *See* 8 U.S.C. § 1226(c)(1)(B).

47. Section 1226(c) provides that the Attorney General may release a criminal non-citizen "only if" necessary for narrow witness protection purposes. *See* 8 U.S.C. § 1226(c)(2). Under § 1226(c), custody is mandatory for criminal non-citizens throughout the entirety of their removal proceedings, and there is no statutory possibility for release on bond.

48. Petitioner was never detained under the authority of section 1226(c) as she has no qualifying criminal record.

Detention Pursuant to 8 U.S.C. § 1225(b)(2)

49. Under § 1225(b)(2), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained." 8 U.S.C. § 1225(b)(2). By contrast, an alien arrested on a warrant issued by the Attorney General "may" be detained but is also eligible for release on bond. 8 U.S.C § 1226(a). Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of "aliens already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018); *Rodriguez Vasquez v. Bostock*, ___ F. 4th ___, 2026 WL 2196424 (9th Cir. July 30, 2026). Petitioner is not an arriving alien under § 1225 and in fact Respondents charged Petitioner as an "alien

present in the United States who has not been admitted or paroled" rather than an "arriving alien." See Exhibit 1. Ms. Francois was also previously released from custody and granted a conditional parole and released on OREC.

50. Petitioner submits that she is exempted from mandatory detention under section 1235(b)(1) and (2) by operation of law and because Respondents exercised their discretion favorably and previously processed, conditionally paroled, and released Ms. Francois under the authority of section 1226(a). See Exhibits 1-3.

Revocation of Parole

51. To terminate the previously granted parole, the agency must comply with the applicable regulatory and statutory requirements. As set forth in 8 C.F.R. § 212.5(e)(2)(i), which governs the"[t]ermination of parole," "[i]n cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole." 8 C.F.R. § 212.5(e)(2)(i). That is, "[u]nder the governing regulation, [§ 1182(d)(5)(A) or a conditional] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public benefit no longer warrant parole." *See Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)). In the present case, Respondents have failed

to follow the applicable statutory and regulatory provisions to terminate Petitioner's parole. *See Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025) (holding that the government failed to follow the applicable statutory and regulatory provisions and that paroled noncitizens cannot be subject to expedited removal proceedings); *see also Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5–7 (E.D. Mich. Oct. 29, 2025).

52. District courts to have addressed the termination of § 1182(d)(5)(A) and coditional parole "have found that just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute." *See Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (citations omitted) (addressing this issue and granting the petitioner's motion for preliminary injunction and ordering that the petitioner be released); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1145–47 (D. Or. 2025) (finding parolee must receive written notice of impending revocation with reasons for revocation)

53. Even if the statutory requirements are met, any revocation of parole must be in compliance with the 5th Amendment of the U.S. Constitution. *See Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the

imprisonment serves the government's legitimate goals."); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *6 (E.D. Cal. Aug. 14, 2025) (finding a case-by-case analysis is needed to revoke parole); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *12 (E.D. Cal. Aug. 21, 2025); *but see Doe v. Noem*, 152 F.4th 272, 286–88 (1st Cir. 2025) (finding an individualized termination of parole en masse is not required).

54. Respondents must provide at minimum some explanation or support why Petitioner – under the circumstances of this case -- would now be considered a flight risk or danger to the community justifying the summary revocation of her conditional parole and OREC. *See Castellon*, 2025 WL 2373425, at *12; *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1033–35 (N.D. Cal. 2025). Here Respondents never even attempted to perform a review much less justify the revocation of Petitioner's parole prior to her summary re-detention as part of an at large enforcement raid. See Exhibit 4.

55. Moreover, Respondents did not follow the applicable statutory and regulatory requirements to revoke Petitioner's parole, they did not have the authority to arrest and re-detain Petitioner, unless there was some other valid reason to arrest her. *See Mata Velasquez*, 794 F. Supp. 3d at 145, *and see Norfolk S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir. 2022) (discussing that "an agency's action that fails to observe the procedures required by its own regulations should be set aside" (citation omitted)); *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004) ("It is an elemental

principle of administrative law that agencies are bound to follow their own regulations[,] . . . [and] '[a]n agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.'" (additional internal quotation marks omitted) (quoting *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998))).

56. Respondents did not provide Petitioner the reasons for her re-detention nor an opportunity to respond and rebut.

Revocation of Conditions of Release

57. Any "[r]elease" of a noncitizen "reflects a determination by Respondents that the noncitizen is not a danger to the community or a flight risk." *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). Here Respondents made the requisite determination and released Petitioner on a conditional parole and order of recognizance.

58. When a non-citizen is placed on parole status after having been detained, a protected liberty interest may arise. *Young v. Harper*, 520 U.S. 143, 147-149 (1997).

59. The Due Process Clause may protect this liberty interest even where a statute allows the immigrant's arrest and detention and does not provide for procedural protections. *Id.* (Due Process requires pre deprivation hearing before revocation of parole); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). *Morrissey* observed that parole allows the parolee to enjoy the same activities as those who have not been

arrested and held in custody including, living at home, having a job, and "be[ing] with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. "Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, "his condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, a parolee possesses a protected liberty interest in his "continued liberty." *Id.* at 481–84.

60. The protected liberty is even greater when a person is placed on release on order of recognizance.

61. In *Pinchi*, the Court explained:

> . . . even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody. See Romero v. Kaiser, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); Jorge M. F. v. Wilkinson, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); Ortiz Vargas v. Jennings, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); Ortega, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.").

Pinchi v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *accord Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017); *Kamalpreet v. Singh*, No. 26-cv-1211-LL-JLB, 2026 WL 622687, at *1 (S.D. Cal. Mar. 5, 2026) ("Although the initial decision to detain or release an individual may be within the government's discretion, 'the government's decision to release an individual from custody creates an implicit promise upon which that individual may rely, that their liberty will be revoked only if [they] fail [] to live up to the . . . conditions of release.'" (quoting *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025)).

62. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision and/or parole is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: *preventing danger to the community or preventing flight prior to removal. See Zadvydas v. Davis,* 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).

63. On the other hand, "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

64. By regulation, revocations of release may only be carried out in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

65. The Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context). The same protection applies to people like Petitioner who were released from civil immigration detention. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (observing that "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees.")

COUNT ONE

Detention in Violation of the Fifth Amendment (substantive due process)

Against all Respondents

66. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 65 above.

67. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical

restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

68. "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification, . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

69. Respondents cannot show any "special justification" or compelling governmental interest which would outweigh Petitioner's constitutional liberty.

70. Petitioner is neither a danger to the community or a flight risk or risk.

71. The governmental interest in the continued detention of these least-dangerous individuals does not and cannot outweigh the liberty interest at stake.

COUNT TWO

Violation of Fifth Amendment Right
Procedural Due Process
Against All Defendants

72. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 65 above.

73. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

74. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

75. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release in this case.

76. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

77. The risk of erroneous deprivation is exceptionally high. Petitioner has resided in the US for over 4 years, was previously processed, vetted, paroled, and released by Respondents and has since established deep ties in the community.

78. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

79. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a pre-deprivation hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

80. Considering these factors, Petitioner respectfully requests that this Court order her immediate release from custody.

COUNT THREE

Unreasonable Search and Seizure—Detention and Arrest in Violation of the Fourth Amendment Against all Respondents

81. Petitioner repeats and re-alleges the allegations in paragraphs 1 through 65 above.

82. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. *United States v. Sokolow*, 490 U. S. 1, 7 (1989).

83. "A person's mere propinquity to others independently suspected of [unlawful] activity does not, without more, give rise to probable cause to search [or seize] that person." *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019) (quotation omitted). "'Reasonable suspicion' is no different." *Id.*

84. Respondents have a policy, pattern, and practice of stopping individuals without regard to reasonable suspicion that they are unlawfully in the United States. As a part of Respondents' policy, pattern, and practice, when conducting stops, they engage in a show of force so overwhelming that a reasonable person would not feel free to leave. As a matter of policy, pattern, and practice, Respondents do not evaluate the need for force or tailor the force they use to the circumstances of individual stops and arrests.

85. In this case Respondents had no objectively reasonable or specifically articulable factual basis to suspect that Petitioner was involved in the commission of any crime, nor did Respondents have any confirmation that Petitioner had committed any deportable crime, posed threat to anyone, nor did they observe Petitioner in possession of any illegal objects, contraband, or weapons. Petitioner was driving lawfully and in compliance with state and local laws.

86. Respondents restrained, re-detained, and interrogated Petitioner without reasonable suspicion, arrested her without probable cause, and provided no notice to either her or her immigration attorney. The scope and manner of Respondents' actions in detaining, arresting, and interrogating of Petitioner was unreasonable.

87. Respondents' conduct violated Petitioner's right to be secure in her person against unreasonable searches and seizures as guaranteed under the Fourth Amendment to the United States Constitution.

88. Petitioner seeks a declaration that Respondents violated her 4th Amendment rights.

89. Petitioner also seeks to set aside Respondents' policy of arresting non-citizens without probable cause and without a warrant. Respondents also permit officers to create post hoc administrative warrants and without issuing notices to appear, thereby violating a clear and mandatory duty imposed by statute and regulations.

COUNT FOUR
Detention in violation of 8 U.S.C. § 1226(a)
against All Respondents

90. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 65 above.

91. When Respondents apprehended Petitioner in 2022 they elected not to place her in expedited removal proceedings but placed her in formal, full removal proceedings before an immigration judge.

92. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. See 8 C.F.R. 236.1(d) & 1003.19(a)-(f). Yet, Respondents have denied Petitioner request for bond, asserting that she is subject to mandatory detention under section 1225(b).

93. Petitioner's continuing detention is therefore unlawful.

COUNT FIVE

Violation of 8 U.S.C. § 1357(a)(2) Warrantless Arrests Without Probable Cause of Flight Risk against All Respondents

94. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 65 above.

95. 8 U.S.C. § 1357(a)(2) requires that arrests without a warrant be accompanied by "reason to believe" that an individual is "likely to escape before a warrant can be obtained for [their] arrest."

96. Respondents arrested Petitioner without any warrant and without making an individualized determination of flight risk. In fact, Respondents have no mechanism for ensuring agents' compliance with the statutory limits on warrantless arrest authority and do not provide guidance or training to agents and officers on how to make an

individualized determination of likelihood of escape. Respondents permit agents and officers to make warrantless arrests at whim and in violation of law.

COUNT SIX

Violation of 8 C.F.R. § 287.8(c)(2)(ii) against All Respondents

97. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 65 above.

98. By regulation Respondents are required to conform warrantless arrests to the standards in 8 C.F.R. § 287.8(c), including the requirement of 8 C.F.R. § 287.8(c)(2)(ii) that officers have reason to believe that an individual is "likely to escape before a warrant can be obtained."

99. Respondents arrested Petitioner without any warrant and without making an individualized determination of flight risk.

100. In fact, Respondents have no mechanism for ensuring agents' compliance with the statutory limits on warrantless arrest authority and do not provide guidance to agents and officers on how to make an individualized determination of likelihood of escape. Respondents permit agents and officers to make warrantless arrests at whim and in violation of law.

COUNT SEVEN

Non-Statutory Ultra Vires Action/Accardi Doctrine Violation Against all Defendants

101. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under the circumstances of this case.

102. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

103. Under the *Accardi* doctrine, Petitioner also has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

104. Petitioner has a liberty interest accruing to her by the grant of conditional parole and release of recognizance that cannot be taken without due process. Congress has permitted the Attorney General to delegate detention determinations to "any other officer, employee, or agency of the Department of Justice." 28 U.S.C. § 510.

105. Defendants violated its own regulations in re-detaining Petitioner without a notice, an opportunity to be heard and rebut before a neutral adjudicator prior to the deprivation of liberty.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order Petitioner's release;

(3) Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention violates the Due Process Clause, the Fourth Amendment, and the INA and order her release;

(4) In the alternative, issue injunctive relief ordering Respondents to release Petitioner, on the ground that her continued detention violates Plaintiff's constitutional due process rights;

(5) Issue an injunction ordering Respondents not to arrest and re-detain Petitioner without a proper finding that she has committed a violation of the conditions of release;

(6) Issue an injunction ordering Respondents not to revoke Petitioner's grant of release and/or bond without providing prior written notice, an opportunity to respond, and be represented by counsel prior to deprivation of liberty when the individual is not yet subject to a final order of removal;

(7) Issue an injunction prohibiting the transfer of Petitioner outside of the jurisdictional limits of this Court;

(8) Enter a judgment declaring that Respondents' detention of Petitioner is and will be unauthorized by statute and contrary to law;

(9) Award Petitioner reasonable costs and attorney fees.

Date: 8/15/2026

Verified and Submitted by

s/ Nicolette Glazer Esq.
Nicolette Glazer Esq.
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ATTORNEY FOR PETITIONER

VERIFICATION OF COUNSEL

I am counsel for the Petitioner, who is detained by ICE outside of the counties in which I maintain my offices and she cannot easily receive and return documents. Accordingly, I make this verification for and on behalf of Petitioner for that reason. I have conducted a reasonable investigation into the facts and circumstances in this case, I have interviewed witnesses, and I am informed and believe and on that ground allege that the factual matters stated in the foregoing Petition for Habeas Corpus are true and correct to the best of my knowledge. I so declare under penalty of perjury.

_____*s/ Nicolette Glazer Esq.*_____

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