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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Andrea Zuniga Palacios,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, warden of Otay Mesa Detention Center; JESUS ROCHA, Acting San Diego Field Office Director, Enforcement and Removal Operations; DAVID J. VENTURELLA, Acting Director of U.S. Immigration & Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security,

Respondents.

Case No.: '26CV4696 AGS JLB

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

Petitioner Andrea Zuniga Palacios petitions this Court for a writ of habeas corpus ordering her immediate release under 28 U.S.C. § 2241 to remedy Respondents' unlawful detention, and states as follows:

INTRODUCTION

1. Petitioner came to the United States seeking protection on September

23, 2022. After approximately four days in immigration custody, the Department of Homeland Security ("DHS") released her on parole. Petitioner then lived at liberty in the United States for nearly four years.

2. During those years, Petitioner complied with all of the Government's requirements. She sought asylum, reported to immigration authorities when instructed, obtained employment authorization, worked, and paid taxes. She has never been arrested, charged with, or convicted of any crime.

3. In July 2026, Petitioner moved from New Jersey to California. She submitted an online AR-11 change of address on July 10, 2026 and voluntarily appeared in person at the San Diego ICE office to verify that she had complied with all change of address requirements shortly thereafter. During that visit, ICE instructed her to return for a check-in on July 22, 2026.

4. Petitioner did exactly what ICE had instructed her to do and voluntarily appeared for the scheduled check-in. Rather than permit her to leave, ICE arrested her at the appointment.

5. Before depriving her of the liberty she had enjoyed for nearly four years, Respondents gave Petitioner no advance notice, no hearing, and no opportunity to demonstrate that she was neither a danger nor a flight risk. No one asked Petitioner any questions bearing on whether detention was necessary. No one identified any material change in circumstances warranting her re-detention.

6. Respondents also arrested Petitioner without presenting or identifying any warrant to her and without making an individualized determination that she was likely to escape before a warrant could be obtained, as required for a

warrantless immigration arrest under 8 U.S.C. § 1357(a)(2).

7. Respondents' own records further demonstrate the arbitrary nature of Petitioner's detention. DHS's original Notice to Appear expressly acknowledges that Petitioner "was paroled into the United States." Yet only days later DHS lodged substitute factual allegations characterizing Petitioner as a noncitizen who had "not been admitted or paroled." DHS also issued a Notice of Custody Determination expressly invoking INA § 236, 8 U.S.C. § 1226.

8. This Court has repeatedly rejected that position and ordered immediate release under materially similar circumstances. Most directly, in *Velazquez Velazquez v. LaRose*, No. 26-cv-3108-RFL-SBC (S.D. Cal. May 26, 2026), the Court ordered the immediate release of a petitioner who had entered seeking asylum in 2022, been released, applied for asylum and obtained work authorization, complied with her immigration obligations, and then was abruptly re-detained in 2026 without notice, hearing, or changed circumstances.

9. The same result is warranted here. Petitioner seeks restoration of the liberty Respondents unlawfully took from her, together with protection against another re-detention without constitutionally adequate process.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article 1, Section 9 (Suspension Clause).

11. Venue properly lies within the Southern District of California under 28 U.S.C. § 1391 because this is a civil action in which Respondents are agencies

of the United States, Petitioner is detained in this District, and a substantial part of the events and omissions giving rise to this action occurred in this District.

PARTIES

12. Petitioner Andrea Zuniga Palacios, [redacted] is in pending removal proceedings and is currently detained at the Otay Mesa Detention Center in Otay Mesa, California.

13. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center where Petitioner is detained. He has immediate physical custody of Petitioner and is sued in his official capacity.

14. Respondent Jesus Rocha is the Acting Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, he is the custodian of all persons held at the ICE facilities in San Diego. He is Petitioner's immediate custodian and is responsible for her detention. He is sued in his official capacity.

15. Respondent David J. Venturella is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Respondent Venturella has broad authority over the operation and enforcement of the immigration laws. Respondent Venturella is sued in his official capacity.

16. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner. He is sued in his official capacity.

FACTS

17. Petitioner Andrea Zuniga Palacios is a citizen of Nicaragua. In September 2022, Petitioner came to a port of entry near Ciudad Juárez and requested protection from the United States. Immigration authorities took Petitioner into custody and held her for approximately four days.

18. In September 2022, DHS released Petitioner on parole. DHS's own records acknowledge that Petitioner was paroled into the United States. Exs. B, E.

19. After her release, Petitioner traveled to New Jersey and reported to ICE in Newark in approximately October 2022. ICE instructed Petitioner to report again on January 24, 2023. Petitioner did so. At that appointment, Petitioner was told that because she did not yet have an immigration court date, she no longer needed to continue reporting to ICE.

20. Notably, Petitioner lived openly and lawfully complied with immigration authorities for nearly four years before she was re-detained. On August 17, 2023, Petitioner submitted an affirmative application for asylum to USCIS. Ex. C. Petitioner subsequently received an Employment Authorization Document valid through 2029. She worked at a nut-packing factory in New Jersey pursuant to her valid work authorization for approximately two years and paid taxes in 2024 and 2025.

21. Petitioner has never been arrested, charged with or convicted of a crime in the United States or elsewhere. Moreover, in 2024, when Petitioner was

sexually harassed at a store in Elizabeth, New Jersey, she herself went to law enforcement and made a police report. Throughout the years following her release, Petitioner understood that she was required to comply with immigration authorities and did so.

22. On approximately July 8, 2026, Petitioner moved from New Jersey to Chula Vista, California to live with her cousin. Two days later, on July 10, 2026, Petitioner submitted her new address to immigration authorities online. Ex. D. She then voluntarily went to ICE's San Diego office to ensure that her address information had been updated and to confirm that she was complying with all requirements. During that visit, ICE instructed Petitioner to return for a check-in on July 22, 2026.

23. Petitioner had no reason to believe the appointment was anything other than a routine check-in. Nothing ICE told Petitioner warned her that she would be arrested if she complied with the instruction to return.

24. On July 22, 2026, Petitioner voluntarily appeared at ICE's San Diego office for her scheduled 8:00a.m. check-in. At approximately 10:00a.m., ICE officers took Petitioner's belongings and placed her under arrest.

25. No officer showed Petitioner a warrant, no officer told Petitioner that ICE possessed a warrant, no officer provided Petitioner arrest paperwork before taking her into custody, nor did ICE tell Petitioner in advance that they intended to arrest her. Petitioner was afforded no pre-deprivation hearing and no opportunity to demonstrate that detention was unnecessary. She was not asked whether she posed a danger to anyone, she was not asked if she would appear for

future immigration proceedings and ICE did not conduct any individualized inquiry concerning whether she presented a flight risk or danger before depriving her of her liberty. Ex. A.

26. Only after Petitioner had already been placed into custody did a Deportation Officer tell her that USCIS had "dismissed" her asylum case and that she lacked papers permitting her to remain in the United States. Ex. A.

27. Petitioner was surprised by this statement because she has never received notice from USCIS that her asylum application had been dismissed, denied, or otherwise terminated and has never received an asylum interview in connection with that application.

28. The Deportation Officer's representation is inconsistent with USCIS's own current record of the case status. As of August 14, 2026, USCIS's online case-status system identifies the "Next Step" in Petitioner's asylum application as "an in-person interview" and states that USCIS will send Petitioner an interview notice once the interview has been scheduled. Thus, as of August 14, 2026, USCIS's own case status system reflects that Petitioner's affirmative asylum application remains awaiting an interview, not that it had been dismissed as ICE represented when taking her into custody. Exs. C, J.

29. The Deportation Officer repeatedly asked Petitioner to sign paperwork agreeing to removal. Petitioner refused to sign without first speaking to an attorney and requested to see a judge. The Deportation Officer told her that because she was refusing to sign, she would have to wait in detention for at least a month before she could see a judge. Ex. A.

30. ICE held Petitioner in the basement of the ICE office for approximately four days before transferring her to Otay Mesa Detention Center on approximately July 26, 2026. She has remained detained since. Ex. A.

31. Notably, DHS's own records reflect conflicting theories as to the basis for Petitioner's custody and immigration status. On or about July 23, 2026, DHS served Petitioner with a Notice to Appear ("NTA"). The original NTA acknowledges that Petitioner was paroled into the United States. Ex. E. DHS subsequently issued additional charges substituting allegations characterizing Petitioner as someone who had not been admitted or paroled and charging her under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). Ex. G.

32. The two copies of Petitioner's NTA also contain different hearing dates, including a version personally served on Petitioner that ordered her to appear on a date preceding issuance of the NTA itself. Exs. E, F.

33. Separately, DHS issued Petitioner a Form I-286 Notice of Custody Determination expressly stating that the determination was made pursuant to INA §236, 8 C.F.R. Part 236, which is codified at 8 U.S.C. § 1226. Ex. H.

34. Nothing in the records provided to Petitioner identifies any changed circumstance establishing that she had become a flight risk or danger after nearly four years at liberty. To date, Petitioner has not received a custody redetermination hearing before an Immigration Judge, nor has one been scheduled. Petitioner's removal proceedings remain pending.

EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED AND, ALTERNATIVELY, IS EXCUSED

35. Petitioner is not required to exhaust administrative remedies before seeking relief under 28 U.S.C. § 2241. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Singh v. Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011).

36. A court may waive prudential exhaustion where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be futile, irreparable injury will result, or the administrative proceedings would be void. *Id.; Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). In determining whether prudential exhaustion should be required, courts also consider whether agency expertise is necessary to develop the record, whether waiver would encourage deliberate bypass of the administrative scheme, and whether administrative review is likely to permit the agency to correct its own errors and obviate judicial review. *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). None of those considerations warrants requiring exhaustion here.

37. Petitioner's principal claim challenges Respondents' decision to re-detain her after nearly four years of liberty without providing notice or a meaningful opportunity to be heard before depriving her of that liberty. No administrative remedy can now provide the pre-deprivation process that Respondents failed to afford. Petitioner voluntarily appeared at ICE's office as instructed and was immediately deprived of her liberty without any prior hearing before a neutral decisionmaker concerning whether changed circumstances justified her re-detention or whether she presented a danger or risk of flight. The

constitutional injury alleged in this Petition therefore occurred when Respondents detained Petitioner without the process that was due before that deprivation.

38. A subsequent bond proceeding cannot cure that injury. A post-deprivation hearing necessarily occurs only after the deprivation of liberty that Petitioner contends was constitutionally impermissible. Even if an immigration judge were ultimately to provide Petitioner with a custody hearing, that remedy cannot cure the injury alleged in this Petition: incarceration without constitutionally adequate pre-deprivation process. As numerous courts have recognized, a post-deprivation bond hearing cannot prevent the erroneous deprivation of liberty that has already occurred. Broadly speaking, "[d]eprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018). The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention" including "the economic burdens imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Each additional day Petitioner remains detained compounds an injury that subsequent administrative proceedings cannot retroactively prevent.

39. Moreover, the administrative record itself demonstrates a substantial risk of erroneous deprivation that cannot adequately be addressed merely by requiring Petitioner to remain detained while pursuing administrative remedies. When Petitioner was taken into custody, an ICE officer informed her that her affirmative asylum application had been "dismissed" and that she lacked lawful status permitting her to remain in the United States. Yet the USCIS's current

online case status identifies the next step in her asylum proceeding as an in-person interview and states that USCIS will send her an interview notice once that interview is scheduled. Exs. C, J. Requiring Petitioner to remain incarcerated while pursuing administrative custody proceedings would not remedy Respondents' failure to provide a meaningful opportunity to contest the factual premise upon which ICE purportedly acted before depriving her of liberty.

40. Petitioner's challenge to the legality of her arrest provides an independent basis for excusing exhaustion. DHS's Form I-213 asserts that Petitioner was served with a Form I-200 Warrant of Arrest (Ex. I), but Petitioner was not shown, served with, or provided a copy of any warrant and was never told that a warrant existed. Ex. A. The materials subsequently provided to Petitioner likewise do not include the purported I-200. If no valid warrant existed before Petitioner was seized, her arrest was lawful only if the requirements for a warrantless arrest under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) were satisfied, including the requirement that officers have reason to believe that she was "likely to escape before a warrant can be obtained."

41. Exhaustion would also be futile to the extent Petitioner seeks restoration to the status quo that existed before Respondents unlawfully deprived her of liberty. Petitioner does not merely contend that she presently merits release as a matter of discretionary bond adjudication. She contends that Respondents lacked authority to extinguish her established liberty without constitutionally adequate process in the first instance. A later administrative determination that

Petitioner qualifies for release on bond, potentially subject to monetary or other conditions that did not exist before her arrest, would not restore the process Respondents failed to provide or remedy the period of unlawful detention that precedes it.

42. Finally, requiring exhaustion would inflict continuing irreparable injury without advancing the purposes ordinarily served by administrative exhaustion. Petitioner remains physically incarcerated at the Otay Mesa Detention Center. Her constitutional and statutory claims present legal questions concerning Respondents' authority and the procedures required before depriving her of liberty. Further factual development through prolonged immigration proceedings is unnecessary to permit this Court to decide those questions, and the administrative process cannot provide the principal relief Petitioner seeks for the violations alleged.

43. Accordingly, because exhaustion under § 2241 is prudential rather than jurisdictional; because available administrative proceedings cannot supply the pre-deprivation process Petitioner was denied or adjudicate the legality of her arrest; because further administrative proceedings would be inadequate or futile as to the claims presented here; and because each additional day of unlawful detention causes irreparable injury, Petitioner respectfully requests that this Court exercise its habeas jurisdiction without requiring further administrative exhaustion.

CAUSES OF ACTION

COUNT I

Violation of Due Process Clause of the Fifth Amendment as it pertains to Procedural Due Process

44. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

45. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. Noncitizens physically present within the United States, regardless of their immigration status, are protected by the Due Process Clause with respect to deprivations of physical liberty. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty…". *Zadvydas v. Davis*, 533 U.S. 678, 690, (2001). Immigration detention constitutes a significant deprivation of liberty and must therefore comport with constitutional requirements. *See Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (recognizing that due process requires adequate procedural protections in immigration detention).

46. After DHS released Petitioner from custody in September 2022, she lived continuously at liberty in the United States for nearly four years. During that period, she applied for asylum, obtained employment authorization, worked, paid taxes, complied with immigration authorities, and established a life in the community. She possessed a substantial protected liberty interest in remaining free from physical detention. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Velazquez Velazquez v. LaRose*, Case No.: 3:26-cv-03108-RFL-SBC (S.D. Cal. May 26, 2026); *Bracho Moran v. Acting Field Office Director of the San Diego Field Office*, Case No.: 3:26-cv-03775-RFL-MMP (S.D. Cal. Jul. 6, 2026); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). Exs. A-D.

47. Notwithstanding that established liberty interest, Petitioner was

arrested on July 22, 2026, transported to Otay Mesa Detention Center, and has remained incarcerated without any pre-deprivation notice or hearing and without any meaningful opportunity to demonstrate that her arrest and detention are unnecessary.

48. This Court has repeatedly recognized that re-detention under materially similar circumstances implicates a protected liberty interest and requires constitutionally adequate process. *See Velazquez Velazquez v. LaRose*, Case No.: 3:26-cv-03108-RFL-SBC (S.D. Cal. May 26, 2026); *Zhang v. LaRose*, Case No.: 3:26-cv-03896-RFL-JAC (S.D. Cal. Jul. 15, 2026); *Garcia Ayala v. Warden*, Case No.: 3:26-cv-03907-RFL-MSB (S.D. Cal. Jul. 15, 2026); *Bracho Moran v. Acting Field Office Director*, Case No.: 3:26-cv-03775-RFL-MMP (S.D. Cal. Jul. 6, 2026); *Nayem v. LaRose*, Case No.: 3:26-cv-00777-RSH-MMP (S.D. Cal. Apr. 3, 2026); *Hassanzedeh v. Chestnut*, Case No.: 1:26-cv-00056-DC-CKD (E.D. Cal. Mar. 18, 2026). In *Velazquez Velazquez*, for example, this Court held that a petitioner who had been living freely for nearly four years following release possessed such a liberty interest and that abrupt re-detention without notice or hearing violated procedural due process. The circumstances here are materially similar.

49. The procedural safeguards required by the Fifth Amendment must be evaluated in light of the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under *Mathews*, the process required depends upon (1) the private interest affected, (2) the risk of erroneous deprivation under the procedures employed and the probable value of additional safeguards, and (3) the

Government's interest.

50. First, the Petitioner's private interest is exceptionally strong. She has been deprived of physical liberty, separated from her family and community, and has lost her job as a result of her detention, all while her removal proceedings remain pending. Her interest is not merely in avoiding an additional condition on an existing restraint, but in avoiding physical incarceration after nearly four years of liberty. Every additional day of detention constitutes an ongoing deprivation of a fundamental liberty interest.

51. Second, the risk of erroneous deprivation was extraordinarily high because Respondents provided no pre-deprivation process whatsoever. No neutral decisionmaker considered whether Petitioner was a danger or flight risk. Indeed, ICE did not even ask Petitioner those questions.

52. The circumstances of Petitioner's arrest demonstrate that this risk was not merely theoretical. Only after taking Petitioner into custody did an ICE officer tell her that USCIS had "dismissed" her affirmative asylum application. Yet, as of August 14, 2026, USCIS's own case-status system identifies Petitioner's next step for said application as an in-person asylum interview and states that she will receive notice once that interview is scheduled. The factual explanation ICE communicated to Petitioner after taking her into custody was therefore inconsistent with USCIS's own records. A meaningful opportunity to be heard before detention would have permitted Petitioner to contest that erroneous premise before being deprived of her liberty. Exs. C, J.

53. DHS's own records contain additional material inconsistencies that

further demonstrate the value of pre-deprivation review. DHS initially alleged that Petitioner had been paroled into the United States but subsequently lodged additional charges alleging that she had not been admitted or paroled and then later produced as evidence a copy of the I-94 record showing parole. Exs. B, E, G. Different copies of Petitioner's NTA also contain different hearing dates, including a version personally served on Petitioner directing her to appear on a date preceding issuance of the NTA itself. Exs. E, F. These discrepancies underscore the substantial value of notice and an opportunity to contest the Government's factual and legal premises before physical liberty is taken.

54. Third, the government has identified no countervailing interest sufficient to justify dispensing entirely with pre-deprivation process. DHS had permitted Petitioner to live at liberty for nearly four years, during which she demonstrated compliance with immigration authorities and accumulated no criminal history. Only twelve days before her arrest, Petitioner affirmatively updated her residential address with immigration authorities. She then voluntarily appeared at ICE's office at the precise time and place ICE instructed her to appear. Respondents have identified no material change in circumstances demonstrating an urgent need to detain Petitioner without first providing notice and an opportunity to be heard.

55. Balancing these factors, Respondents' complete failure to provide Petitioner any meaningful process before abruptly terminating nearly four years of liberty was constitutionally inadequate. *See Mathews*, 424 U.S. at 335; *Velazquez Velazquez*, No. 3:26-cv-03108-RFL-SBC; *Bracho Moran*, No. 3:26-

cv-03775-RFL-MMP.

56. A delayed custody hearing cannot cure the constitutional violation. Petitioner's claim concerns the deprivation of liberty resulting from detention imposed without constitutionally adequate pre-deprivation process. A post-deprivation hearing necessarily occurs after the injury and cannot prevent the erroneous deprivation of liberty that has already occurred. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner [] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

57. Release from detention is the "typical remedy" for "unlawful executive detention." *Munaf v. Geren*, 533 U.S. 674, 693 (2008). Recent decisions within this District likewise recognize immediate release as the appropriate remedy where previously released noncitizens were re-detained without constitutionally adequate pre-deprivation process. *See Velazquez Velazquez v. LaRose*, Case No.: 3:26-cv-03108-RFL-SBC (S.D. Cal. May 26,

2026) (finding a violation of procedural due process and ordering immediate release of a petitioner who had been living freely for nearly four years following release); *Zhang v. LaRose*, Case No.: 3:26-cv-03896-RFL-JAC (S.D. Cal. Jul. 15, 2026) (holding that the petitioner's re-detention violated procedural due process and ordering release within twenty-four hours on the same terms as his initial release); *Bracho Moran v. Acting Field Office Director of the San Diego Field Office*, Case No.: 3:26-cv-03775-RFL-MMP (S.D. Cal. Jul. 6, 2026) (finding re-detention violated procedural due process and ordering immediate release of previously paroled asylum applicant with employment authorization, no criminal record, and a history of compliance).

58. Because Respondents deprived Petitioner of her liberty without constitutionally sufficient procedures, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment. Petitioner therefore respectfully requests that this court issue a writ of habeas corpus ordering her immediate release from immigration custody.

COUNT II
Violation of Due Process Clause of the Fifth Amendment as it pertains to Substantive Due Process

59. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

60. Civil immigration detention must be "nonpunitive in purpose" and bear a "reasonable relation" to the legitimate regulatory purpose of preventing flight and danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

61. DHS determined in 2022 that Petitioner could appropriately be released from physical custody, and for nearly four years thereafter Petitioner demonstrated through her conduct that she was neither dangerous nor likely to flee. *See Valencia Zapata v. Kaiser*, 801 F. Supp. 3d at 933-38 (N.D. Cal. 2025); *Velazquez Velazquez v. LaRose*, Case No.: 3:26-cv-03108-RFL-SBC at 3 (S.D. Cal. May 26, 2026). She has no criminal history and she complied with immigration authorities. Notably, she voluntarily walked into the ICE office where Respondents arrested her.

62. Respondents communicated no basis under the statutory purpose of preventing flight and danger to the community for arresting Petitioner. They have identified no material change in Petitioner's circumstances demonstrating that detention became necessary.

63. Moreover, Respondents have no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can reasonably be ensured by a less restrictive condition or combination of conditions. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Therefore, Petitioner's detention violates her substantive due process rights and Petitioner respectfully asks that this Court order her released immediately.

COUNT III

Violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii): Unlawful Arrest Without a Valid Pre-Arrest Warrant or Probable Cause of Likely Escape

64. Petitioner repeats, re-alleges, and incorporates by reference each and

every allegation in the preceding paragraphs as if set forth fully herein.

65. Respondents' own Form I-286 states that Petitioner's custody determination was made pursuant to INA § 236, codified at 8 U.S.C. § 1226. Ex. H. 8 U.S.C. § 1226(a) provides that, "[o]n a warrant issued by the Attorney General," a noncitizen may be arrested and detained pending a decision on removal. Separately, 8 U.S.C. § 1357(a)(2) permits a warrantless immigration arrest only where an immigration officer has reason to believe that the individual is in the United States in violation of the law and is likely to escape before a warrant can be obtained. The implementing regulation likewise requires an individualized basis to believe that the person "is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

66. Respondents arrested Petitioner without showing her a warrant or advising her of the existence of a warrant and without an individualized finding that she was likely to escape before a warrant could be obtained. A finding of likely escape in Petitioner's situation would have been particularly implausible since she voluntarily appeared at ICE's office at the time and place directed by ICE. No officer made or communicated to Petitioner any individualized determination that she was likely to escape before a warrant could be obtained.

67. Notably, DHS's Form I-213 states that Petitioner, "was served with a Warrant of Arrest (I-200)." Ex. I. That assertion conflicts directly with Petitioner's recollection of her arrest. Petitioner maintains that she was not served with, shown, or provided a copy of an I-200 or any other arrest warrant before or when ICE took her into custody, and no officer told her that a warrant had been

issued for her arrest. Moreover, although DHS subsequently submitted an evidentiary packet in Petitioner's removal proceedings containing the Form I-213 and other immigration records, the packet provided to Petitioner does not include the purported Form I-200.

68. The Petitioner therefore does not know whether an I-200 actually existed when ICE arrested her, when any purported I-200 was issued, or whether it preceded the seizure of her person. If Respondents contend that Petitioner's arrest was authorized by a warrant pursuant to § 1226(a), the purported warrant and its time of issuance are facts uniquely within Respondents' possession and necessary to evaluate that contention.

69. If no valid warrant had been issued before Petitioner was arrested, ICE was authorized to arrest Petitioner without a warrant only upon satisfaction of § 1357(a)(2), including its independent requirement that officers have reason to believe that Petitioner was "likely to escape before a warrant could be obtained." 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii).

70. There was no basis for such a determination here. Petitioner had lived openly in the United States for nearly four years, had complied with all ICE reporting requirements, had no criminal history, and on July 10, 2026, only twelve days before her arrest, had affirmatively provided immigration authorities with her new California address. Ex. D. Most significantly, Petitioner voluntarily presented herself at ICE's office at the precise time and place ICE instructed her to appear on the day she was arrested. ICE thus had both Petitioner's known address and her physical presence in its own office and had ample opportunity to

obtain a warrant before arresting her.

71. The Ninth Circuit has recognized that the "reason to believe" standard applicable to immigration arrests is equivalent to the probable cause standard of the Fourth Amendment. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019). *See also Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018).

72. District courts in this state recently addressing materially similar warrantless arrests have concluded that failure to satisfy § 1357(a)(2)'s "likely to escape" requirement renders the arrest unlawful and supports habeas relief. *See, e.g., Urias v. Semaia*, No. 5:26-cv-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026); *Galvez Pantoja v. DHS*, No. 5:26-cv-02084-JDE, 2026 WL 1601897, at *4 (C.D. Cal. June 1, 2026).

73. Other district courts likewise have granted habeas relief where immigration officers arrested noncitizens without a warrant and without satisfying § 1357(a)(2)'s likely to escape requirement. *See 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).

74. Accordingly, if Respondents cannot establish that a valid warrant authorized Petitioner's arrest before ICE seized her, her arrest violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii), and her resulting detention is unlawful.

COUNT IV

Petitioner's Detention is not Authorized by 8 U.S.C. § 1225(b)(2)

75. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

76. Respondents have detained Petitioner but have not explicitly or consistently identified the statutory authority governing Petitioner's present detention. DHS's own Form I-286 Notice of Custody Determination expressly states that Petitioner's custody determination was made pursuant to INA § 236, i.e. 8 U.S.C. § 1226, rather than INA § 235, 8 U.S.C. § 1225. Ex. H. Nevertheless, Respondents have treated Petitioner as categorically ineligible for a custody redetermination hearing, consistent with the Government's position in similar cases that previously released noncitizens are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

77. 8 U.S.C. § 1225(b)(2) does not authorize Petitioner's present mandatory detention. Congress established distinct detention provisions governing different circumstances. § 1225 addresses inspection and detention of applicants for admission; § 1226 governs arrest and detention "pending a decision on whether the [noncitizen] is to be removed from the United States"; and § 1231 governs detention during the removal period following entry of a final order. *See* 8 U.S.C. §§ 1225, 1226, 1231; *Jennings v. Rodriguez*, 583 U.S. 281, 289-91 (2018). The Government may not treat those provisions as interchangeable merely by relabeling the statutory basis for custody after the fact.

78. DHS's own records establish that Petitioner was processed and

released on parole in September 2022. Exs. B, E. Petitioner also has a Form I-94 Arrival/Departure Record, which DHS submitted as evidence in Petitioner's removal proceedings, that documents her September 2022 entry, processing and release. DHS's Notice to Appear likewise expressly alleges that Petitioner "was paroled into the United States by U.S. Border Patrol." Ex. E. Petitioner thereafter remained at liberty in the interior of the United States for nearly four years before ICE re-arrested her in San Diego. She was apprehended during what she believed was a routine ICE check in at the field office in downtown San Diego, not at the border.

79. Courts within this District have rejected application of § 1225(b)(2) to materially similar re-detentions. *See Zhang v. LaRose*, No. 26-cv-03896-RFL-JAC (S.D. Cal. Jul. 15, 2026) citing *Martinez Zayas v. Gordon*, No. 26-cv-00237-BAS, 2026 WL 266275, at *3 (S.D. Cal. Jan. 30, 2026) ("[§ 1225(b)(2)] does not apply to Petitioner because, at the time of his detention, 'he was not at the border or a Port of Entry seeking admission to the United States' and has been living in the country for over two years."); *Bracho Moran v. Acting Field Office Director*, No. 26-cv-03775-RFL-MMP at *2 (S.D. Cal. Jul. 6, 2026) (reaching the same conclusion).

80. Petitioner's circumstances present an even clearer basis for rejecting mandatory detention under § 1225(b)(2). DHS's own records do not merely establish that she had been physically present in the interior for years; they expressly acknowledge that DHS previously paroled her into the United States, and DHS's own 2026 custody determination invokes § 1226. Respondents cannot

reconcile a claim of mandatory detention under § 1225(b)(2) with their contemporaneous determination that Petitioner's custody was governed by § 1226 without explaining the statutory basis for disregarding their own custody classification.

81. Accordingly, to the extent Respondents contend that Petitioner is presently subject to mandatory detention under § 1225(b)(2), that position is contrary to the statutory framework and to the decisions of this Court addressing materially similar re-detentions. Petitioner's custody is not authorized by § 1225(b)(2).

82. Immediate release is the appropriate remedy because Petitioner does not merely challenge the absence of a discretionary bond hearing; she challenges Respondents' asserted statutory authority to subject her to mandatory detention in the first instance. Recent decisions in this District have ordered immediate release of similarly situated previously released noncitizens rather than requiring them to remain detained pending a post-deprivation custody proceeding. *Velazquez Velazquez v. LaRose*, Case No.: 3:26-cv-03108-RFL-SBC (S.D. Cal. May 26, 2026); *Zhang v. LaRose*, Case No.: 3:26-cv-03896-RFL-JAC (S.D. Cal. Jul. 15, 2026); *Garcia Ayala v. Warden*, Case No.: 3:26-cv-03907-RFL-MSB (S.D. Cal. Jul. 15, 2026); *Bracho Moran v. Acting Field Office Director of the San Diego Field Office*, Case No.: 3:26-cv-03775-RFL-MMP (S.D. Cal. Jul. 6, 2026); *Nayem v. LaRose*, Case No.: 3:26-cv-00777-RSH-MMP (S.D. Cal. Apr. 3, 2026).

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring Respondents to immediately release Petitioner, and in no event later than twenty-four hours after entry of the Court's order;

c. Order that Respondents release Petitioner on the same terms and conditions as her release in September 2022, without the imposition of additional restraints on her liberty;

d. Order Respondents to return all identification documents and other confiscated property and documents to Petitioner upon her release;

e. Enjoin Respondents from re-detaining Petitioner without first providing at least seven days' notice and a pre-deprivation bond hearing before an Immigration Judge at which the Government bears the burden of proof to show by clear and convincing evidence that Petitioner is a flight risk or a danger to the community and that no condition or combination of conditions could reasonably assure Petitioner's future appearance and/or the safety of the community, and the Immigration Judge must conduct an individualized assessment of Petitioner's suitability for bond in light of the foregoing standard;

f. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal

Access to Justice Act, 28 U.S.C. § 2412, upon timely application; and

g. Grant such other further relief as this Court deems just and appropriate.

Dated August 14, 2026

Respectfully Submitted,

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P.O. Box 12666
San Diego, CA 92112
Tel: (619) 231-7788

Counsel for Petitioner

EXHIBIT INDEX

Exhibit A – Declaration of Andrea Zuniga Palacios

Exhibit B – Form I-94 Record of Parole

Exhibit C – I-589 Application for Asylum Receipt Notice

Exhibit D – ICE Online Change of Address Confirmation

Exhibit E – First NTA Served on Petitioner

Exhibit F – Second NTA Served on Petitioner

Exhibit G – Form I-261 Additional Charges of Inadmissibility

Exhibit H – Form I-286 Notice of Custody Determination

Exhibit I – Form I-213

Exhibit J – USCIS Case Status for Asylum Application

I, Andrea Zuniga Palacios, declare as follows:

1. My name is Andrea Zuniga Palacios. I was born in [redacted] in Nicaragua, and I am a citizen of Nicaragua. I am currently detained at the Otay Mesa Detention Center in San Diego, California.
2. I have two children who live in Nicaragua with their paternal grandparents. I left Nicaragua because of [redacted] I was afraid to stay.
3. On September 23, 2022, I came to a port of entry near Ciudad Juárez and asked the United States for protection. Immigration officers held me for about four days and then released me. I was told I was being released on parole and given a date to check-in with ICE.
4. After I was released, I did everything the government asked me to do. I went to my check-in at the immigration office in Newark, New Jersey in October 2022, about a month after my release. I was told to take a photograph of myself every Tuesday, and I did that. I was given another check-in date of January 24, 2023. At no time during the years after my release did anyone from ICE tell me that I had violated any condition of my parole or that I was not complying with their instructions.
5. Around September 2023, I applied for asylum with USCIS. I later received a work permit that was good for five years. I never received a notice for an asylum interview. My understanding was that I was allowed to remain in the United States while my asylum application was pending as long as I continued following the government's instructions.

6. While I lived in New Jersey, I worked at a nut-packing factory for almost two years. I lived on my own. I have never been arrested, charged, or convicted of any crime, in the United States or anywhere else.
7. In 2024, when a man sexually harassed me at a store in Elizabeth, I went to the police and made a report. I have always trusted that following the rules was the right thing to do.
8. In July 2026, I moved to Chula Vista, California, to live with cousins of mine.
9. On July 12, 2026, I went in person to the ICE office in San Diego to file a change of address form. While I was there, officers gave me a notice telling me to come back and check in the following week. I believed this was a routine appointment. Nothing about the notice or what the officers told me suggested that I might be arrested if I returned.
10. I found a job at a dog boarding and daycare business and worked there for about ten days.
11. On July 22, 2026, I went to my check-in as I was told to do. I went on my own, voluntarily. Instead of letting me leave, officers detained me. No one showed me an arrest warrant before they detained me. No one told me that they had an arrest warrant. An officer told me that my case was "disqualified" and that I had no status in the United States. He asked me to sign papers agreeing to be deported. I told him that I would not sign anything until I had a lawyer. He told me that if I did not sign, I would have to wait another month to see a judge. I told him I did not care, I wanted to speak with a lawyer.
12. No one asked me whether I was a danger to anyone or whether I would appear for future immigration proceedings. No one asked me any questions before deciding to detain me.
13. Officers kept me in the basement of that building for four days. Then ICE transferred me to the Otay Mesa Detention Center. I have been there ever since. No one has explained to

me why I am being held here. No one has explained to me why I was arrested, why my parole was no longer valid, what had changed in my case, or why I was being detained after following every instruction ICE had ever given me.

14. I am not a danger to anyone. I have never hurt anyone, and I have never been in trouble with the law. I am not going to run away. Every single time the government has told me to appear somewhere, I have appeared, that is how I ended up in custody. I believed that if I continued to follow ICE's instructions and appearing whenever they asked me to report, I would be allowed to remain out of detention while my immigration case was pending.

15. Until July 22, 2026, I believed I was doing everything the government required of me. I appeared voluntarily for my appointment because I wanted to continue complying with ICE's instructions.

16. Being detained is very hard on me. I want to continue with my asylum case, and I want the chance to explain to a judge why I cannot go back to Nicaragua.

I declare under penalty of perjury under the laws of the United States of America that the foregoing, has been read to me in Spanish, and is true and correct to the best of my knowledge.

Andrea Zuniga Palacios

8/12/26
Date

CERTIFICATION OF TRANSLATION

I, _Patricia Hornung, certify that I am competent to translate from Spanish into English and that I have reviewed the Spanish-language declaration entitled "Declaración de Andrea Zúñiga Palacios" and the accompanying English-language declaration entitled "Declaration of Andrea Zuniga Palacios."

I further certify that, to the best of my knowledge and ability, the English-language declaration is a true, accurate, and complete translation of the Spanish-language declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 17, 2026, at Yulee, Florida

Patricia Hornung

Signature of Translator

(908) 229 -9561

Telephone

PATRICIA HORNUNG

Printed Name of Translator

768 Continuum Loop, Yulee, Florida 32097

Address