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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 Carolina ORTIZ CALDERON

16 Petitioner,

17 v.

18 POLLY KAISER, Acting Field Office Director
19 of the San Francisco Immigration and Customs
20 Enforcement Office; TODD LYONS, Acting
21 Director of United States Immigration and
22 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,

23 Respondents.
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25
26
27
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CASE NO. 3:25-cv-6695

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1
2 1. Carolina Ortiz Calderon (“Petitioner”) is an asylum seeker who fled Colombia.
3 After Petitioner arrived in the United States on June 3, 2024, federal agents briefly detained her,
4 determined that she was not a flight risk or danger to the community, and released her on her own
5 recognizance with a notice to appear for removal proceedings in immigration court. Since then,
6 Petitioner has done everything the government asked her to do: she has diligently attended every
7 immigration court hearing and filed an application for asylum within the one-year filing deadline.
8 She has no criminal history anywhere in the world.

9 2. Today, August 7, 2025, Petitioner again did what the government told her to do:
10 She went to San Francisco Immigration Court for a routine hearing before Immigration Judge
11 (“IJ”) Patrick O’Brien, where the government orally moved to dismiss his case. On information
12 and belief, the government did so for the purpose of placing her in so-called “expedited removal”
13 proceedings. IJ O’Brien did not grant the motion to dismiss. Instead, the judge gave Petitioner time
14 to respond and set a further hearing for September 4, 2025, ominously adding, “there’s a good
15 possibility that that hearing is not going to happen,” and “I’m not sure whether I’ll see you again,
16 but I hope I do.”

17 3. Indeed, minutes after Petitioner exited the courtroom, a group of roughly three
18 Department of Homeland Security (“DHS”) agents arrested her before she could leave the
19 courthouse, violently separating her from her friend who was accompanying her in court. They did
20 not present a warrant, and told her that her case had been dismissed by the judge, even though it
21 was not.

22 4. This arrest is part of a new, nationwide DHS strategy of sweeping up people who
23 attend their immigration court hearings, detaining them, and unlawfully seeking to re-route them
24 to fast-track deportations. Since mid-May, DHS has implemented a coordinated practice of
25 leveraging immigration detention to strip people like Petitioner of their substantive and procedural
26 rights and pressure them into deportation. Immigration detention is civil, and thus is permissible
27 for only two reasons: to ensure a noncitizen’s appearance at immigration hearings and to prevent
28 danger to the community. But DHS did not arrest and detain Petitioner—who demonstrably poses

1 no risk of absconding from immigration proceedings or danger to the community—for either of
2 these reasons. Instead, as part of its broader enforcement campaign, DHS detained Petitioner to
3 strip her of her procedural rights, force her to forfeit her application for relief, and pressure her
4 into fast-track removal.

5 5. In immigration court, noncitizens have the right to pursue claims for relief from
6 removal (including asylum), be represented by counsel, gather and present evidence, and pursue
7 appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a
8 noncitizen’s case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a,
9 to cursory proceedings under 8 U.S.C. § 1225(b)(1) called “expedited removal,” where the
10 procedural protections and opportunities to pursue relief from removal built into regular
11 immigration-court proceedings do not apply.

12 6. Petitioner’s arrest and detention are causing her tremendous and ongoing harm. She
13 has been torn away from her family and her community.

14 7. The Constitution protects Petitioner—and every other person present in this
15 country—from arbitrary deprivations of her liberty, and guarantees her due process of law. The
16 government’s power over immigration is broad, but as the Supreme Court has declared, it “is
17 subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
18 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due
19 Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

20 8. Petitioner respectfully seeks a writ of habeas corpus ordering the government to
21 immediately release her from her ongoing, unlawful detention, prohibiting her re-arrest without a
22 hearing to contest that re-arrest before a neutral decisionmaker, and prohibiting the government
23 from placing her in expedited removal proceedings, as she is plainly exempt from the criteria. In
24 addition, to preserve this Court’s jurisdiction, Petitioner also requests that this Court order the
25 government not to transfer her outside of the District or deport her for the duration of this
26 proceeding.

27
28 **JURISDICTION AND VENUE**

9. 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).

10. 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

11. Petitioner Carolina Ortiz Calderon is a 25-year-old woman resident of San Jose. She has no criminal history and is pursuing asylum based on a fear of persecution in Colombia, which, if approved, would give her a permanent residency and, eventually, U.S. citizenship. She is presently in physical custody of Immigration and Customs Enforcement (ICE) at 630 Sansome Street in San Francisco, California.

12. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office. She is the physical custodian of Petitioner. 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 Petitioner. Respondent Kaiser maintains an office and regularly conducts business in this district. Respondent Kaiser is sued in her official capacity.

13. 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. Respondent Lyons is sued in his official capacity.

14. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and

1 remove the Petitioner. Respondent Noem is sued in her official capacity.

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

8 EXHAUSTION

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

16 LEGAL BACKGROUND

17 *A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and* 18 *Detention.*

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

23 18. *First*, “[t]he touchstone of due process is protection of the individual against
24 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
25 exercise of power without any reasonable justification in the service of a legitimate government
26 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

27 19. These protections extend to noncitizens facing detention, as “[i]n our society
28 liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

1 *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from
2 imprisonment—from government custody, detention, or other forms of physical restraint—lies
3 at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

10 21. *Second*, the procedural component of the Due Process Clause prohibits the
11 government from imposing even permissible physical restraints without adequate procedural
12 safeguards.

13 22. Generally, “the Constitution requires some kind of a hearing *before* the State
14 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so
15 even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683
16 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional
17 supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
18 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

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

25 24. This reasoning applies with equal if not greater force to people released from civil
26 immigration detention at the border, like Petitioner. After all, noncitizens living in the United
27 States like Petitioner have a protected liberty interest in their ongoing freedom from confinement.
28 *See Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil context [of immigration detention], [the]

1 liberty interest [of noncitizens released from custody] is arguably greater than the interest of
2 parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

3 ***B. Due Process and the Immigration and Nationality Act Protect Noncitizens like Petitioner***
4 ***from Summary Removal Without a Hearing.***

5 25. Deportation, like detention, constitutes a deprivation of liberty protected by the
6 Due Process Clause. As the Supreme Court has held, a noncitizen’s interest in deportation
7 proceedings “is, without question, a weighty one” because “[s]he stands to lose the right ‘to stay
8 and live and work in this land of freedom.’” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting
9 *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

10 26. Indeed, modern-day removal proceedings developed in response to a series of
11 Supreme Court decisions recognizing that the deportation of noncitizens already in the United
12 States without a hearing before a neutral arbiter would violate due process. *See Yamataya v.*
13 *Fisher*, 189 U.S. 86, 101 (1903) (construing immigration statutes to require hearing before
14 deportation to “bring them into harmony with the constitution”); *Wong Yang Sung v. McGrath*,
15 339 U.S. 33, 49, *modified*, 339 U.S. 908 (1950) (same, reasoning that “the difficulty with any
16 argument premised on the proposition that the deportation statute does not require a hearing is
17 that, without such hearing, there would be no constitutional authority for deportation”).

18 27. Removal proceedings under Section 240 of the Immigration and Nationality Act
19 (“Section 240” proceedings) accordingly provide important substantive and procedural
20 protections. Noncitizens in Section 240 proceedings, like Petitioner when she was arrested, are
21 entitled to full hearings in immigration court before immigration authorities can remove them. 8
22 U.S.C. § 1229a. They are statutorily afforded rights and procedural protections, including the right
23 to be represented by counsel of their choice, and the right to present and confront evidence. *See id.*
24 § 1229a(4). They are also entitled to administrative appellate review at the Board of Immigration
25 Appeals and further judicial review in the federal Courts of Appeals. *See* 8 C.F.R. § 1003.1(b)
26 (Board of Immigration Appeals); 8 U.S.C. § 1252(a)(5) (Courts of Appeals).

27 28. Expedited removal is a form of summary removal historically applicable only to
28 recently-arrived noncitizens that sharply limits the rights and process available in Section 240

1 proceedings.

2 29. In contrast to Section 240 proceedings, expedited removal takes place almost
3 entirely outside of immigration court: A person subject to expedited removal can be removed by
4 an immigration officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). At this
5 stage, the person is typically detained and unable to access counsel. In effect, immigration
6 enforcement agents from ICE or Border Patrol serve as judge, jury, and jailer; they detain the
7 noncitizen, unilaterally determine whether they are subject to the expedited removal statute, and
8 unilaterally order them removed.

9 30. When a person in expedited removal expresses a fear of persecution or intent to
10 seek asylum, the immigration officer refers the person to an asylum officer for a credible fear
11 interview. 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer finds that the person has a credible
12 fear, they are permitted to seek to apply for asylum through Section 240 proceedings. *Id.*
13 § 1225(b)(1)(B)(ii). However, when an asylum officer determines that someone has not
14 established a credible fear, the officer must order them removed “without further hearing or
15 review,” subject to highly limited review by an immigration judge that the person “does not have
16 a credible fear of persecution.” *Id.* § 1225(b)(1)(B)(iii).

17 **FACTUAL ALLEGATIONS**

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

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

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

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

6 34. In 2019, at the direction of President Trump, DHS published a Federal Register
7 Notice authorizing the application of expedited removal to certain noncitizens arrested anywhere
8 in the country who could not affirmatively show that they had been continuously present for two
9 years. *See* Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The
10 District Court for the District of Columbia entered a preliminary injunction preventing the rule
11 from taking effect, which the D.C. Circuit later vacated. *Make the Rd. New York v. McAleenan*,
12 405 F. Supp. 3d 1, 11 (D.D.C. 2019), *vacated sub nom. Make the Rd. New York v. Wolf*, 962 F.3d
13 612, 618 (D.C. Cir. 2020).

14 35. In 2021, President Biden directed the DHS Secretary to review the rule expanding
15 expedited removal and consider whether it comported with legal and constitutional requirements,
16 including due process. In 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23,
17 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

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

23 37. This state of affairs changed drastically on January 20, 2025, the day that President
24 Trump took office for his second term. That day, President Trump signed Executive Order 14159,
25 “Protecting the American People Against Invasion,” the purpose of which was “to faithfully
26 execute the immigration laws against all inadmissible and removable aliens, particularly those
27 aliens who threaten the safety or security of the American people.” Exec. Order No. 14,159, 90
28 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take

1 various actions “to ensure the efficient and expedited removal of aliens from the United States.”

2 *Id.*

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

7 39. On January 23, 2025, the Acting Secretary of Homeland Security issued a
8 memorandum “provid[ing] guidance regarding how to exercise enforcement discretion in
9 implementing” the new expedited-removal rule. The guidance directed federal immigration
10 officers to “consider . . . whether to apply expedited removal” to “any alien DHS is aware of who
11 is amenable to expedited removal but to whom expedited removal has not been applied.” As part
12 of that process, the guidance encourages officers to “take steps to terminate any ongoing removal
13 proceeding and/or any active parole status.”¹

14 40. Under the administration’s expanded approach to expedited removal, hundreds of
15 thousands of noncitizens who have lived in the country for less than two years are at imminent risk
16 of summary removal without any hearing, meaningful process, access to counsel, or judicial
17 review—regardless of the strength of their ties to the United States.

18 ***B. To Place More People in Expedited Removal, DHS Undertakes New Campaign of***
19 ***Courthouse Arrests and Detention.***

20 41. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
21 targeting people who are in regular removal proceedings in immigration court, many of whom
22 have pending applications for asylum or other relief. This “coordinated operation” is “aimed at
23 dramatically accelerating deportations” by arresting people at the courthouse and placing them
24 into expedited removal.²

25 ¹ Benamine C. Huffman, *Guidance Regarding How to Exercise Enforcement Discretion*, Dep’t
26 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.

27 ² Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic*
28 *in Trump’s Deportation Push*, Wash. Post, May 23, 2025,
<https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;

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

8 43. Even though individuals are supposed to have ten days to respond to a motion to
9 dismiss, some IJs have granted the government’s oral motion on the spot and immediately
10 dismissed the case. This is consistent with recent instructions from the Department of Justice to
11 immigration judges stating that they may allow the government to move to dismiss cases orally,
12 in court, without a written motion, and to decide that motion without allowing the noncitizen an
13 opportunity to file a response.

14 44. Despite these instructions, some IJs have still asked DHS to re-file the motion as a
15 written motion and continued proceedings to allow individuals to file their response. A smaller
16 group of IJs have expressly denied the motion to dismiss on the record or in a written order.

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

23 46. Once the person has been transferred to a detention facility, the government places
24 the individual in expedited removal. In cases in which the IJ did not dismiss the person’s removal
25 proceedings, DHS attorneys unilaterally transfer venue of the case to a “detained” immigration
26 court, where they renew their motions to dismiss—again with the goal of putting the person in

27 *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up*
28 *Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,

<https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

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1 expedited removal.

2 47. DHS is aggressively pursuing this arrest and detention campaign at courthouses
3 throughout the country. In New York City, for example, “ICE agents have apprehended so many
4 people showing up for routine appointments this month that the facilities” are “overcrowded,” with
5 “[h]undreds of migrants . . . sle[eping] on the floor or sitting upright, sometimes for days.”³

6 48. The same is true at the San Francisco Immigration Court, where Petitioner was
7 arrested. Over the past two months, dozens of people have been arrested and detained after
8 attending their routine immigration hearings.⁴

9 49. DHS’s aggressive tactics at immigration courts appear to be motivated by the
10 Administration’s imposition of a new daily quota of 3,000 ICE arrests.⁵ In part as a result of this
11 campaign, ICE’s arrests of noncitizens with no criminal record have increased more than 800%
12 since before January.⁶

13 50. The new courthouse arrest and detention campaign is a sharp break from DHS’s
14 previous practices, when immigration officers avoided arrests at courthouses given the concern
15 that such enforcement actions would deter people from appearing for their proceedings and
16 complying with court orders.⁷

17 ³ Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*,
18 N.Y. Times, June 12, 2025, <https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html>.

19 ⁴ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron.,
20 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,
21 <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

22 ⁵ Ted Hesson & Kristina Cooke, *ICE’s Tactics Draw Criticism as it Triples Daily Arrest Targets*,
23 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,
24 <https://www.axios.com/2025/06/12/ice-courthouse-arrests-trump>.

25 ⁶ José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, <https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures>.

26 ⁷ Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
27 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

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

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

12 ***C. Petitioner is Unlawfully Arrested and Detained Pursuant to DHS’s New Policy.***

13 53. Petitioner is a 25-year-old citizen of Colombia.

14 54. In mid-2024, Petitioner fled to the United States. She was initially arrested by DHS
15 officers, but was released on her own recognizance with a notice to appear for removal
16 proceedings. In granting her release, DHS determined that she posed little if any risk of flight or
17 danger to the community.

18 55. Petitioner thereafter moved to San Jose, California. On information and belief, she
19 informed the immigration court about her change of address. She attended her first immigration
20 court hearing in the San Francisco Immigration Court today.

21 56. Less than one year after her arrival in the United States, Petitioner applied for
22 asylum, withholding of removal, and relief under the Convention Against Torture.

23 57. Ever since Petitioner entered the country, she has fully complied with court and
24 supervision requirements. She has no criminal history.

25 58. On August 7, 2025, Petitioner appeared at San Francisco Immigration Court for her
26 first master calendar hearing in immigration court. She appeared pro se, without the representation
27 of counsel.

28 59. The DHS attorney orally moved to dismiss Petitioner’s case.

1 60. Petitioner's opposed the motion. The IJ gave Petitioner time to file a response and
2 continued the hearing until September 4, 2025. Although the IJ had continued the hearing, he
3 told petitioner "there's a good possibility that that hearing is not going to happen," and "I'm not
4 sure whether I'll see you again, but I hope I do"—suggesting that he had received notice that she
5 would be arrested pursuant to ICE's new tactics. The IJ stated that he believed Petitioner's case
6 was being dismissed for the purpose of putting her in expedited removal. Petitioner did not
7 receive notice that she would be arrested and had no opportunity to oppose her re-arrest or re-
8 detention on the record.

9 61. When Petitioner left the courtroom, she was arrested by ICE agents. On information
10 and belief, the agents did not have a warrant, and told her that her case had been dismissed by the
11 judge, even though it was not.

12 62. Because Petitioner has never been determined to be a flight risk or danger to the
13 community, her detention is not related to either of the permissible justifications for civil
14 immigration litigation. Her detention does not further any legitimate government interest.

15 ***D. As a Result of Her Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable***
16 ***Harm.***

17 63. Petitioner is being deprived of her liberty without any permissible justification. The
18 government previously released her on her own recognizance because she did not pose sufficient
19 risk of flight or danger to the community to warrant detention.

20 64. None of that has changed. Petitioner has no criminal record, and there is no basis
21 to believe that she poses any public-safety risk. Nor is Petitioner, who was arrested *while*
22 *appearing in court for her immigration case*, conceivably a flight risk. To the contrary, Petitioner
23 appeared for every immigration court hearing and other requirement.

24 65. Petitioner is now separated from her friends and family. She suffers from severe
25 medical conditions, including:

- 26 a. She suffers from Polycystic Ovary Syndrome and recently underwent surgery,
27 which continues to be monitored, requiring medication and treatment to prevent
28

1 recurrence, hemorrhaging, and infertility. She is currently in ICE custody; her
2 medication is at home.

3 b. She experiences heavy bleeding and significant inflammation.

4 c. She also suffers from severe depression and anxiety, for which she has received
5 treatment.

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

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

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

10 66. Petitioner repeats and re-alleges the allegations contained in the preceding
11 paragraphs of this Petition as if fully set forth herein.

12 67. The Due Process Clause of the Fifth Amendment protects all “person[s]” from
13 deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from
14 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
15 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

16 68. Immigration detention is constitutionally permissible only when it furthers the
17 government’s legitimate goals of ensuring the noncitizen’s appearance during removal
18 proceedings and preventing danger to the community. *See id.*

19 69. Petitioner is not a flight risk or danger to the community. Respondents’ detention
20 of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in
21 violation of the Due Process Clause of the Fifth Amendment.

22 70. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation” to
23 any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly
24 “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention appears to be “not
25 to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for
26 other reasons”—namely, to meet newly-imposed DHS quotas and transfer immigration court
27 venue away from an IJ who refused to facilitate DHS’s new expedited removal scheme. *Demore*,
28 538 U.S. at 532–33 (Kennedy, J., concurring).

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Detention)

71. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

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

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

74. Petitioner’s re-detention without a pre-deprivation hearing violated due process. Over one year after deciding to release Petitioner from custody on her own recognizance, Respondents re-detained Petitioner with no notice, no explanation of the justification of her re-detention, and no opportunity to contest her re-detention before a neutral adjudicator before being taken into custody.

75. Petitioner has a profound personal interest in her liberty. Because she received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a

1 matter of course in immigration proceedings, and nothing in Petitioner's record suggested that
 2 she would abscond or endanger the community before a bond hearing could be carried out. *See*,
 3 e.g., *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v.*
 4 *Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that
 5 delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of
 6 petitioner's strong family ties and his continued employment during the pandemic as an essential
 7 agricultural worker").

8 **THIRD CLAIM FOR RELIEF**

9 **Violation of the Fourth Amendment to the United States Constitution**

10 **(Unlawful Arrest)**

11 76. Petitioner repeats and re-alleges the allegations contained in the preceding
 12 paragraphs of this Petition as if fully set forth herein.

13 77. The Fourth Amendment protects the right of persons present in the United States to
 14 be free from unreasonable seizures by government officials.

15 78. As a corollary to that right, the Fourth Amendment prohibits government officials
 16 from conducting repeated arrests on the same probable cause.

17 It is axiomatic that seizures have purposes. When those purposes are spent, further seizure
 18 is unreasonable. . . . [T]he primary purpose of an arrest is to ensure the arrestee appears
 19 to answer charges. . . . Once the arrestee appears before the court, the purpose of the initial
 seizure has been accomplished. Further seizure requires a court order or new cause; the
 original probable cause determination is no justification.

20 *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (cleaned up); *see also United States v.*
 21 *Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent
 22 some compelling justification, the repeated seizure of a person on the same probable cause
 23 cannot, by any standard, be regarded as reasonable under the Fourth Amendment.").

24 79. In the immigration context, this prohibition means that a person who immigration
 25 authorities released from initial custody cannot be re-arrested "solely on the ground that he is
 26 subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*,
 27 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom., Saravia for A.H. v. Sessions*, 905
 28

1 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result
2 in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir.
3 1971).

4 80. DHS agents arrested Petitioner in 2024 after she entered the United States, charged
5 her with a violation of civil immigration law, and released her on his own recognizance with a
6 notice to appear in immigration court. Petitioner appeared in immigration court as instructed,
7 answered the charges, and diligently pursued an application for relief from removal.

8 81. DHS re-arrested Petitioner on August 7, 2025, based on nothing more than the 2024
9 civil charge of violating immigration law for which she had *just appeared* in court. Petitioner had
10 not engaged in any conduct in the intervening time that made her a flight risk or danger to the
11 community. No material change in circumstances justified Petitioner’s re-arrest.

12 82. Petitioner’s re-arrest and detention by Respondents after she had already appeared
13 in court on his civil immigration charge and absent any material change in circumstances is thus
14 an unreasonable seizure in violation of the Fourth Amendment.

15 **FOURTH CLAIM FOR RELIEF**

16 **Violation of the Administrative Procedure Act**

17 83. Petitioner repeats and re-alleges the allegations contained in the preceding
18 paragraphs of this Petition as if fully set forth herein.

19 84. The Administrative Procedure Act prohibits federal action that is “in excess of
20 statutory jurisdiction, authority or limitations, or short of statutory right,” 5 U.S.C. § 706(2)(C),
21 and “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” *id.*
22 § 706(2)(A).

23 85. The government’s policy targeting people attending their immigration hearings at
24 immigration court for arrest violates the longstanding common-law privilege against civil arrests
25 in and around courthouses. That privilege extends to parties, witnesses, and all people attending
26 the courts on business.

27 86. Congress did not displace this privilege when it enacted the Immigration and
28 Nationality Act, and the privilege was incorporated as a limit on ICE’s arrest authority. The

1 government's courthouse arrest policy therefore is in excess of statutory authority in violation of
2 the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

3 87. The policy is also arbitrary and capricious, in violation of 5 U.S.C. § 706(2)(A).

4 88. The government has provided no reasoned or adequate explanation for the policy,
5 which is a dramatic shift from recent and longstanding agency policy and practice.

6 89. Additionally, in adopting the policy, the government failed to adequately consider
7 all relevant factors and crucial aspects of the issue. The policy will deter individuals from
8 appearing as parties and witnesses at immigration and other judicial proceedings, preventing the
9 adjudication of meritorious claims, impeding the administration of justice, and hindering
10 cooperation with law enforcement.

11 90. The policy is also in excess of the agency's authority, and arbitrary and capricious,
12 because it violates the agency's own regulations making clear that the government cannot
13 terminate a person's Section 240 proceedings absent a showing that the "[c]ircumstances of the
14 case have changed after the notice to appear was issued." 8 C.F.R. § 239.2(a)(7), (c); *see United*
15 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

16 91. Petitioner's arrest and detention pursuant to the government's policy is a final
17 agency action that violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

18 **FIFTH CLAIM FOR RELIEF**

19 **Violation of the First and Fifth Amendments to the United States Constitution**

20 **(Right to Access Courts and Petition for Redress)**

21 92. Petitioner repeats and re-alleges the allegations contained in the preceding
22 paragraphs of this Petition as if fully set forth herein.

23 93. The First and Fifth Amendments to the United States Constitution guarantee the
24 rights to access the courts and to petition for redress of grievances, which includes the right to
25 participate as a party or witness in judicial and administrative proceedings.

26 94. The Constitution as a corollary prohibits systemic official action that bans or
27 obstructs meaningful access to the courts, including the filing or presenting of legal claims. *See*
28 *Christopher v. Harbury*, 536 U.S. 403 (2002).

1 95. Petitioner's arrest and detention have interfered with her ability to access
2 immigration court and participate in his immigration proceedings—including pursuing his
3 applications for asylum, withholding of removal, and relief under the Convention Against Torture.

4 96. The government's arrest of Petitioner therefore deprived her of his First and Fifth
5 Amendment rights to meaningfully access court and to petition for redress of grievances.

6 97. Petitioner has no adequate remedy at law.

7 **SIXTH CLAIM FOR RELIEF**

8 **Violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 706**

9 **(Dismissal/Expedited Removal)**

10 98. Petitioner repeats and re-alleges the allegations contained in the preceding
11 paragraphs of this Petition as if fully set forth herein.

12 99. 8 U.S.C. § 1225(b)(1) covers the “[i]nspection of aliens arriving in the United States
13 and certain other aliens who have not been admitted or paroled.” 8 U.S.C. § 1225(b)(1). Section
14 1225(b)(1)(A)(iii)(II) further clarifies that “[a]n alien described in this clause is an alien who is not
15 described in subparagraph (F), who has not ... been physically present in the United States
16 continuously for the 2-year period.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

17 100. Dismissal of Petitioner's 240 proceedings case for the purpose of placing her in
18 expedited removal would exceed statutory authority and be contrary to the Fifth Amendment's
19 guarantee of due process in violation of 5 U.S.C. § 706(2)(A)-(B).

20 101. Placing Petitioner in expedited removal proceedings would be contrary to the Fifth
21 Amendment's guarantee of due process in violation of 5 U.S.C. § 706(2)(A)-(B).

22 **SEVENTH CLAIM FOR RELIEF**

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

24 **(Procedural Due Process—Dismissal/Expedited Removal)**

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

27 103. Petitioner has a liberty interest in protection from deportation. *Landon v. Plasencia*,
28 459 U.S. 21, 34 (1982) (a noncitizen's interest in deportation proceedings “is, without question, a

weighty one” because “she stands to lose the right ‘to stay and live and work in this land of freedom’” (quoting *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 377 n.32 (C.D. Cal. 1982) (“It is well-settled that the right to a deportation hearing is of constitutional scope because deportation ‘involves issues basic to human liberty and happiness and, in the present upheavals in lands to which aliens may be returned perhaps to life itself.’”) (quoting *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50 (1950)). Accordingly, “[a] person who faces deportation is entitled under our constitution to a full and fair deportation hearing,” *Hartooni v. I.N.S.*, 21 F.3d 336, 339–40 (9th Cir. 1994), because “without such a hearing, there would be no constitutional authority for deportation.” *Wong Yang Sung*, 339 U.S. at 49.

104. Depriving Petitioner of her liberty interest is unconstitutional under the Fifth Amendment unless it is “accompanied by sufficient procedural protections.” See *Johnson v. Ryan*, 55D F.4th 1167, 1179–80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

105. Dismissing Petitioner’s Section 240 proceedings for the purpose of placing her in expedited removal would violate due process by failing to provide adequate procedural protections to her weighty interests.

106. Placing Petitioner in expedited removal would violate due process by failing to provide adequate procedural protections to her weighty interests.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
3. Declare that Petitioner’s arrest and detention violate the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the First Amendment, and the Administrative Procedure Act;
4. Declare that dismissing Petitioner’s Section 240 proceedings would violate the Due Process Clause of the Fifth Amendment;

- 1 5. Declare that placing Petitioner in expedited removal proceedings would violate the
- 2 Due Process Clause of the Fifth Amendment;
- 3 6. Enjoin Respondents from transferring Petitioner outside this District or deporting
- 4 Petitioner pending these proceedings;
- 5 7. Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered
- 6 at a custody hearing before a neutral arbiter in which the government bears the
- 7 burden of proving, by clear and convincing evidence, that Petitioner is a flight risk
- 8 or danger to the community;
- 9 8. Order that Respondents may not dismiss Petitioner's Section 240 proceedings;
- 10 9. Order that Respondents may not place Petitioner in expedited removal proceedings
- 11 or remove Petitioner except based on a final, executable removal order issued
- 12 through Section 240 removal proceedings;
- 13 10. Award Petitioner his costs and reasonable attorneys' fees in this action as provided
- 14 for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 15 11. Grant such further relief as the Court deems just and proper.

16
17 Date: August 7, 2025

Respectfully Submitted,

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