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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 Juan Edelmar ALVA ALVA,

13 Petitioner,

14 v.

15 Polly KAISER, Acting Field Office Director of
16 the San Francisco Immigration and Customs
17 Enforcement Office; Todd LYONS, Acting
18 Director of United States Immigration and
19 Customs Enforcement; Kristi NOEM, Secretary
of the United States Department of Homeland
Security, Pamela BONDI, Attorney General of
the United States, acting in their official
capacities,

20 Respondents.

Case No. 3:25-cv-6676

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1
2 1. Petitioner Juan Edelmar Alva Alva (“Mr. Alva” or “Petitioner”) is a 44-year-old
3 husband and father of two young children. On or about Nov. 27, 2018, he came to the United
4 States from Guatemala, bringing his daughter, N.¹ age 12, because conditions in Guatemala had
5 become untenable for them to remain living there. He and N. have lived here ever since. Upon his
6 arrival in the United States, he was briefly detained by the U.S. Border Patrol and then released
7 with an order of supervision issued by the U.S. Immigration and Customs Enforcement (ICE).
8 Since then, he has been fully compliant with everything that the government of asked of him,
9 including regular check-in appointments with ICE. In 2023, he worked with undersigned counsel
10 to meet with an ICE officer and request a reasonable fear interview to begin his claim for protection
11 from removal since, due to past orders of removal, he is ineligible for asylum. He applied for and
12 received an Employment Authorization Document (commonly called a “work permit”), and has
13 been employed since. He attends Saint Jarlath Catholic Church. He has no criminal record. He has
14 a cognizable claim to withholding of removal and protection under the Convention Against Torture
15 (CAT) based on abuse his young daughter suffered in Guatemala and severe and credible death
16 threats that Mr. Alva received when he tried to protect her from a powerful person in the
17 community. Plus, he suffered a history of abuse from his own family.

18 2. On Aug. 6, 2025, Mr. Alva and undersigned counsel attended a reasonable fear
19 interview (RFI) scheduled at 630 Sansome Street, suite 590, which is the floor that ICE
20 Enforcement and Removal Operations uses. Although the U.S. Citizenship and Immigration
21 Service (USCIS) Asylum Office conducted the interview, in Mr. Alva’s case, the asylum officer
22 spoke to him on speaker phone, along with a Spanish interpreter, who was also remote. Counsel
23 noted it was unusual for an RFI to take place at ICE offices when Mr. Alva was not detained, and
24 that usually RFIs are scheduled for non-detained applicants at USCIS’s offices, but since Mr. Alva
25 had been summoned for his long-awaited RFI, he was obligated to attend in order to advance his
26 claim for protection from removal, and he did.

27 3. Mr. Alva testified for over two hours about the abuse and credible death threats he
28 and his family endured in Guatemala, all the while, an armed ICE guard sat outside the office

¹ Mr. Alva’s young daughter will be referred to here as “N.” to protect her privacy.

1 where Mr. Alva and his attorney sat, watching Mr. Alva through a narrow glass window. Then,
2 Mr. Alva was told that he could leave ICE offices to eat lunch and had to return one hour later to
3 receive the decision on his RFI. He and his attorney had lunch and returned as directed to 630
4 Sansome Street, 6th floor, to receive his decision. Mr. Alva was then informed by a new asylum
5 officer, who also spoke over speaker phone, and told that he was found not to have a reasonable
6 fear of return. He was told that he had the right to ask an immigration judge (IJ) to review his
7 negative reasonable fear finding, but that he would do so while detained by ICE. Undersigned
8 counsel asked for clarification on whether Mr. Alva would be detained that day regardless of his
9 decision about whether to seek IJ review, and the asylum officer said ICE would make that
10 decision. Mr. Alva said he wants an IJ to review the negative reasonable fear finding and the
11 asylum officer ended the call.

12 4. A female ICE officer entered the room, wearing latex gloves, and told Mr. Alva to
13 come with her. Undersigned counsel asked if she was going to detain Mr. Alva and she said yes.
14 Counsel responded that there was no need to detain her client and handed the officer a written
15 request not to detain him, which explained he has no criminal history and two young children at
16 home, who are enrolled in Oakland schools. The officer took the packet and asked undersigned
17 counsel to wait outside in the hall. Yet another ICE guard found counsel in the hallway and said
18 that Mr. Alva was being detained and there was nothing more to say about it – the decision was
19 final. Undersigned counsel waited there until Mr. Alva had been fingerprinted and his belongings
20 taken and spoke to him through a glass window and over a phone receiver. She told him she would
21 keep representing him while detained and would call his wife to let her know Mr. Alva would not
22 come home.

23 5. Mr. Alva was not told why he was being arrested. When undersigned counsel asked
24 why given he has no criminal history and two young children at home to support, no answer was
25 provided except to say that this situation was the new normal.

26 6. Today, Mr. Alva is currently locked in a temporary holding area at 630 Sansome
27 Street in San Francisco. One of the ICE agents informed counsel that Mr. Alva would be
28 transferred to a new detention center soon, possibly the next day – that is, August 8, 2025.

7. This arrest is part of a new, nationwide DHS strategy of sweeping up people who

1 attend their immigration interviews, detaining them, and seeking to re-route them to fast-track
2 deportations. Since mid-May, DHS has implemented a coordinated practice of leveraging
3 immigration detention to strip people like Mr. Alva of their substantive and procedural rights and
4 effect their swift deportation. Immigration detention is civil, and thus is permissible for only two
5 reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the
6 community. But DHS did not arrest and detain Mr. Alva—who demonstrably poses no risk of
7 absconding from immigration proceedings nor danger to the community—for either of these
8 reasons. Instead, as part of its broader enforcement campaign, DHS detained Mr. Alva to strip him
9 of his procedural rights, force him to forfeit his right to IJ review, and pressure him into fast-track
10 removal.

11 8. In immigration proceedings, noncitizens have the right to pursue claims for relief
12 from removal (including withholding of removal and protection under CAT), be represented by
13 counsel, gather and present evidence, and pursue IJ and judicial review. 8 U.S.C. § 1229(a). By
14 arresting Mr. Alva at his immigration interview, DHS—in its view—can pressure him into giving
15 up his rights by placing him into DHS custody where conditions rival those in criminal
16 confinement, where DHS employees often tell detained people their cases are hopeless and the
17 waits for judicial review will be long, best to accept an order of removal to escape poor conditions.
18 Undersigned counsel has witnessed in recent months that clients in DHS custody are rapidly and
19 frequently transferred, in handcuffs, from one DHS detention center to another, often crisscrossing
20 state lines as bedspace ebbs and flows, further putting detained immigrants in physical restraints
21 and emotional abysses. At the same time, those detained respondents without attorneys are put at
22 greater disadvantage to secure legal representation because their physical whereabouts can be
23 unknown for days and at risk of changing overnight to a place far from a lawyer's office and
24 expertise.

25 9. Mr. Alva's recent arrest and detention have already caused him substantial harm,
26 including the emotional trauma of being summoned to speak earnestly for hours about the abuse
27 and death threats that he and his family have endured, only to be told he has no reasonable fear of
28 returning to Guatemala, and arrested like a criminal when he had been fully compliant with legal
requirements ever since his entry to the United States. The psychological toll of confinement is

1 considerable, and conditions in immigration detention facilities are often substandard. Every
2 additional day of unlawful detention will add to his immiseration and subject him to further
3 irreparable harm. The emotional pain that his wife and two young children have suffered because
4 of his unexpected and traumatic arrest only furthers Mr. Alva's pain.

5 10. Moreover, detention is highly prejudicial to his chance of success in his request that
6 an IJ review the negative finding of reasonable fear. His loss of income takes away his ability to
7 pay for immigration counsel. Although undersigned counsel is willing and able to take on this
8 petition *pro bono*, if he is successful at convincing an IJ to review and overturn his negative
9 reasonable fear finding, he will be placed into much longer withholding-only proceedings before
10 the immigration court, and these proceedings can last years. His inability to earn a living and save
11 for future immigration counsel will limit him to seeking *pro bono* help from the limited number
12 of nonprofit providers who take on immigration court cases. Importantly, detention will also make
13 it much harder for Mr. Alva to go through all the steps needed to prepare a complex withholding-
14 only and CAT case – steps such as having extensive communication with counsel, collecting
15 evidence, being evaluated by a psychologist for corroborating signs of trauma, and preparing
16 testimony. Further, while detained, Mr. Alva's case will be heard by detained docket IJs who are
17 accustomed to seeing immigrants with criminal history and may be less inclined to grant relief
18 from removal, though Mr. Alva does not fit this profile.

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

25 12. Mr. Alva respectfully seeks a writ of habeas corpus ordering the government to
26 immediately release him from ongoing, unlawful detention, and prohibiting his re-arrest without a
27 hearing to contest that re-arrest before a neutral decision-maker. In addition, to preserve this
28 Court's jurisdiction, Petitioner also requests that this Court order the government not to transfer
him outside of the District, or deport him, for the duration of this proceeding.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

14. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

PARTIES

15. Mr. Alva is a 44-year-old husband and father from Guatemala. He requested a RFI from the USCIS Asylum Office and attended his scheduled RFI to pursue his claim for protection from removal. He has no criminal history, and has been compliant with his legal obligations since being released by ICE following his apprehension at the southern border. He is currently in civil immigration detention, in a temporary holding facility on the sixth floor of 630 Sansome Street in downtown San Francisco.

16. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office. In this capacity, she is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Mr. Alva. Respondent Kaiser maintains an office and regularly conducts business in this district. Respondent Kaiser is sued in her official capacity. Moreover, while Mr. Alva remains at the Sansome Street location, Ms. Kaiser serves as his immediate physical custodian.

17. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner.

1 Respondent Lyons is sued in his official capacity.

2 18. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate
3 authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority
4 over and responsibility for the operation and enforcement of the immigration laws; routinely
5 transacts business in this District; and is legally responsible for pursuing any effort to detain and
6 remove Mr. Alva. Respondent Noem is sued in her official capacity.

7 19. Respondent Pamela Bondi is the Attorney General of the United States and the most
8 senior official at the Department of Justice. In that capacity and through her agents, she is
9 responsible for overseeing the implementation and enforcement of the federal immigration laws.
10 The Attorney General delegates this responsibility to the Executive Office for Immigration
11 Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her
12 official capacity.

13 EXHAUSTION

14 20. There is no requirement to exhaust because no other forum exists in which Mr. Alva
15 can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the
16 constitutionality of an arrest or detention, or challenging a policy under the Administrative
17 Procedure Act. Prudential exhaustion is not required here because it would be futile, and Mr. Alva
18 will “suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim.”
19 *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further exhaustion requirements would be
unreasonable.

20 LEGAL BACKGROUND

21 *A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and* 22 *Detention.*

23 21. The Constitution establishes due process rights for “all ‘persons’ within the United
24 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
25 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533
26 U.S. at 693). These due process rights are both substantive and procedural.

27 22. First, “[t]he touchstone of due process is protection of the individual against
28 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the

1 exercise of power without any reasonable justification in the service of a legitimate government
2 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

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

8 24. Substantive due process thus requires that all forms of civil detention—including
9 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v.*
10 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible
11 non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at
12 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–
13 92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

14 25. *Second*, the procedural component of the Due Process Clause prohibits the
15 government from imposing even permissible physical restraints without adequate procedural
16 safeguards.

17 26. Generally, “the Constitution requires some kind of a hearing *before* the State
18 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so
19 even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683
20 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional
21 supervision requires pre-deprivation hearing)); *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).

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

28 28. This reasoning applies with equal if not greater force to people released from civil

1 immigration detention at the border, like Mr. Alva. After all, noncitizens living in the United States
2 like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See*
3 *Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil context [of immigration detention], [the] liberty
4 interest [of noncitizens released from custody] is arguably greater than the interest of parolees.”
5 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

6 7 FACTUAL ALLEGATIONS

8 *A. DHS Dramatically Expands the Scope of Expedited Removal.*

9 29. For decades, DHS applied expedited removal exclusively in the border enforcement
10 context, with only narrow exceptions to that general rule. From 1997 until 2002, expedited removal
11 applied only to inadmissible noncitizens arriving at ports of entry. *See* Inspection and Expedited
12 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
13 Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

14 30. In 2002, the government for the first time invoked its authority to apply expedited
15 removal to persons already inside the country, but only for a narrow group of people who arrived
16 by sea, were not admitted or paroled, and were apprehended within two years of entry. *See* Notice
17 Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the
18 Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002).

19 31. In 2004, the government authorized the application of expedited removal to
20 individuals who entered by means other than sea, but only if they were apprehended within 100
21 miles of a land border and were unable to demonstrate that they had been continuously physically
22 present in the United States for 14 days. *See* Designating Aliens for Expedited Removal, 69 Fed.
23 Reg. 48877 (Aug. 11, 2004).

24 32. In 2019, at the direction of President Trump, DHS published a Federal Register
25 Notice authorizing the application of expedited removal to certain noncitizens arrested anywhere
26 in the country who could not affirmatively show that they had been continuously present for two
27 years. *See* Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The
28 District Court for the District of Columbia entered a preliminary injunction preventing the rule
from taking effect, which the D.C. Circuit later vacated. *Make the Rd. New York v. McAleenan*,

1 405 F. Supp. 3d 1, 11 (D.D.C. 2019), *vacated sub nom. Make the Rd. New York v. Wolf*, 962 F.3d
2 612, 618 (D.C. Cir. 2020).

3 33. In 2021, President Biden directed the DHS Secretary to review the rule expanding
4 expedited removal and consider whether it comported with legal and constitutional requirements,
5 including due process. In 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23,
6 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

7 34. While the 2019 expansion was in effect, the government applied expedited removal
8 to persons inside the country in an exceedingly small number of cases. Thus, from 1997 to 2025,
9 with limited exceptions, immigration authorities generally did not apply expedited removal to
10 noncitizens apprehended far from the border, or individuals anywhere in the United States
(including near the border) who had been residing in the country for more than fourteen days.

11 35. This state of affairs changed drastically on January 20, 2025, the day that President
12 Trump took office for his second term. That day, President Trump signed Executive Order 14159,
13 “Protecting the American People Against Invasion,” the purpose of which was “to faithfully
14 execute the immigration laws against all inadmissible and removable aliens, particularly those
15 aliens who threaten the safety or security of the American people.” Exec. Order No. 14,159, 90
16 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take
17 various actions “to ensure the efficient and expedited removal of aliens from the United States.”
18 *Id.*

19 36. To implement this Executive Order, DHS issued a notice immediately authorizing
20 application of expedited removal to certain noncitizens arrested anywhere in the country who
21 cannot show “to the satisfaction of an immigration officer” that they have been continuously
22 present in the United States for at least two years. 90 Fed. Reg. 8139 (published Jan. 24, 2025).

23 37. On January 23, 2025, the Acting Secretary of Homeland Security issued a
24 memorandum “provid[ing] guidance regarding how to exercise enforcement discretion in
25 implementing” the new expedited-removal rule. The guidance directed federal immigration
26 officers to “consider . . . whether to apply expedited removal” to “any alien DHS is aware of who
27 is amenable to expedited removal but to whom expedited removal has not been applied.” As part
28 of that process, the guidance encourages officers to “take steps to terminate any ongoing removal

1 proceeding and/or any active parole status.”²

2 38. The government has subsequently taken other steps to expand the use of expedited
3 removal far beyond what has been seen before. In a leaked ICE memo from earlier this year, ICE
4 leadership shared its interpretation of the law such that some noncitizens encountered at the border
5 are subject to expedited removal with no time limit.

6 39. Under the administration’s expanded approach to expedited removal, hundreds of
7 thousands of noncitizens who have lived in the country for significant periods of time are at
8 imminent risk of summary removal without any hearing, meaningful process, access to counsel,
9 or judicial review—regardless of the strength of their ties to the United States.

10
11 ***B. To Place More People in Expedited Removal and Pressure Others to Accept Removal,***
12 ***DHS Undertakes a New Campaign of Courthouse and Immigration Interview Arrests and***
13 ***Detention.***

14 40. Since the spring of 2025, DHS has initiated an aggressive new enforcement
15 campaign targeting people who are in regular removal proceedings in immigration court and at
16 scheduled USCIS interviews, many of whom have pending applications for relief from removal.
17 This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting
18 people at the courthouse and placing them into expedited removal.³

19 41. The American Immigration Lawyers’ Association, the largest trade group of
20 immigration attorneys in the country, wrote that starting in Mar. 2025, their members began
21 reporting increased ICE “presence and arrests taking place at U.S. Citizenship and Immigration
22 Services (USCIS) field offices during immigration interviews. Since then, USCIS field offices

23
24 ² Benamine C. Huffman, *Guidance Regarding How to Exercise Enforcement Discretion*, Dep’t
25 of Homeland Sec. (Jan. 23, 2025), [https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-](https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf)
and-parole-guidance.pdf.

26 ³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic*
27 *in Trump’s Deportation Push*, Wash. Post, May 23, 2025,
28 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up*
Deportations Through Courthouse Arrests, N.Y. Times, May 30, 2025,
<https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

1 have facilitated, extended, and ramped up immigration enforcement efforts across the country.”⁴
2 In a press release, USCIS “boast[ed] about its assistance to ICE, including actively providing ICE
3 with volunteers to support enforcement operations[,]” despite this being “far removed from
4 USCIS’s congressionally mandated mission” to “uphold[] America’s promise as a nation of
5 welcome and possibility with fairness, integrity, and respect for all we serve.” *Id.*

6 42. In the immigration courthouses, the first step of this enforcement operation
7 typically takes place inside the court. When people arrive in court for their master calendar
8 hearings, DHS attorneys orally file a motion to dismiss the proceedings—without any notice to
9 the affected individual. Although DHS regulations do not permit such motions to dismiss absent a
10 showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. § 239.2(a)(7), (c), DHS
11 attorneys do not conduct any case-specific analysis of changed circumstances before filing these
12 motions to dismiss.

13 43. The next step of DHS’s new campaign takes place outside the courtroom. ICE
14 officers, in consultation with DHS attorneys and officials, station themselves in courthouse waiting
15 rooms, hallways, and elevator banks. When an individual exits their immigration hearings, ICE
16 officers—typically masked and in plainclothes—immediately arrest the person and detain them.
17 ICE officers execute these arrests regardless of how the IJ rules on the government’s motion to
18 dismiss. On information and belief, they typically do not have an arrest warrant.

19 44. At immigration interviews, arrests take place while the immigrant is still in the
20 immigration process. While immigration interviews are a required part of most applications for
21 relief, these arrests prevent people from exercising their rights and being ultimately approved for
22 lawful status. Most of the reports of arrests are of people who entered the United States without
23 inspection, like Mr. Alva, but this classification at entry to the country is not necessarily final and
24 individuals may be eligible for waivers that permit them to regularize their immigration status.
25 However, when individuals are arrested during their immigration process, detention interferes with
26 their ability to pursue their claims and chills legal immigration by frightening people who are
27 eligible for relief from pursuing it.

28 ⁴ A true and correct copy of AILA Policy Brief: ICE Arrests at USCIS Field Offices Undermine
U.S. Immigration Processes, Jul. 2, 2025, is attached hereto as Exhibit 1.

45. Once the person has been transferred to a detention facility, the government pressures them to accept removal, both by telling the person that their case is hopeless and wait times inside detention for review will be long, and by subjecting them to conditions on par with criminal custody. The immigration court system has a recently implemented policy of unilaterally transferring venue of the case to a “detained” immigration court, often far from their attorney of record’s office and area of experience with the local immigration court bench and its practices.

46. DHS is aggressively pursuing this arrest and detention campaign at courthouses and interviews throughout the country. In New York City, for example, “ICE agents have apprehended so many people showing up for routine appointments this month that the facilities” are “overcrowded,” with “[h]undreds of migrants . . . sle[eping] on the floor or sitting upright, sometimes for days.”⁵

47. The same is true at the San Francisco Immigration Court, where Petitioner’s case for relief will go if he is successful in convincing an IJ to review and overturn the negative reasonable fear finding. In recent months, unprecedented numbers of people have been arrested and detained after attending their routine immigration hearings.⁶

48. DHS’s aggressive tactics at courts and interviews appear to be motivated by the Administration’s imposition of a new daily quota of 3,000 ICE arrests.⁷ In part because of this campaign, ICE’s arrests of noncitizens with no criminal record have increased more than 800%

⁵ Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*, N.Y. Times, June 12, 2025, <https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html>.

⁶ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., June 12, 2025, <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>; Margaret Kadifa & Gustavo Hernandez, *Immigrants fearful as ICE Nabs at least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, <https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/>; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

⁷ Ted Hesson & Kristina Cooke, *ICE’s Tactics Draw Criticism as it Triples Daily Arrest Targets*, Reuters, June 10, 2025, <https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/>; Alayna Alvarez & Brittany Gibson, *ICE Ramps Up Immigration Arrests in Courthouses Across the U.S.*, Axios, June 12, 2025, <https://www.axios.com/2025/06/12/ice-courthouse-arrests-trump>.

1 since before January.⁸

2 49. The new courthouse and interview arrest and detention campaign is a sharp break
3 from DHS's previous practices, which sought to avoid chilling legal immigration and when
4 immigration officers avoided arrests at courthouses given the concern that such enforcement
5 actions would deter people from appearing for their proceedings and complying with court orders.⁹

6 50. In fact, DHS officials previously permitted ICE officers to conduct "civil
7 immigration enforcement action . . . in or near a courthouse" only in highly limited
8 circumstances, such as when "it involves a national security threat," or "there is an imminent risk
9 of death, violence, or physical harm." These limitations were necessary, DHS explained, because
10 "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals'
11 access to courthouses, and, as a result, impair the fair administration of justice."¹⁰ The new policy
12 includes no such limiting language.¹¹

13 51. The government's new campaign is also a significant shift from previous DHS
14 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
15 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
16 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

17 **C. Petitioner is Unlawfully Arrested and Detained Pursuant to DHS's New Policy.**

18 52. Mr. Alva fled Guatemala after he was threatened multiple times, including with a
19 firearm and a machete, by a man who wanted to continue having his way with Mr. Alva's young
20 daughter. When Mr. Alva confronted that man, who is a wealthy landowner in their community,

21 ⁸ José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under*
22 *Trump*, The Guardian, June 14, 2025, [https://www.theguardian.com/us-news/2025/jun/14/ice-](https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures)
23 [arrests-migrants-trump-figures](https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures).

24 ⁹ Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE Is Seeking to Ramp Up*
25 *Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
26 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

27 ¹⁰ A true and correct copy of DHS' April 27, 2021 *Civil Immigration Enforcement Actions in or*
28 *Near Courthouses* memorandum from Tae Johnson and Troy Miller is attached hereto as Exhibit
2.9

29 ¹¹ A true and correct copy of ICE's January 21, 2025 *Interim Guidance: Civil Immigration*
30 *Enforcement Actions in or near Courthouses* memorandum from Caleb Vitello is attached hereto
31 as Exhibit 3. A true and correct copy of ICE's May 27, 2025 *Civil Immigration Enforcement*
32 *Actions In or Near Courthouses* memorandum from Todd M. Lyons is attached hereto as Exhibit
4.

1 he threatened to kill Mr. Alva and hurt his family. After Mr. Alva fled Guatemala with his
2 daughter, that man burned down Mr. Alva's family home, forcing Mr. Alva's wife and son to flee
3 as well. These events, plus abuse Mr. Alva suffered as a minor, give rise to a cognizable claim for
4 withholding of removal and protection under CAT.

5 53. When Mr. Alva entered the United States, he and his daughter were processed by
6 Border Patrol and ICE and after a brief detention, he was released on an order of supervision, with
7 which he always complied. In granting his supervised release, DHS determined that he posed little
8 if any risk of flight or danger to the community.

9 54. Since 2018, when DHS released Mr. Alva, they instructed him to check in at the
10 San Francisco ICE office around 10 different times. He did as instructed and has fully complied
11 with supervision requirements.

12 55. Based on his order of supervision, he was granted employment authorization and
13 has been working since then. He has no criminal history.

14 56. In 2023, undersigned counsel helped Mr. Alva to request a RFI to start his claim
15 for relief from removal.

16 57. On Aug. 6, 2025, he and his counsel attended his scheduled RFI together. They
17 appeared, as directed, at the ICE ERO offices at 630 Sansome Street, suite 590, and were taken to
18 an office on the 6th floor where Mr. Alva testified over speaker phone to a remote asylum officer
19 about his fear of returning to Guatemala. During the entirety of the RFI, an armed ICE guard sat
20 outside the office, watching him through a narrow glass panel.

21 58. Mr. Alva and his attorney were allowed to leave after the RFI concluded to eat
22 lunch and returned one hour later to ICE offices, as instructed. After being taken to the 6th floor
23 again, Mr. Alva was informed by a new asylum officer found he has no reasonable fear of returning
24 to Guatemala and that he could seek IJ review from ICE detention. Thereafter, an ICE officer
25 wearing latex gloves entered the office where Mr. Alva had testified and told his attorney to leave
26 the room. Mr. Alva was detained by ICE and now sits in locked confinement at 630 Sansome
27 Street in San Francisco.

28 59. Because Mr. Alva has never been determined to be a flight risk nor a danger to
the community, his ongoing detention is not related to either of the permissible justifications for

1 civil immigration detention. His confinement does not further any legitimate government interest.

2 ***D. As a Result of this Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable***
 3 ***Harm.***

4 60. Mr. Alva is being deprived of his liberty without any permissible justification. The
 5 government previously released him under an order of supervision because he did not pose
 6 sufficient risk of flight or danger to the community to warrant detention.

7 61. None of that has changed. He has no criminal record, and there is no basis to believe
 8 that he poses any public safety risk. Nor is he, who was arrested *while appearing for his*
 9 *immigration interview*, conceivably a flight risk. To the contrary, he has appeared for all of his
 10 supervision check-ins.

11 62. Detention will pose him irreparable harm. It will interfere with his ability to work
 12 with his attorney to convince an IJ to review and overturn the negative reasonable fear finding,
 13 which would have fatal consequences for his claim for relief from removal. His continued
 14 detention will greatly complicate his ability to present his withholding and CAT claims, if he's
 15 successful at IJ review, and to find legal assistance for the remainder of his case. Immigration
 16 proceedings aside, it will pose a compounding psychological burden, in addition to whatever
 17 physical hardships he has to endure from prison conditions. It will deprive him of his livelihood
 18 and ability to support his wife and two young children. His family's deep despair over his sudden
 19 arrest has already negatively impacted Mr. Alva's mental health. Continued detention deprives
 20 Mr. Alva of his community, his church, and his life as he knows it.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

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

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

25 63. Mr. Alva repeats and re-alleges the allegations contained in the preceding
 26 paragraphs of this Petition as if fully set forth herein.

27 64. The Due Process Clause of the Fifth Amendment protects all "person[s]" from
 28 deprivation 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

1 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

2 65. Immigration detention is constitutionally permissible only when it furthers the
3 government’s legitimate goals of ensuring the noncitizen’s appearance during removal
4 proceedings and preventing danger to the community. *See id.*

5 66. Mr. Alva is not a flight risk or danger to the community. Respondents’ detention of
6 Mr. Alva is therefore unjustified and unlawful. Accordingly, Mr. Alva is being detained in
7 violation of the Due Process Clause of the Fifth Amendment.

8 67. Moreover, Mr. Alva’s detention is punitive as it bears no “reasonable relation” to
9 any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly
10 “nonpunitive in purpose and effect”). Here, the purpose of Mr. Alva’s detention appears to be “not
11 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for
12 other reasons”—namely, to meet newly-imposed DHS quotas and pressure Mr. Alva into forfeiting
13 his rights to IJ review and to pursue relief from removal in favor of accepting a speedy departure
14 from the United States. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

15 16 17 **SECOND CLAIM FOR RELIEF**

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

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

20 68. Mr. Alva repeats and re-alleges the allegations contained in the preceding
21 paragraphs of this Petition as if fully set forth herein.

22 69. As part of the liberty protected by the Due Process Clause, Mr. Alva has a weighty
23 liberty interest in avoiding re-incarceration after his initial release from DHS custody. *See Young*
24 *v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973);
25 *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70
26 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an
27 IJ’s bond determination).

28 70. Accordingly, “[i]n the context of immigration detention, it is well-settled that due

1 process requires adequate procedural protections to ensure that the government's asserted
2 justification for physical confinement outweighs the individual's constitutionally protected
3 interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*, 494
4 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State
5 deprives a person of liberty or property."). In the immigration context, for such hearings to
6 comply with due process, the government must bear the burden to demonstrate, by clear and
7 convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh*
8 *v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785,
9 786 (9th Cir. 2024).

10 71. Mr. Alva's re-detention without a pre-deprivation hearing violated due process.
11 Six years after deciding to release Mr. Alva from custody under an order of supervision,
12 Respondents re-detained him with no notice, no explanation of the justification of his re-
13 detention, and no opportunity to contest his re-detention before a neutral adjudicator before being
14 taken into custody.

15 72. Mr. Alva has a profound personal interest in his liberty. Because he received no
16 procedural protections, the risk of erroneous deprivation is high, and the government has no
17 legitimate interest in detaining him without a hearing. Bond hearings are conducted as a matter
18 of course in immigration proceedings, and nothing in Mr. Alva's record suggests that he would
19 abscond or endanger the community before a bond hearing could be carried out. *See, e.g., Jorge*
20 *M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020
21 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that delay in
22 scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of
23 petitioner's strong family ties and his continued employment during the pandemic as an essential
24 agricultural worker").

25 **PRAYER FOR RELIEF**

26 Petitioner respectfully requests that this Court:

- 27 1. Assume jurisdiction over this matter;
- 28

2. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Alva from custody;
3. Declare that Mr. Alva's arrest and detention violates the Due Process Clause of the Fifth Amendment;
4. Enjoin Respondents from transferring Mr. Alva outside this District or deporting Mr. Alva pending these proceedings;
5. Enjoin Respondents from re-detaining Mr. Alva unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that he is a flight risk or danger to the community;
6. Award Mr. Alva his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
7. Grant such further relief as the Court deems just and proper.

Date: August 7, 2025

Respectfully Submitted,

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