UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

LICINEA RODRIGUES-BARROS Petitioner,	)	Case No. 2:25-cv-496
v.	)	
DONALD J. TRUMP, et al., Respondents	)	**ORAL ARGUMENT REQUESTED**

MOTION AND MEMORANDUM OF LAW IN SUPPORT OF RELEASE UNDER *MAPP V. RENO*

Petitioner Licinea Rodrigues-Barros (Ms. Barros) respectfully moves for release pursuant to this Court's inherent authority under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). Ms. Barros, who entered the United States lawfully with a visa but then overstayed her visa, was arrested without a warrant by ICE at a Massachusetts state courthouse on May 7, 2025, and has been detained since. She presents no risk of flight or danger to the community. Her continued detention, especially considering she is three months pregnant and has a two-year-old child, is solely punitive and lacks any legitimate reason. Her arrest and detention violate the Fifth Amendment due process clause, the Fourth Amendment right to be free from unreasonable searches and seizures, and the Tenth Amendment. This Court should order her immediate release on bail pending adjudication of her habeas corpus petition.

FACTS

Personal history

Ms. Barros is 25 years old. She was born and raised in Cape Verde. *See* Barros Declaration, attached as Exhibit A, ¶ 1. She came lawfully to the United States on a six-month visa in 2016, when she was 16 years old, to visit her family. *Id.* ¶ 14. Her father, Manual Barros, immigrated to the United States in 2010 and works for 47brand, a company that makes sports jerseys. *Id.* ¶ 9. He has a green card and is scheduled to take his test for citizenship within the next month. *Id.* ¶ 8. Ms. Barros's brother, Emerson Barros, came to the United States when he was thirteen years old and is now a U.S. citizen. *Id.* ¶ 7. He is married and has children. *Id.*

Licinea and her father

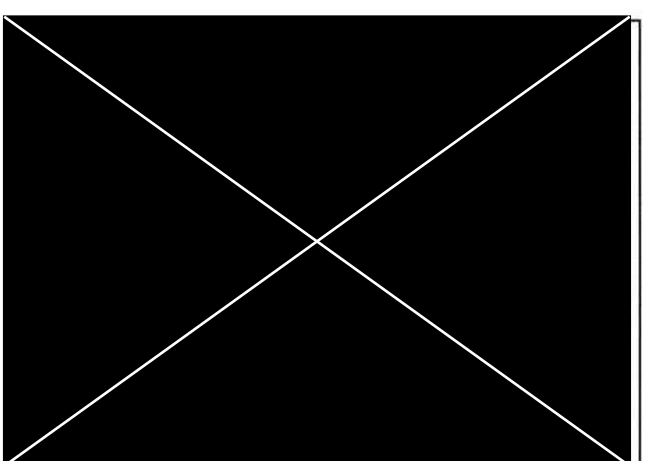
Ms. Barros also has two sisters who live in Boston, Massachusetts, and they are married with children. *Id.* ¶ 12. They both have green cards. *Id.* Ms. Barros's brother and sisters are each employed. *Id.* Ms. Barros's mother, Regina Rodrigues, has remained in Cape Verde. *Id.* ¶ 13. She attended college and works as a hospital administrator. *Id.*

Although only in the United States on a six-month visa, Ms. Barros and her parents ultimately decided it would be best for her to remain in the United States,

and she overstayed her visa. *Id.* ¶ 14. Ms. Barros lived initially in Pawtucket, Rhode Island, with her brother, Emerson, where she attended high school. *Id.* ¶ 15. She later moved to Randolph, Massachusetts, to live with her father and attend high school there. *Id.* ¶ 16. Due to language difficulties and lack of support for Creole-speaking students such as herself, Ms. Barros was unable to graduate from high school. *Id.* She remains motivated, however, to get her high school diploma and attend college. *Id.* ¶ 17.

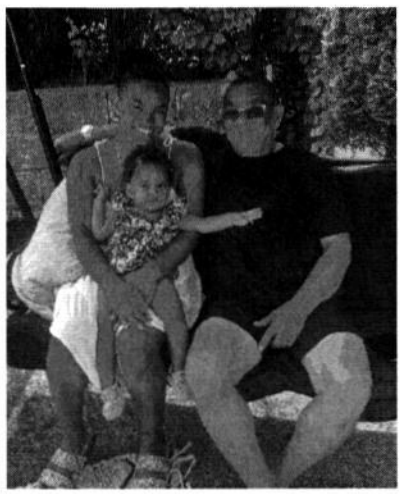
Marcos and Licinea

Ms. Barros's boyfriend, Marcos Tavares, is a lawful permanent resident living in East Providence, Rhode Island. *Id.* ¶ 3. Ms. Barros is three months pregnant with their child. *Id.* ¶¶ 2,3. In addition, they have a two-year-old daughter, A.T. *Id.* Mr. Tavares is currently caring for A.T. while Ms. Barros is in custody. *Id.* ¶ 3.



Marcos, A.T., and Licinea

Prior to being detained, Ms. Barros was splitting her time between living with Mr. Tavares and their daughter in East Providence, Rhode Island, and living with her father and uncle in Randolph, Massachusetts to provide care for them. *Id.* ¶ 4. Since 2000, Ms. Barros's father has had several tumors in different parts of his body, including his brain. *Id.* ¶ 9. His brother (Ms. Barros's uncle) had a stroke about one year ago and was partially paralyzed. *Id.* ¶ 10. Ms. Barros has helped her father and uncle around the house by cooking and cleaning, and she assisted in bathing her uncle when he was paralyzed. *Id.* ¶ 11.



Licinea, her father, and A.T.

Prior to her arrest, Ms. Barros had been working for five years as a housekeeper for Claudia Rocha, who runs a housekeeping service. *Id.* ¶ 5. Ms. Rocha has stated that she will re-hire Ms. Barros when she is released from custody. *See* Rocha Letter, attached as Exhibit B. Ms. Barros has an Individual Taxpayer Identification Number (ITIN) and her employer has been deducting taxes. Exh. A (Barros Decl.) ¶ 6.

Events leading to ICE arrest and detention

On May 14, 2019, Ms. Barros was charged with felony assault and battery with a dangerous weapon (pavement) and misdemeanor assault and battery in

Brockton, Massachusetts, arising from an argument she had with another woman over a boyfriend. *Id.* ¶ 18. Ms. Barros failed to appear in court at a pre-trial hearing on October 23, 2019, and a warrant was issued. *Id.* ¶ 19.

Six years later, on May 7, 2025, police stopped Ms. Barros for a traffic violation. *Id.* In checking her record, police saw she had an outstanding warrant from 2019. *Id.* She was taken into custody and brought to court in Brockton, Massachusetts, the next day, May 8, 2025. *Id.* ¶ 20. She was released on personal recognizance and placed on conditions, including weekly reporting to a probation officer. *Id.* ¶ 20. The court scheduled her next appearance for June 6, 2025.

Following her court hearing on May 8, 2025, Ms. Barros was taken to the basement of the courthouse to be processed for release. *Id.* ¶ 21. But to her surprise, she was not released. Instead, two plain clothes agents with Immigration and Customs Enforcement (ICE) arrived and immediately took her into custody, placing her in handcuffs and putting shackles on her ankles, despite knowing that she was three months pregnant. *Id.* ¶ 22. The agents brought her to Burlington, Massachusetts, where they took her fingerprints and gave her a Notice to Appear in Immigration Court on May 27, 2025. She was told she had over-stayed her visa. *Id.* ¶ 23. The agents kept Ms. Barros in Burlington, Massachusetts for a day and a half in a large cell with ten women and no beds. *Id.* ¶ 24. On May 9, 2025, she was driven to Vermont. *Id.* She arrived at Chittenden Regional Correctional Facility

(CRCF) at about 1:00 a.m. *Id.* ¶ 25. Ms. Barros has remained at CRCF since that date. *Id.*

Ms. Barros's arrest and detention are part of an explicit policy of the Trump Administration to impose punitive measures on immigrants by detaining them to the fullest extent possible, even for civil violations such as the instant one.[1] The evident purpose of this policy is to dramatically increase the number of immigrants in ICE custody so as to "create a climate of fear" and discourage migration to the United States.[2]

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[1] *See* Executive Order, *Protecting the American People Against Invasion* (Jan. 20, 2025) ("Sec.10.... The Secretary of Homeland Security, further, shall take all appropriate actions to *ensure the detention of aliens* apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country, to the extent permitted by law.") (emphasis added), available at: https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/; Executive Order, *Securing Our Borders* (Jan. 20, 2025) ("Sec. 2. Policy... (c) *Detaining, to the maximum extent authorized by law*, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States"; "Sec. 5. Detention. The Secretary of Homeland Security shall take all appropriate actions to *detain, to the fullest extent permitted by law*, aliens apprehended for violations of immigration law until their successful removal from the United States.") (emphases added), available at: https://www.whitehouse.gov/presidential-actions/2025/01/securing-our-borders/.

[2] Tara Watson & Jonathan Zars, *100 days of immigration under the second Trump administration*, Brookings, Apr. 29, 2025 (Noting the increase in detentions by ICE under the Trump Administration, and stating, "Regardless of the legal outcomes, the administration has successfully created a climate of fear among undocumented residents, international students, and even legal permanent residents."), available at: https://www.brookings.edu/articles/100-days-of-immigration-under-the-second-trump-administration/ .

ARGUMENT

I. This Court has jurisdiction to consider the habeas petition.

As this Court recently stated, "Subject to certain exceptions, the federal district courts are authorized to grant the writ of habeas corpus 'within their respective jurisdictions.'" *Mahdawi v. Trump*, No. 2:25-cv-389, slip op. at 7, 2025 WL 1243135, at *3 (D. Vt. Apr. 30, 2025) (quoting 28 U.S.C. § 2241(a)). This Court in *Mahdawi* thoroughly analyzed the jurisdiction stripping provisions in the Immigration and Nationality Act (INA). The Court concluded that none of these provisions strip the district courts of their jurisdiction to consider habeas challenges to the arrest and detention of aliens for purposes of removal or deportation. *Id.* D. Vt. slip op. at 8-15. The Second Circuit, in denying a stay of this court's ruling in *Mahdawi* granting bail, came to the same conclusion. *Mahdawi v. Trump*, No. 25-1113, __ F.4th __ , 2025 WL 1353665 (2d Cir. May 9, 2025). The Second Circuit held that while Congress has expressly taken away authority of the courts to consider habeas claims challenging *removal* from the country, it has not taken away jurisdiction to consider habeas claims regarding *arrest and detention* pending removal proceedings, since arrest and detention are "independent of, and collateral to, the removal process." *Id.* at *4 (quoting *Öztürk v. Hyde,* No. 25-1019, __F.4th__, 2025 WL 1318154 *9 (2d Cir. May 7, 2025)).

The *Mahdawi* and *Öztürk* rulings make clear this court's jurisdiction to address Ms. Barros's habeas petition challenging her arrest and detention by ICE agents.

II. Under the authority set out in *Mapp*, this Court should grant Ms. Barros immediate release pending adjudication of her habeas petition.

This Court should release Ms. Barros on personal recognizance, or alternatively on bail, pending adjudication of her petition pursuant to this Court's inherent habeas authority, as set out in *Mapp*, 241 F.3d at 226. As this Court explained in *Mahdawi*, *Mapp* sets out the legal standard for the court's exercise of its authority to grant bail for those within its jurisdiction. In considering whether to grant a habeas petitioner bail, the court "must inquire into whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective." *Mahdawi*, D. Vt. slip op. at 16 (quoting *Mapp*, 241 F.3d at 226). The burden is on the petitioner to demonstrate both that the petition raises substantial claims and that there are extraordinary circumstances making bail necessary. *Id.* But to raise a substantial claim, "the Second Circuit does not require that the petitioner convince every court, let alone the court considering the bail application, that he *will* succeed; rather, he need only show that his claims are 'substantial.'" *D'Alessandro v. Mukasey*, No. 08-cv-914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009) (emphasis in original).

The circumstances that may qualify as "extraordinary" include lack of flight risk or dangerousness, health issues, and the nature of the government behavior giving rise to the habeas claim. *See, e.g., Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D.N.Y. 2020); *D'Alessandro*, 2009 WL 799957, at *3. Where, as in this case, the petitioner would face "the very outcome they seek to avoid" if they remained in detention pending determination of the merits, release is necessary to make the habeas remedy effective. *See Coronel*, 449 F. Supp. 3d at 289.

A. Ms. Barros raises substantial claims for habeas relief.

Ms. Barros' habeas petition raises substantial claims under the Fifth Amendment due process clause, the Fourth Amendment protection against unreasonable searches and seizure, and the Tenth Amendment.

1. Fifth Amendment Procedural Due Process Violation

The Fifth Amendment Due Process Clause establishes due process rights for "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas, v. Davis*, 533 U.S. 678, 693 (2001)). "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Detention by ICE pending removal proceedings is civil, not criminal, and thus only justified when necessary to ensure a noncitizen's

appearance during removal proceedings and to prevent danger to the community. *See Black*, 103 F.4th at 143 (citing *Zadvydas*).

As this Court summarized the law in *Mahdawi*, "[S]uch detention can never be punitive, either by design or effect." *Mahdawi*, D. Vt. slip op. at 22, (citing *inter alia Zadvydas*, 533 U.S. at 690; *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893)). Detention for purposes of punishment is permitted only "on the basis of a criminal statute and only after conducting a criminal prosecution." *Id.* Accordingly, Ms. Barros "may therefore succeed on [her] Fifth Amendment claim if [she] demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain [her]." *Id.* (emphasis in original).

Ms. Barros raises a substantial constitutional claim that her detention violates due process both because it is punitive and because it lacks any legitimate purpose. The punitive nature of her detention is well-established by the recent executive orders cited above in footnote 1, indicating that the Trump Administration has taken a maximalist approach in seeking to detain all noncitizens facing removal proceedings. *See* Executive Order, *Securing Our Borders* (Jan. 20, 2025) ("Sec. 2. Policy... (c) *Detaining, to the maximum extent authorized by law*, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States;" "Sec. 5. *Detention*. The Secretary of Homeland Security shall take all appropriate actions to

detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States.) (emphasis added). This approach is evidently intended to punish noncitizens and thereby deter them and all prospective immigrants from overstaying their visas or otherwise running afoul of our immigration laws. Such a punitive purpose for civil detention plainly violates due process.

The detention of Ms. Barros also lacks any legitimate purpose because she does not present a risk of flight or a danger to the community. Ms. Barros has strong community ties and has been a productive member of the community since she arrived in the United States in 2016 to visit her father and brother. She has been working for the last five years as a housekeeper, and her employer has been deducting taxes from her wages. She will be rehired if released. Although she did fail to appear for a court hearing in Brockton, Massachusetts in 2019 when she was 19 years old, she never fled from police or tried to conceal her whereabouts. When she appeared again in Brockton Court on May 8, 2025 for the pending charge, that court apparently did not believe that detention was required to ensure her future appearance because it released her on minimal conditions until her next appearance, which it set for nearly one month later.

Ms. Barros also has very strong family ties. She and her boyfriend, Marcos Tavares, have a two-year-old daughter, and Ms. Barros is currently three months

pregnant. Her detention certainly is not advisable for the healthy development of her baby and potentially puts her pregnancy at risk. Studies show that "[i]ncarcerated individuals have greater likelihood of negative birth outcomes" such as infant mortality, low birthweight and prematurity.[3]

Before being detained, Ms. Barros was providing care and assistance for her father and uncle, who have both suffered from serious illnesses. For this reason, she was splitting her time between living with her boyfriend and daughter, and living with her father and uncle to care for them. Ms. Barros also has a brother living close by in Pawtucket and two sisters living close by in Boston, along with several nieces and nephews. She has no convictions. Given these strong community and family ties, employment, and her pregnancy, she clearly does not present either a risk of flight or a danger to the community. Her detention serves no legitimate purpose.

2. Fourth Amendment and 8 U.S.C. § 1357(a)(2) Violation

The arrest of Ms. Barros without a warrant violated both the Fourth Amendment and the statutory arrest authority of ICE under 8 U.S.C. §1357(a)(2). The warrantless arrest was unreasonable under the Fourth Amendment because there was no reasonable basis to believe Ms. Barros, upon her release on conditions

[3] Emma Rose Miller-Bedell, et al. *Birth outcomes of individuals who have experienced incarceration during pregnancy,* Journal of Perinatology (Nov. 13, 2024), available at https://www.nature.com/articles/s41372-024-02170-4.

from the courthouse in Brockton, Massachusetts, presented such an immediate risk of flight that ICE agents would not have time to get a warrant. As discussed above, Ms. Barros does not present any risk of flight at all.

For the same reasons, the warrantless arrest also violated the statutory authority of immigration officers under 8 U.S.C. § 1357(a)(2), which provides that an agent is authorized to conduct a warrantless arrest of a noncitizen only "if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation *and is likely to escape* before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2) (emphasis added). The ICE agents here had no reason to believe Ms. Barros might escape before a warrant could be obtained. The fact that the warrantless arrest exceeded their statutory arrest authority further demonstrates that the warrantless arrest was unreasonable for purposes of the Fourth Amendment. In addition, the failure of the ICE agents to abide by the statute governing their arrest authority also violates due process.

The circumstances of the arrest, moreover, were shocking, given Ms. Barros' pregnant condition. She was both handcuffed and shackled, despite widespread recognition that shackling pregnant women is dangerous to them and their babies. As experts have noted, "The use of restraints on pregnant and postpartum people has been identified as medically dangerous, a human rights

violation, and against national and international standards of care."[4] These circumstances further establish the unreasonableness of the arrest and detention under the Fourth Amendment. They also establish the necessity of granting bail so as to prevent ICE agents from employing the same "medically dangerous" practice of shackling when they next need to transport Ms. Barros to a hearing or another facility.

3. Fifth Amendment Substantive Due Process Violation

The shackling and detention of Ms. Barros also violates her substantive due process rights under the Fifth Amendment because these conditions amount to punishment and pose an unreasonable risk to her health.

Civil immigration detainees are entitled to at least as much protection as prisoners are under the Eighth Amendment prohibition on cruel and unusual punishment. *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017). But under the Fifth Amendment, a civil detainee "may not be punished *at all*." *Id.* at 35, 21 n.3 (emphasis added). The U.S. Supreme Court has suggested that civil detainees are "entitled to *more considerate treatment* than a criminal detainee, whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982) (emphasis added) (referring to civil commitment context).

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[4] *See* Camille Kramer, et al. *Shacking and pregnancy care policies in US prisons and jails*, Maternal Child Health J. pp. 186-196 (Nov. 22, 2022) available at https://pmc.ncbi.nlm.nih.gov/articles/PMC9660187/.

To establish a violation of substantive due process based upon conditions, Ms. Barros must show that the conditions she faces "either alone or in combination, pose an unreasonable risk of serious damage to [her] health." *Darnell*, 849 F.3d at 30 (internal quotation omitted).

Ms. Barros raises a substantial substantive due process claim because her being shackled and subsequently detained amounts to punishment and exposes her to an unreasonable risk of serious damage to her health and the health of her unborn child.

First Ms. Barros's shackling and subsequent detention amount to punishment, as is the evident intent of the Administration.[5] As discussed above, Ms. Barros does not pose a risk of flight or dangerousness. Her shackling and detention thus serve no legitimate non-punitive goal and violate her right as a civil detainee to be free from punishment.

Second, her shackling and detention expose her to an unreasonable risk of harm as a pregnant person. The significant and unique harms of incarceration for pregnant people, including those in ICE custody, are well-established and widely acknowledged.[6] When a civil detainee is incarcerated, they are "absorbed into an

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[5] *See supra* notes 1 & 2.

[6] *See* Miller-Bedell, *supra* note 3; Physicians for Human Rights, *Health Harms Experienced by Pregnant Women in U.S. Immigration Custody* (2019), available at https://phr.org/wp-content/uploads/2019/12/PHR-Pregnant-Women-in-Immigration-Custody-Fact-Sheet-Nov-2019.pdf; Nicole Einbinder, *Migrant*

effectively punitive environment" without having been determined guilty of—much less charged with—any crime; their movement, food intake and nutrition, interactions, and access to basic medical care are all "highly restricted and supervised."[7] Accordingly, multiple attempts have been made to pass legislation that would require immediate release of pregnant detainees unless they pose a serious and immediate risk to themself or others and detention is required to mitigate that risk. *See* Stop Shackling and Detaining Pregnant Women Act, S. 916, 119th Cong. (2025-2026).

Shackling a pregnant person is recognized as especially egregious—it is medically dangerous, emotionally traumatizing, and inconsistent with substantive due process and federal law.[8] In fact, in 2018, Defendant-President Trump passed the First Step Act, which expressly prohibits the use of restraints on pregnant

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Miscarriages in ICE Detention Centers Have Almost Doubled During President Trump's First Two Years in Office, BUSINESS INSIDER (Mar. 4, 2019), available at https://www.businessinsider.com/migrant-miscarriages-have-almost-doubled-in-ice-detention2019-3.

[7] Joella Adia Jones, Note, *The Failure to Protect Pregnant Pretrial Detainees: The Possibility of Constitutional Relief in the Second Circuit Under a Fourteenth Amendment Analysis*, 10 COLUM. J. RACE & L. 139, 170 (2020).

[8] *Id.* at 173-77; *see also* Madeline Martin, Note, *Pregnancy, Incarcerated: How Incarcerating Pregnant Women In The United States Is Incompatible With Theories Justifying Punishment*, 32 HASTING WOMEN'S L.J. 61, 71 (2021) (use of shackles widely condemned by American College of Obstetricians and Gynecologists, American Medical Association, American Psychological Association, and the American Civil Liberties Union, among others, as "unnecessary, inhumane, and logically unwarranted in the context of pregnancy").

inmates in the custody of the Bureau of Prisons or the U.S. Marshals Service. *See* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, § 301 (2018). Even where restraints are necessary to prevent risk of flight or harm to self or others, the law requires that the "least restrictive restraints" be used, and it *prohibits under any circumstances* placing restraints around the ankles, legs, or waist of a pregnant prisoner, restraining a pregnant prisoner's hands behind their back, restraining a pregnant prisoner using four-point restraints, and attaching a pregnant prisoner to another prisoner. *See id.* Because ICE has already demonstrated that they are willing to ignore the recommendations of the medical community and the apparent policy of the Administration as it relates to the safety of pregnant federal prisoners, it is reasonably likely that Ms. Barros will be again subject to inhumane shackling practices at later and more vulnerable stages of her pregnancy.

If Ms. Barros continues to be detained, she will continue to be subject to these harms in an irreparable and increasingly egregious way throughout her pregnancy. She will be stripped of her autonomy to make critical decisions about her own medical care and parenting her newborn; she will continue to be forced to face the stresses of prenatal, perinatal, and postnatal care all without the support of the father of her children or her family and community; and she will risk separation from her newborn at a critical bonding stage if she gives birth while detained.

4. Violation of the Tenth Amendment and the common law privilege against courthouse arrests, as incorporated into the Immigration and Nationality Act

The Tenth Amendment provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., amend. X. The warrantless arrest of Ms. Barros in a state courthouse improperly intruded on rights reserved to the States under this amendment. *See generally Bond v. United States*, 564 U.S. 211 (2011) (holding that defendant had standing to challenge statute of conviction as violating Tenth Amendment). Such arrest authority has not been delegated to the United States. Indeed, as discussed above, the warrantless arrest here actually contravened federal statutory authority because there was no basis to believe Ms. Barros would flee if the agents had taken the time to secure a warrant.

The Supreme Court has repeatedly held that it is the states that are traditionally responsible for dealing with local criminal activity. *Bond v. United States*, 572 U.S. 844, 858 (2014) (citing cases and explaining "Perhaps the clearest example of traditional state authority is the punishment of local criminal activity."). Federal action that disrupts this balance is unconstitutional.

Under common law, moreover, there is a privilege against courthouse arrests for civil matters. *See Velazquez-Hernandez v. U.S. Immigrations and Customs Enforcement,* 500 F. Supp. 3d 1132, 1143-44 (S.D. Cal. 2020) (noting the

"traditional common-law privilege against civil arrest or service of process at the courthouse continued into American common law, where it was recognized as well-established into the twentieth century"). The privilege is an ancient one that dates back to the 1500s. *Id.* Crucially, the privilege is held by the court, with the Supreme Court recognizing that the privilege has been long-sustained and is necessary for the administration of the court's business. *Id.* at 1143 (citing and quoting *Stewart v. Ramsay*, 242 U.S. 128 (1916)); *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932) ("[T]he due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it, by the service of process in other suits[.]"). Multiple courts have specifically acknowledged that the Immigration and Nationality Act (INA) incorporated this common-law privilege. *See Velazquez-Hernandez*, 500 F. Supp. 3d at 1143; *State v. United States Immigration & Customs Enforcement*, 431 F. Supp. 3d 377, 392 (S.D.N.Y. 2019); see also *Washington v. U.S. Dep't of Homeland Security*, 614 F. Supp. 3d 863, 878-79 (W.D.Wa. 2020).

Thus, while immigration authorities have the power to make arrests, Congress did not authorize arrests at courthouses. In the absence of clear Congressional authorization that would erase the common law privilege, the privilege remains and protects courts in the exercise of their powers, including the administration of the States' traditional control over local criminal conduct. Almost

nothing could be more likely interfere with a state's administration of criminal cases than the knowledge that a defendant, witness, or victim is likely to be arrested by the immigration authorities if he or she shows up for a hearing in a state case. Thus, the warrantless arrest of Ms. Barros at a state courthouse for a civil immigration matter violated both the Tenth Amendment and the common law privilege against courthouse arrests, as incorporated in the INA.

B. Extraordinary circumstances

As discussed above, extraordinary circumstances warranting release on bail for a civil detainee may include absence of risk of flight or danger to the community, as well as health issues. Thus, the facts above establishing the substantial basis for the due process claim also establish the extraordinary circumstances warranting release on bail. *See Mahdawi*, D. Vt. slip op. at 23 (finding extraordinary circumstances based on lack of risk of flight or danger to community). Ms. Barros presents no risk of flight or danger to the community, and in light of her pregnancy, she faces serious health concerns if she remains incarcerated. These facts constitute extraordinary circumstances.

C. Necessary to make habeas remedy effective

These extraordinary circumstances make the granting of bail necessary for habeas relief to be effective. Release is necessary to avoid the punitive effect of Ms. Barros' continued detention and the potentially damaging health consequences

it may have in light of her pregnancy. And it is necessary to prevent a repeat of ICE agents shackling Ms. Barros as they transport her to a hearing or another facility, a practice considered both medically dangerous and a violation of human rights. It is also necessary to avoid the damaging effects her detention has on her family as she remains separated from her two-year-old daughter and her boyfriend. One can only imagine how traumatizing for A.T. this sudden and unexpected separation from her mother must be.

CONCLUSION

For the foregoing reasons, the Court should grant this motion and order Ms. Barros's immediate release. Release will end the extraordinary harm of her detention, restore the status quo, and ensure that habeas relief remains meaningful by allowing full and fair consideration of the serious constitutional issues at stake.

Dated: May 21, 2025, Montpelier, VT

Respectfully submitted,

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