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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ARIZONA
PHOENIX DIVISION**

BO LI,

Plaintiff,

v.

Case No.

JOHN E. CANTÚ, Field Office Director of
the Phoenix Immigration and Customs
Enforcement Office; **TODD LYONS**,
Acting Director of United States
Immigration and 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,

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS**
Date Filed: August 18, 2025

I. INTRODUCTION

1. Bo Li ("Petitioner") is an asylum seeker who fled China. He arrived in the U.S. in November of 2023 and was encountered by Customs and Border Protection several miles from the border. Petitioner initially asks this Court to issue order requiring his release from custody because his re-arrest following initial detention and release, without change in circumstance, violates his Constitutional rights. Additionally, Petitioner requests a declaration that any detention of Petitioner, until and unless he is subject of a final order

1 of removal, is pursuant to 8 U.S.C. 1226 and that he is not subject to mandatory detention
2 under Section 1225. Petitioner was detained and then released with formal order
3 indicating he was being released on his own recognizance (ORR) pursuant to INA section
4 236. He was served with Notice to Appear in removal proceedings under INA section
5 240 and thereafter appeared for all scheduled hearings. The ORR and contemporaneously
6 prepared form I-213 (record of deportable/inadmissible alien) indicated the officer did
7 not find respondent to be a danger to the community. Petitioner has complied with all
8 requirements of his release, appeared at all scheduled hearings in section 240 removal
9 proceedings, and prepared and filed an application for protection from removal through
10 asylum.

11 2. On July 31, 2025, Petitioner, continuing to comply with requirements to appear in
12 court, went to the San Francisco Immigration Court and appeared before Immigration
13 Judge Patrick O'Brien. At that hearing, the attorney representing ICE made an oral
14 motion to dismiss the pending removal proceedings to facilitate ICE's goal of placing
15 Petitioner into "expedited removal" proceedings. Despite being unrepresented, Petitioner
16 asked for time to reply to the motion and IJ O'Brien gave Petitioner time to respond and
17 set the case for a subsequent master calendar hearing.

18 3. However, ICE was not content to allow Petitioner time to reply to the motion or to
19 wait for the Immigration Judge to issue a ruling. Instead, Petitioner was detained by
20 Department of Homeland Security ("DHS") agents as he left the courthouse. Petitioner
21 would be held in temporary detention space in the same building as the Courthouse for 7
22 days before being transferred to Florence, Arizona, where he is being detained now.

23 4. This arrest is part of a new, nationwide DHS policy of sweeping up people who
24 attend their immigration court hearings, detaining them, and unlawfully seeking to place
25 them in expedited deportation proceedings. A large piece of this policy involves ICE's
26 novel claim that all persons having entered the United States without inspection are
27 subject to mandatory detention under 8 U.S.C. SECTION 1225. This interpretation is
28 contrary to decades of agency practice as well as to well-established precedent. Nadia

1 Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr., 2025 U.S. Dist.
 2 LEXIS 156344, *30 (Dist. Of Az, August 11, 2025).

3 5. The policy is being implemented in coordination with Department of Justice and
 4 Executive Office for Immigration Review (EOIR) leadership and immigration judges are
 5 being instructed and pressured to put their stamp of quasi-judicial approval on the policy
 6 by quickly dismissing removal proceedings, refusing to find jurisdiction to conduct bond
 7 hearings, or both. Since mid-May, DHS has implemented a coordinated practice of
 8 utilizing unlawful civil immigration detention to coerce people, like petitioner into giving
 9 up their rights and accepting voluntary deportation at the threat of indefinite detention.
 10 Reports of unsanitary and inhumane conditions in detention centers increase day-by-day
 11 as DHS and EOIR's coordinated policy becomes more and more apparent. As has been
 12 recognized by several Federal Judges, detention of persons similarly or identically
 13 situated to Petitioner is unlawful. Nadia Cristina DA Rocha Rosado v. Fred Figueroa,
 14 Warden, Eloy Det. Ctr., 2025 U.S. Dist. LEXIS 156344, *30 (Dist. Of Az, August 11,
 15 2025); Pinchi v. Noem, 2025 U.S. Dist. LEXIS 142213 (N.D. Cal. July 24, 2025)(habeas
 16 granted finding detention unlawful with identical facts to respondent's case); Sequen v.
 17 Kaiser, 2025 U.S. Dist. LEXIS 148751 (N.D. Cal. August 1, 2025) (same); Martinez v.
 18 Hyde, 2025 U.S. Dist. LEXIS 141724, *7 (July 24, 2025)(same); *see also* Guillermo M.
 19 R. v. Kaiser, No. 25-CV-05436-RFL, 2025 U.S. Dist. LEXIS 138205, at *7 n.4 (N.D.
 20 Cal. July 17, 2025) (collecting cases in which courts have found there are at least serious
 21 questions as to whether due process entitles noncitizens released from custody to a
 22 hearing before or immediately after re-detention).

23 6. Civil Immigration Detention is generally only permissible for only two reasons: to
 24 ensure a noncitizen's appearance at immigration hearings and to prevent danger to the
 25 community. But DHS did not arrest and detain Petitioner—who demonstrably poses no
 26 risk of absconding or danger to the community—for either of these reasons. Instead, as
 27 part of its broader enforcement campaign, DHS detained Petitioner to strip him of his
 28 procedural rights and seeking to pressure Petitioner into giving up his claim for
 protection or to process his case in expedited removal proceedings.

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

8 8. Petitioner’s arrest and detention are causing him and his family ongoing harm.
9 Petitioner’s partner is pregnant and due to give birth in a few months. Petitioner worries
10 about her health, the health of the unborn child, as he remains unlawfully detained far
11 from his community in California Bay Area.

12 9. The Constitution protects Petitioner—and every other person present in this country—
13 from arbitrary arrest and detention and guarantees him due process of law. While the
14 Executive Branch has broad power over the regulation of noncitizens, those powers are
15 still “is subject to important constitutional limitations.” Zadvydas v. Davis, 533 U.S. 678,
16 695 (2001). “Freedom from bodily restraint has always been at the core of the liberty
17 protected by the Due Process Clause from arbitrary governmental action.” Foucha v.
18 Louisiana, 504 U.S. 71, 80 (1992).

19 10. Petitioner respectfully, and urgently, seeks a writ of habeas corpus ordering the
20 government to release him from unlawful detention, prohibiting his re-arrest absent a
21 finding that he is a danger to his community or a flight risk from a neutral decisionmaker,
22 and prohibiting the government from placing him in expedited removal proceedings, as
23 she is plainly exempt from the criteria. In addition, to preserve this Court’s jurisdiction,
24 Petitioner asks for an order that the government not transfer him outside of this judicial
25 District or deport her for the duration of this proceeding.

26 II. JURISDICTION AND VENUE

27 10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
28

1 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory
2 Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S.
3 Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S.
4 Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

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

8 **III. PARTIES**

9
10 12. Petitioner, Bo Li, is a 31-year-old native and citizen of China. Prior to being detained,
11 he resided in Union City, California. He was briefly arrested and then released with Notice
12 to Appear in removal proceedings and thereafter filed an application for asylum with the
13 Immigration Court. He has no criminal history. He is presently in physical custody of
14 Immigration and Customs Enforcement (ICE) at Florence Detention Center 3250 North
15 Pinal Parkway Florence, AZ 85132.

16 13. Respondent, John E. Cantú, is the Field Office Director of the Phoenix Immigration
17 and Customs Enforcement. In this capacity, he is responsible for the administration of
18 immigration laws and the execution of immigration enforcement and detention policy
19 within ICE's Phoenix Area of Responsibility, including the detention of Petitioner.
20 Respondent Cantú maintains an office and regularly conducts business in this district.
21 Respondent Cantú is sued in his official capacity.

22
23 14. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
24 Performing the Duties of the Director of ICE, he is responsible for the administration and
25 enforcement of the immigration laws of the United States, routinely transacts business in
26 this District, and is legally responsible for pursuing any effort to detain and remove the
27 Petitioner. Respondent Lyons is sued in his official capacity.

28 15. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate

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

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

12 IV. EXHAUSTION

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

20 V. LEGAL BACKGROUND

21 A. The Constitution prohibits arbitrary arrest and detention of noncitizens

22 18. The Constitution affords and requires due process rights for “all ‘persons’ within the
23 United States, including [noncitizens], whether their presence here is lawful, unlawful,
24 temporary, or permanent.” Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017)
25 (quoting Zadvydas, 533 U.S. at 693). These due process rights are both substantive and
26 procedural.
27

28 19. First, “[t]he touchstone of due process is protection of the individual against arbitrary

1 action of government,” Wolff v. McDonnell, 418 U.S. 539, 558 (1974), including “the
2 exercise of power without any reasonable justification in the service of a legitimate
3 government objective,” Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

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

9 21. Substantive due process requires that all forms of civil detention—including
10 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See*
11 Jackson v. Indiana, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only
12 two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s
13 appearance at immigration proceedings and preventing danger to the community.
14 Zadvydas, 533 U.S. at 690–92; *see also* Demore v. Kim, 538 U.S. 510 at 519–20, 527–28,
15 31 (2003).

16 22. Secondly, the Due Process Clause’s procedural protections require that even
17 permissible forms of detention only be imposed where procedural safeguards are in place
18 and have been followed. Lopez v. Heinauer, 332 F.3d 507, 512 (8th Cir. 2003) (“The
19 Supreme Court has long recognized that deportable aliens are entitled to constitutional
20 protections of due process.”
21

22 23. Except in rare situations, “the Constitution requires some kind of a hearing before the
23 State deprives a person of liberty or property.” Zinermon v. Burch, 494 U.S. 113, 127
24 (1990). This is so even in cases where that freedom is lawfully revocable. *See* Hurd v.
25 D.C., Gov’t, 864 F.3d at 683 (citing Young v. Harper, 520 U.S. 143, 152 (1997) (re-
26 detention after pre-parole conditional supervision requires pre-deprivation hearing));
27 Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973) (same, in probation context); Morrissey v.
28 Brewer, 408 U.S. 471 (1972) (same, in parole context).

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

8 25. This reasoning applies with equal or greater force to people released from civil
 9 immigration detention. Noncitizens residing in the United States, like Petitioner, have a
 10 protected liberty interest in their ongoing freedom from detention. *See Zadvydas*, 533
 11 U.S. at 690. Further, “[g]iven the civil context [of immigration detention], [the] liberty
 12 interest [of noncitizens released from custody] is arguably greater than the interest of
 13 parolees.” Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

14
 15 **B. Due Process and the Immigration and Nationality Act Protect Noncitizens I**
 16 **from Summary Removal Without a Hearing.**

17 26. Deportation, like detention, constitutes a deprivation of liberty protected by the Due
 18 Process Clause. A noncitizen’s interest in deportation proceedings “is, without question, a
 19 weighty one” because “he stands to lose the right ‘to stay and live and work in this land of
 20 freedom.’” Landon v. Plasencia, 459 U.S. 21, 34 (1982) (quoting Bridges v. Wixon, 326
 21 U.S. 135, 154 (1945)).

22 27. Removal proceedings under Section 240 of the Immigration and Nationality Act
 23 (“Section 240” proceedings) accordingly provide important substantive and procedural
 24 protections. Noncitizens placed in Section 240 proceedings, as was Petitioner following
 25 initial arrest in 2023, are entitled to full hearings in immigration court before immigration
 26 authorities can remove them. 8 U.S.C. § 1229a. Congress has afforded statutory rights
 27 and protections including the right to be represented by counsel of their choice, and the
 28 right to present and confront evidence. 8 U.S.C. § 1229a(4). They are also entitled to

1 administrative appellate review at the Board of Immigration Appeals and further judicial
2 review in the federal Courts of Appeals. *See* 8 C.F.R. § 1003.1(b) (Board of Immigration
3 Appeals); 8 U.S.C. § 1252(a)(5) (Courts of Appeals).

4
5 28. Expedited removal is a form of summary removal historically applicable only to
6 recently arrived noncitizens that sharply limits the rights and process available in Section
7 240 proceedings.

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

16 30. When a person in expedited removal expresses a fear of persecution or intent to seek
17 asylum, the immigration officer refers the person to an asylum officer for a credible fear
18 interview. 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer finds that the person has a
19 credible fear, they are permitted to seek to apply for asylum through Section 240
20 proceedings. *Id.* § 1225(b)(1)(B)(ii). However, when an asylum officer determines that
21 someone has not established a credible fear, the officer must order them removed
22 “without further hearing or review,” subject to highly limited review by an immigration
23 judge that the person “does not have a credible fear of persecution.” *Id.* §
24 1225(b)(1)(B)(iii).

25 VI. FACTUAL ALLEGATIONS

26 A. DHS Expands the Scope of Expedited Removal.

27 31. DHS has historically applied expedited removal nearly exclusively in the border
28 enforcement context. From 1997 until 2002, expedited removal was only applied to

1 noncitizens arriving at ports of entry. *See* Inspection and Expedited Removal of Aliens;
2 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures;
3 Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

4
5 32. In 2002, the government for the first time invoked its authority to apply expedited
6 removal to persons already inside the country, but only for a narrow group of people who
7 arrived by sea, were not admitted or paroled, and were apprehended within two years of
8 entry. *See* Notice Designating Aliens Subject to Expedited Removal Under Section
9 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13,
10 2002).

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

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

24 35. In 2021 DHS initiated a review of the rule expanding expedited removal to consider
25 whether it complied with legal and constitutional requirements, including due process. In
26 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23, 2019, Designating
27 Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).
28

1 36. While the 2019 expansion was in effect, the government applied expedited removal to
2 persons inside the country in only a small number of cases. Thus, from 1997 to 2025, with
3 limited exceptions, immigration authorities generally did not apply expedited removal to
4 noncitizens apprehended far from the border, or individuals anywhere in the United States
5 (including near the border) who had been residing in the country for more than fourteen
6 days.

7 37. On January 20, 2025, President Trump signed Executive Order 14159, “Protecting the
8 American People Against Invasion,” the purpose of which was “to faithfully execute the
9 immigration laws against all inadmissible and removable aliens, particularly those aliens
10 who threaten the safety or security of the American people.” Exec. Order No. 14,159, 90
11 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to
12 take various actions “to ensure the efficient and expedited removal of aliens from the
13 United States.” *Id.*

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

20 39. On January 23, 2025, the Acting Secretary of Homeland Security issued a
21 memorandum “provid[ing] guidance regarding how to exercise enforcement discretion in
22 implementing” the new expedited-removal rule. The guidance directed federal
23 immigration officers to “consider . . . whether to apply expedited removal” to “any alien
24 DHS is aware of who is amenable to expedited removal but to whom expedited removal
25 has not been applied.” As part of that process, the guidance encourages officers to “take
26 steps to terminate any ongoing removal proceeding and/or any active parole status.”¹
27

28 ¹ Benjamine C. Huffman, Guidance Regarding How to Exercise Enforcement Discretion, Dep’t
of Homeland Sec. (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-

B. DHS implements policy of courthouse arrests combined with coordinated effort to dismiss removal proceedings to facilitate expanded use of expedited removal

40. 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 expedited removal.²

41. The first step of this enforcement operation typically takes place inside the immigration court. DHS attorneys make oral motions to dismiss proceedings, without prior notice, based on ‘changed circumstances.’ They ask the judge to immediately dismiss proceedings. Meanwhile ICE enforcement officers wait in the hallways ready to arrests unsuspecting persons when they depart the courtroom.

42. The motions appear to directly contravene existing regulations which only permit a motion to dismiss with a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. § 239.2(a)(7), (c). There is no indication that DHS attorneys have made any case-specific analysis of changed circumstances before filing these motions to dismiss.

43. Despite clear rules requiring 10-days for response to any opposed motion, many 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.

and-parole-guidance.pdf (last visited August 18, 2025).

² 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-Sadurni, & 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 44. Despite pressure from above, some IJs have asked DHS to re-file the motion as a
 2 written motion and continued proceedings to allow individuals to file their response. A
 3 few IJ's have denied the motion to dismiss while most IJ's have ultimately granted the
 4 motions.

5 45. Whether the motion is granted or not, DHS agents, masked and waiting in the
 6 hallways outside the Courtrooms, typically arrest noncitizens as they leave the
 7 Courtrooms. Most reports indicate that the masked agents typically do not have an arrest
 8 warrant.

9 46. Once the person has been transferred to a detention facility, the government places
 10 the individual in expedited removal. In cases in which the IJ did not dismiss the person's
 11 removal proceedings, DHS attorneys unilaterally transfer venue of the case to a
 12 "detained" immigration court, where they renew their motions to dismiss—again with the
 13 goal of putting the person in expedited removal.

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

19 48. DHS's aggressive tactics at immigration courts appear to be motivated by the
 20 Administration's imposition of a new daily quota of 3,000 ICE arrests.⁵ In part as a result
 21 of this campaign, ICE's arrests of noncitizens with no criminal record have increased
 22 more than 800% since before January.⁴

23
 24
 25
 26 ³ Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates*
 27 *Deportations*, N.Y. Times, June 12, 2025,
 28 [https://www.nytimes.com/2025/06/12/nyregion/immigration-](https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html)
[courthouse-arrests-trump-deportation.html](https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html).

⁴ 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->

49. DHS officials previously permitted ICE officers to conduct “civil immigration enforcement action . . . in or near a courthouse” in rare circumstances including where “it involves a national security threat,” or “there is an imminent risk of death, violence, or physical harm.” Though somewhat self-explanatory, DHS explained the restrictions were needed 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.”

50. The government’s new campaign is also a significant shift from previous DHS practice, guided by clear judicial precedent, of only re-detaining noncitizens previously released only upon a material change in circumstances. *See Saravia v. 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).

C. Petitioner’s unlawful arrest and detention

51. Petitioner is a 31-year-old citizen and native of China.

52. Petitioner entered the United States without inspection in November of 2023.

53. Petitioner was briefly arrested by Customs Border Protection in San Diego several miles from the border.

54. Petitioner was then released ORR pursuant to a specific order indicating that the release was pursuant to 8 U.S.C. 1226.

55. Petitioner was not inspected or paroled. No credible fear or other interview as to admissibility occurred.

56. Rather, officials confirmed only that Petitioner had no arrest record and did not appear to be a danger or threat to the United States and released him on his own recognizance.

57. At time release, Petitioner was served with a form I-862, Notice to Appear in Removal Proceedings.

arrests-migrants-trump-figures.

1 58. The NTA, though containing a field for such designation, does not indicate that
2 Petitioner is an 'arriving alien.'

3 59. Instead, the NTA indicates Petitioner is a person present in the United States who has
4 not been admitted or paroled.

5 60. Petitioner thereafter moved to Union City, California where he resided until his July
6 31, 2025 arrest.

7 61. Petitioner moved to Union City to be near to his U.S. citizen sister and lawful
8 permanent resident parents.

9 62. Petitioner is expecting a child together with his partner who is due in November of
10 this year.

11 63. Petitioner appeared at all required hearings in immigration court and also checked in
12 as requested by ICE.

13 64. Petitioner filed an application for relief from removal through asylum with the
14 immigration court on April 16, 2024.

15 65. Petitioner has fully complied with court and supervision requirements.

16 66. Petitioner has no criminal history.

17 67. On July 31, 2025, Petitioner appeared at San Francisco Immigration Court before
18 Immigration Judge Patrick O'Brien, for a scheduled master calendar hearing. He was
19 unrepresented at that time.

20 68. At the master calendar hearing, the DHS attorney made an oral motion to dismiss
21 proceedings. Petitioner requested time to reply and the judge gave Petitioner a chance to
22 submit a response and scheduled a further master calendar hearing.

23 69. When Petitioner left the courtroom, he was arrested by four ICE agents. The agents
24 did not present Petitioner with a warrant at the time of her arrest and did not tell Petitioner
25 why he was being arrested.

26 70. Petitioner was held in custody at ICE's San Francisco Field Office, in the same building
27 as the Courthouse, for almost a week.

28 71. Petitioner was then transferred to Florence SPC where he is held now.

72. Petitioner then requested a custody determination hearing before newly assign IJ Frank

1 Travieso.

2 73. Petitioner submitted argument and evidence demonstrating that his release from custody
3 in November of 2023 was pursuant to 8 U.S.C. 1226 and not 1225.

4 74. DHS submitted argument indicating Petitioner's detention is pursuant to Section 1225 and
5 therefore that the Judge did not have jurisdiction to consider his custody status.

6 75. On August 13, 2025, Immigration Judge Frank Travieso held a master calendar hearing
7 and bond hearing in Petitioner's case.

8 76. Immigration Judge Travieso made a finding that DHS was 'substantially likely' to prevail
9 on its argument that Petitioner's detention is pursuant to Section 1225 and therefore that the
10 IJ did not have jurisdiction to order his release.

11 77. Immigration Judge Frank Travieso did not consider any evidence submitted relating to
12 dangerousness or flight-risk because he found that he did not have jurisdiction.

13 78. Immigration Judge Travieso made no attempt to reconcile the clearly contrary evidence in
14 the record such as the explicit notice of release indicating Petitioner was released pursuant to
15 Section 1226 or the NTA indicating respondent was not an arriving alien, or the Form I213
16 indicating Petitioner was not treated as an applicant for admission, was not inspected, and was
17 not released or detained under Section 1225.

18 79. Judge Travieso also made no attempt to reconcile clearly contradictory and binding
19 precedent, *e.g.* Jennings, 583 U.S. at 300 (quoting INA § 212(d)(5)(A). Release on
20 recognizance is not "humanitarian" or "public benefit" "parole into the United States" under
21 section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge
22 of removability, authorized under section 1226; Ortega Cervantes v. Gonzales, 501 F.3d 1111,
23 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on
24 Recognizance" necessarily must have been detained and released under INA § 236, including
25 because he was not an "arriving alien" under the regulations governing section 235
26 examinations). *See e.g.* Matter of Cabrera-Fernandez, 28 I&N Dec. 747, 749 (BIA 2023)
27 indicating that Petitioner's release in November of 2023 could only have been pursuant to
28 Section 1226.

80. Petitioner reserved appeal from this decision.

1 81. On information and belief, the BIA has received numerous appeals on this issue over the
2 last several months but has not issued any definitive ruling as to the propriety of the finding.

3 82. Bond appeals before the BIA often take months or longer to be resolved due to huge and
4 growing backlogs.

5 83. The BIA is not in any rush to issue a definitive decision on this issue which would then
6 subject the dubious practice to judicial review by Federal Circuit Court of Appeals.

7 84. On August 14, 2025, DHS filed a motion to dismiss removal proceedings in writing
8 to Immigration Judge Frank Travieso.

9 85. The motion to dismiss does not articulate any specific change in circumstances in
10 Petitioner's case but rather merely parrots the regulatory language indicating that
11 "[c]ircumstances of the [respondent's] case have changed after the notice to appear was
12 issued to such an extent that continuation is no longer in the best interest of [DHS]."

13 86. The motion further indicates that DHS intends to pursue expedited removal
14 proceedings under Section 1225.

15 87. Petitioner has never been determined to be a flight risk or danger to the community,
16 her detention is not related to either of the permissible justifications for civil immigration
17 detention. Her detention does not further any legitimate government interest.

18 88. Petitioner is scheduled for further master calendar hearing before Immigration Judge
19 Marni Guerrero on September 3, 2025.

20 89. It is unclear why the case was transferred from Judge Travieso to Judge Guerrero as
21 intra-court reassignment of cases is not the norm in immigration court practice.

22 90. Petitioner has until August 27, 2025 to submit response to DHS motion to dismiss
23 proceedings.

24 91. It is anticipated that the newly assigned Judge will issue ruling on motion to dismiss at
25 or before the scheduled hearing.

26 92. DHS will retain custody of Petitioner regardless of the outcome of the motion to
27 dismiss removal proceedings.

28 93. If the motion to dismiss is denied, DHS will appeal that decision to the BIA and
continue to detain Petitioner pursuant to its unlawfully claimed authority under Section

1 1225.

2 **D. Petitioner is suffering irreparable and ongoing harm as a result of unlawful**
3 **detention**

4 94. Petitioner is being deprived of his liberty without lawful basis or permissible
5 justification. The government previously released him on his own recognizance finding
6 that he did not pose a danger to the community.

7 95. Petitioner is now separated from his partner who is due to give birth to his child in
8 November of this year.

9 96. Petitioner is now separated from his parents, sister, partner and is held far from his
10 home in California.

11 **VII. CLAIMS FOR RELIEF**

12 **FIRST CLAIM FOR RELIEF**

13 Violation of the Fifth Amendment to the United States Constitution

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

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

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

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

25 101. Petitioner is not a flight risk or danger to the community. Respondents’ detention of
26 Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained
27 in violation of the Due Process Clause of the Fifth Amendment.
28

102. 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 transfer immigration court venue away from an IJ who refused to facilitate DHS's new expedited removal 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)

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

104. Petitioner has a strong liberty interest under the Due Process Clause in not being re-incarcerated after prior 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); *Nadia Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr.*, 2025 U.S. Dist. LEXIS 156344, *35

105. 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); *Zinerman*, 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).

106. Petitioner's re-detention without a pre-deprivation hearing violated due process. Nearly two years after deciding to release Petitioner from custody on his own recognizance, and explicitly doing so under Section 1226, Respondents have re-detained Petitioner without prior notice, hearing, change in circumstances, and have inexplicably claimed that he is now subject to detention under Section 1225.

107. Petitioner's continued detention without prior hearing constitutes an ongoing violation of petitioner's Constitutional right to under the Due Process Clause.

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution (Unlawful Arrest)

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

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

110. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause. It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable [T]he primary purpose of an arrest is to ensure the arrestee appears 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. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (cleaned up); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be

1 regarded as reasonable under the Fourth Amendment.”).

2
3 111. In the immigration context, this prohibition means that a person who immigration
4 authorities released from initial custody cannot be re-arrested “solely on the ground that
5 he is subject to removal proceedings” and without some new, intervening cause. Saravia
6 v. Sessions, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom.*, Saravia for
7 A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018). Courts have long recognized that
8 permitting such rearrests could result in “harassment by continual rearrests.” United
9 States v. Holmes, 452 F.2d 249, 261 (7th Cir. 1971).

10 112. DHS agents arrested Petitioner in November of 2023 after he entered the United
11 States, charged him with a violation of civil immigration law, and released him on his
12 own recognizance under Section 1226 with a notice to appear in immigration court.
13 Petitioner appeared in immigration court as instructed and diligently pursued an
14 application for relief from removal in the form of asylum and withholding of removal.

15 113. DHS re-arrested Petitioner on July 31, 2025 though nothing had changed, no new
16 circumstances indicated Petitioner was now a danger or a flight-risk and, indeed,
17 Petitioner had just appeared in Court.

18 114. Petitioner’s re-arrest and detention by Respondents after his prior release based on
19 the same immigration law violation and absent any change in circumstances is a violation
20 of Petitioner’s right to be free from unreasonable seizure under the Fourth Amendment.
21

22 **FOURTH CLAIM FOR RELIEF**

23 **Violation of the Administrative Procedure Act**

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

26 116. The Administrative Procedure Act prohibits federal action that is “in excess of
27 statutory jurisdiction, authority or limitations, or short of statutory right,” 5 U.S.C. §
28 706(2)(C), and “arbitrary, capricious, an abuse of discretion, or otherwise not in

1 accordance with law,” *id.* § 706(2)(A).

2 117. Respondents’ policy targeting people attending their immigration hearings at
3 immigration court for arrest violates the longstanding common-law privilege against civil
4 arrests in and around courthouses. That privilege extends to parties, witnesses, and all
5 people attending the courts on business.

6 118. Congress did not displace this privilege when it enacted the Immigration and
7 Nationality Act, and the privilege was incorporated as a limit on ICE’s arrest authority.
8 The government’s courthouse arrest policy therefore is in excess of statutory authority in
9 violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

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

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

13 121. Additionally, in adopting the policy, the government failed to adequately consider all
14 relevant factors and crucial aspects of the issue. The policy will deter individuals from
15 appearing as parties and witnesses at immigration and other judicial proceedings,
16 preventing the adjudication of meritorious claims, impeding the administration of justice,
17 and hindering cooperation with law enforcement.

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

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

VIII. 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. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless her 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. Order that Respondents may detain Petitioner while Section 240 proceedings are ongoing, including during any direct appeal from dismissal of proceedings by the IJ;
7. Order that Respondents may not place Petitioner in expedited removal proceedings or remove Petitioner while Section 240 proceedings are ongoing, except based on a final, executable removal order issued through Section 240 removal proceedings;
10. Award Petitioner 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
11. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 18th Day of August 2025,

/s/ Ben Loveman
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