Jane Lee (SBN 296021)
jane.lee@pd.cccounty.us
OFFICE OF THE PUBLIC DEFENDER
Contra Costa County
800 Ferry Street
Martinez, CA 94553
Telephone: (925) 608-9600
Facsimile: (925) 608-9610

*Attorney for Petitioner*

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF CALIFORNIA**
**FRESNO DIVISION**

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| NORWIN ALEJANDRO GARCIA BARRERA,<br><br>Petitioner,<br><br>v.<br><br>TONYA ANDREWS, Facility Administrator of Golden State Annex Detention Facility;<br><br>POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office;<br><br>TODD LYONS, Acting Director of United States Immigration and Customs Enforcement;<br><br>KRISTI NOEM, Secretary of the United States Department of Homeland Security,<br><br>PAMELA BONDI, Attorney General of the United States, acting in their official capacities,<br><br>Respondents. | CASE NO. 1:25-at-00673<br><br>**PETITION FOR WRIT OF HABEAS CORPUS** |

## INTRODUCTION

1. Petitioner Norwin Garcia Barrera ("Mr. Garcia" or "Petitioner") is a 25 year old asylum-seeker from Nicaragua. He came to the United States on or about September 9, 2022, was detained for 2 days, and paroled into the United States. Since then, he has established a life in the United States with his partner and two U.S. citizen daughters (1 years old and 2 years old). He has appeared for all of his scheduled court dates and filed for asylum on July 23, 2025. He is the sole income provider for his family who are struggling to make ends meet since he's been in immigration detention.

2. Mr. Garcia went to his scheduled master calendar hearing on July 23, 2025, where he submitted his asylum application. The Department of Homeland Security ("DHS") orally moved to dismiss his case, and, over Mr. Garcia's objection, Immigration Judge ("IJ") Nava dismissed his removal proceedings. Mr. Garcia reserved appeal. On August 10, 2025, Mr. Garcia appealed the IJ grant of dismissal to the Board of Immigration Appeals ("BIA").

3. On July 23, 2025, after his case was dismissed, Mr. Garcia exited the immigration court building. He was walking on the sidewalk when several masked men, armed, and in tactical gear approached him and pointed their rifles at him. He asked what was happening and they told him to "shut up," that his case was closed, he had no reason to be in the United States, and he was going to be deported. They did not show him any warrant to arrest him. He asked if he could call his wife to let her know what was happening because they have two young daughters together. The men took his phone and shut it off. He said it was ok to take him and asked that they not beat him up.

4. Immigration agents grabbed him and cuffed his wrists together and ankles together and then chained them to his waist. They put him in a van and transported him to San Francisco to be processed for detention. On July 24, 2025, Mr. Garcia was transported to Golden State Annex, a detention facility in McFarland, CA.

5. This arrest is part of a new, nationwide DHS strategy of sweeping up people who attend their immigration court hearings, detaining them, and seeking to re-route them to fast-track

deportations. Since mid-May, DHS has implemented a coordinated practice of leveraging immigration detention to strip people like Mr. Garcia of their substantive and procedural rights and pressure them into deportation. Immigration detention is civil and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. However, DHS did not arrest and detain Petitioner for either of these reasons. Petitioner demonstrably pose no risk of absconding from immigration proceedings or danger to the community. He has one arrest in December 2023 when someone called the police when he and his partner had a verbal argument, however, no charges were ever filed. He provided a document showing that no charges were filed at one of his check ins and ICE was satisfied. As part of its broader enforcement campaign, DHS detained Petitioner to strip him of his procedural rights, force him to forfeit his applications for relief, and pressure him into fast-track removal.

6. In immigration court, noncitizens have the right to pursue claims for relief from removal (including asylum), be represented by counsel, gather and present evidence, and pursue appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a noncitizen's case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to cursory proceedings under 8 U.S.C. § 1225(b)(1) called "expedited removal," where the procedural protections and opportunities to pursue relief from removal built into regular immigration-court proceedings do not apply or "detained proceedings" where he would remain detained until his case is resolved. Mr. Garcia is not subject to expedited removal, which for individuals who have been in the United States for less than 2 years.

7. Petitioner's arrest and detention have caused him tremendous and ongoing harm. He had been a political prisoner in Nicaragua where he was beaten almost daily. He has pain on his shoulders from when his arms broke in Nicaragua and takes pain medication several times a day to manage the pain. The circumstances of his immigration arrest and his subsequent detention has been extremely distressing for him as he fears being harmed and being deported to Nicaragua, a place he is seeking asylum from. Further, he is constantly worried about the well-being of his partner and daughters who have no means to support themselves. Every additional day Petitioner

spends in unlawful detention subjects him to further irreparable harm.

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

9. Petitioner respectfully seeks a writ of habeas corpus ordering the government to immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve this 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

10. 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 Fifth Amendment to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

11. 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

12. Petitioner is a 25-year-old man seeking asylum from Nicaragua. He entered the United States in September 2022 and has resided in California since that time. He was arrested outside of the Concord immigration court on July 23, 2025 after his immigration case was dismissed. He has been detained at Golden State Annex, an immigration detention center in McFarland, CA since.

13. Respondent Tonya Andrews is the Facility Administrator of Golden State Annex,

a private for-profit detention facility owned and operated by the GEO Group, Inc., that contracts with ICE to detain individuals suspected of civil immigration violations. Respondent Andrews is Petitioner's immediate physical custodian. Respondent Andrews is sued in her official capacity.

14. 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 Petitioner. Respondent Kaiser maintains an office and regularly conducts business in this district. Respondent Kaiser is sued in her official capacity.

15. 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.

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

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

## EXHAUSTION

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

## LEGAL BACKGROUND

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

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

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

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

22. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible

non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

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

24. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional 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).

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

26. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border, like Petitioner. After all, noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

## FACTUAL ALLEGATIONS

### *A. To Deport More People, DHS Undertakes New Campaign of Courthouse Arrests and Detention.*

27. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse and placing them into detained proceedings.[1]

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

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

30. Some IJs have still asked DHS to re-file the motion as a written motion and continued proceedings to allow individuals to file their response. Other IJs have expressly denied

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[1] Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, 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.

the motion to dismiss on the record or in a written order.

31. The next step of DHS's new campaign takes place outside the courtroom. ICE officers, in consultation with DHS attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator banks. When an individual exits their immigration hearings, ICE officers immediately arrest the person and detain them. Or, ICE officers are waiting outside of the court building and will stop someone on the streets, or follow them to their cars and pull them over on the road to make an arrest. ICE officers execute these arrests regardless of how the IJ rules on the government's motion to dismiss. On information and belief, they typically do not have an arrest warrant. Once the person has been transferred to a detention facility, the government places the individual in expedited removal or detained proceedings.

32. DHS is aggressively pursuing this arrest and detention campaign at courthouses 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."[2]

33. The same is true at the Concord Immigration Court, where Petitioner was arrested. Since June, individuals have been arrested and detained after attending their routine immigration hearings.[3]

34. DHS's aggressive tactics at immigration courts appear to be motivated by the

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[2] 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.

[3] Declaration of Ali John Saidi, August 12, 2025 is attached hereto as Exhibit 1; Velena Jones, *ICE detainments at Concord court trigger protests,* NBC Bay Area, June 26, 2025, https://www.nbcbayarea.com/news/local/ice-detainments-concord-court/3902275/; Kevin Ko, *ICE agents at Concord immigration courthouse confronted by protesters*, CBS News., June 10, 2025, https://www.cbsnews.com/sanfrancisco/news/ice-agents-concord-immigration-courthouse-protests/; Tony Hicks, *Protesters clash with federal agents detaining people at immigration hearings in East Bay*, ABC 7 News, June 10, 2025, https://abc7news.com/post/ice-arrests-protesters-clash-federal-agents-trying-detain-people-immigration-hearings-concord/16719162/; Thomas Lyons, *Mood is tense at Concord Immigration Court following ICE arrests*, Berkeleyside, June 12, 2025, https://www.berkeleyside.org/2025/06/12/concord-immigration-court-tension-after-ice-arrests.

Administration's imposition of a new daily quota of 3,000 ICE arrests.[4] In part as a result of this campaign, ICE's arrests of noncitizens with no criminal record have increased more than 800% since before January.[5]

35. The new courthouse arrest and detention campaign is a sharp break from DHS's previous practices, when immigration officers avoided arrests at courthouses given the concern that such enforcement actions would deter people from appearing for their proceedings and complying with court orders.[6]

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

37. The government's new campaign is also a significant shift from previous DHS practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*

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[4] 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.

[5] 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.

[6] 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.

[7] A true and correct copy of DHS' April 27, 2021 *Civil Immigration Enforcement Actions in or Near Courthouses* memorandum from Tae Johnson and Troy Miller is attached hereto as Exhibit 2.

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

*Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

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

38. Petitioner is seeking asylum in the United States from Nicaragua because of his family's opposition to the current regime. He had been a political prisoner where he was beaten almost daily. Currently, his father is in prison, his mother and one of his brothers are under house arrest. Another brother is in hiding. He came to the United States to be safe from harm and has started a family with his partner with whom he has two U.S. citizen daughters.

39. Mr. Garcia entered the United States on or about September 9, 2022 and was detained by immigration officials for 2 days. He was then paroled for a period of 2 months into the United States and told to go to his scheduled appointments. In granting him parole and not requiring that he pay bond or wear an ankle monitor, DHS determined that he posed little if any risk of flight or danger to the community.

40. Upon release from detention at the border, Petitioner went to the San Francisco ICE Field Office where he was given a phone that he used to check-in, take photos, and communicate with ICE. Sometimes he was asked to check-in in-person and he complied with those requests. Ever since Petitioner entered the country, he has fully complied with ICE check-in and communication requirements.

41. Mr. Garcia has no criminal conviction in the United States. He was arrested in December 2023 when he had a verbal argument with his partner and a passerby called the police. No charges were ever filed. He was questioned by ICE about this and was asked to get a document showing that no charges were filed. He did so and ICE was satisfied with it.

42. His Notice to Appear was issued on February 27, 2023 and he was told his first court hearing will be on September 16, 2024. He received a notice that the hearing was cancelled and rescheduled to February 19, 2025. Mr. Garcia attended that hearing where he was given another hearing date for July 23, 2025.

43. On July 23, 2025, Petitioner appeared at Concord Immigration Court for a master

calendar hearing before IJ Nava. Petitioner did not have an attorney but had a brief conversation with the volunteer Attorney of the Day ("AOD").

44. IJ Nava accepted Petitioner's Form I-589 Application for Asylum, Withholding, and relief under the Convention Against Torture and was about to set his case for a hearing on the merits when DHS made an oral Motion to Dismiss.

45. Petitioner objected to DHS's motion to dismiss as he wanted his case asylum case heard by the IJ. IJ Nava stated that he filed is asylum application almost 3 years after his last entry into the United States and he may not be eligible for asylum. Petitioner tried to explain his circumstances and how he is the sole financial provider for his family and how he has two daughters born during this period. He is still eligible for withholding of removal even if he cannot overcome the one-year filing deadline. Regardless of his circumstances and desire to move forward with his case, IJ Nava granted DHS's motion to dismiss.

46. Petitioner left the court building and was walking on the street when several men who were masked and armed approached him and pointed their rifles are him. He asked what was happening and they told him to "shut up." They told him that he no longer has a case, that he does not have a reason to be in the United States, and he will be deported. They did not provide any warrant for Petitioner's arrest. Petitioner asked if he can call his partner to let her know what's happening and that he has two young daughters at home. They took his phone and shut it off. He said they could take him and asked that they not beat him up since this reminded him of what happened to him in Nicaragua.

47. The immigration agents handcuffed him, cuffed his ankles, and chained them to his waist. He was placed in an unmarked van, driven to a parking lot where he was transferred to another van, and taken to San Francisco ICE office for processing.

48. After processing him at the ICE office in San Francisco, DHS transferred him to Golden State Annex, where he remains detained.

49. Because Petitioner has never been determined to be a flight risk or danger to the community, his ongoing detention is not related to either of the permissible justifications for civil

immigration litigation. His detention does not further any legitimate government interest.

***C. As a Result of His Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable Harm.***

50. Petitioner is being deprived of his liberty without any permissible justification. The government previously released him on parole because he did not pose sufficient risk of flight or danger to the community to warrant detention.

51. None of that has changed. Petitioner has no criminal convictions, and there is no basis to believe that he poses any public-safety risk. ICE knew about his one arrest in December 2023 and was satisfied when he produced a document showing that no charges were ever filed. Nor is Petitioner, who was arrested *while appearing in court for his immigration case*, conceivably a flight risk. To the contrary, Petitioner appeared for every immigration court hearing and ICE check-in.

52. It has been stressful and distressing for Petitioner to be in detention, especially because he had been a political prisoner in Nicaragua where he was regularly beaten by the guards. He has pain in his shoulders because of an incident where the guards in Nicaragua pushed him off of the second floor and he broke his arms. He continues to experience pain and at the detention center, they give him pain medication that he takes 3 times a day to manage his pain. He also has difficulty seeing because his eyes hurt and it has been an increasing problem since he's been detained. There are cockroaches in the food and the food smells foul.

53. Mr. Garcia is constantly worried about his partner and daughters who are facing overwhelming hardships while he is detained. They do not have a source of income since he was the sole financial provider. His partner's mobile phone does not work because she cannot pay the phone bill. If they cannot pay the rent, they fear being evicted from their home the. His daughters, who are 1 and 2 years old, need food and diapers.

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## CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

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

**(Substantive Due Process—Detention)**

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

55. The Due Process Clause of the Fifth Amendment protects all "person[s]" from 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 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

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

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

58. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas and unconstitutional detention scheme. *Demore*, 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)**

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

60. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-detention 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).

61. 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); *Zinermon*, 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).

62. Petitioner's re-detention without a pre-deprivation hearing violated due process. Nearly three years after deciding to release Petitioner from custody on parole, Respondents re-detained Petitioner with no notice, no explanation of the justification of his re-detention, and no opportunity to contest his re-detention before a neutral adjudicator before being taken into custody.

63. Petitioner has a profound personal interest in his liberty. Because he 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 matter of course in immigration proceedings, and nothing in Petitioner's record suggested that he would abscond or endanger the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that

delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and his continued employment during the pandemic as an essential agricultural worker").s

**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 and the Administrative Procedure Act;
4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner 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 Petitioner is a flight risk or danger to the community;
6. Award Petitioner 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 12, 2025

Respectfully Submitted,

*/s/ Jane Lee*

Jane Lee (SBN 296021)
Jane.lee@ps.cccounty.us
OFFICE OF THE PUBLIC DEFENDER
Contra Costa County
800 Ferry Street
Martinez, CA 94553
Telephone: (925) 608-9600
*Attorney for Petitioner*