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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KARLENIS MENDEZ LOS SANTOS, Petitioner, v. CHRISTOPHER J. LAROSE, et al, Respondents.	Case No.: 25-cv-2216-TWR-MSB **PETITONER'S TRAVERSE TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

"[T]here is something fundamentally unfair about the government's changing the rules by fiat simply because it wants to. That is arbitrary by definition. And that is especially troubling here, where [Petitioner] played by the first set of rules without any hint of a violation and spent his time and money accepting the government's invitation and coming here to play by those rules. Luring noncitizens here, paroling them for a period of time, and then telling them "never mind" is just plain wrong—made even worse when the noncitizens are detained while their cases are heard. And a change in administration does not justify or

excuse such fundamental unfairness." Mata Velasquez v. Kurzdorfer et al, 25-CV-493-LJV, p. 19 fn. 6 (W.D.N.Y. July 16, 2025).

Here, Ms. Mendez Los Santos played by the rules. She made an appointment with the CBPOne application and waited her turn to enter the U.S. lawfully at a port of entry. After being paroled in the country, Ms. Mendez Los Santos built community and friendships and became gainfully employed. She played by the rules and abided by the laws of this country only to have her employment authorization revoked and to be arrested and detained attending her first court hearing – again, while following the rules. Other than this administration's agenda to fill detention centers and deport as many immigrants as possible, nothing has changed since Ms. Mendez Los Santos was paroled into the U.S. almost two years ago. As shown in the Form I-213 arrest report from her August 26, 2025 arrest, Ms. Mendez Los Santos is not a danger to the community or a flight risk. As such, her detention without due process is unlawful and she should be released.

A. **There is Standing in that Ms. Mendez Los Santos's Unlawful Detention is the Present Case and Controversy**

Respondents contend there is no case or controversy because Ms. Mendez Los Santos is not yet in expedited removal proceedings. First, there is a real and immediate threat of Ms. Mendez Los Santos being placed in expedited removal proceedings. This is especially the case in light of immigration judges who have been fired by this administration stating that immigration judges are told how to rule on motions, and that they were told specifically to grant motions to dismiss by DHS.[1] As such, there is a high probability that Ms. Mendez Los

[1] https://www.cbsnews.com/news/immigration-judges-speak-out-firings-arbitrary-unfair/

Santos's INA 240 proceedings will be dismissed and she would be placed in expedited removal, during which her detention would continue essentially indefinitely.

More importantly, the habeas petition concerns not just Ms. Mendez Los Santos' likely placement in expedited removal, it also concerns her current unlawful detention which Respondents contend is mandatory under 8 U.S.C. § 1225(b)(2). For example, Count Two in the Petition alleges Ms. Mendez Los Santos' parole was terminated in violation of the Administrative Procedures Act ("APA"). It further alleges that for this reason, Ms. Mendez Los Santos' detention is unlawful and she should be released. Without a determination by this Court, it is a certainty she will continue to be detained essentially indefinitely without any other administrative or judicial manner to challenge the detention. In short, there is a current case and controversy: This habeas petition concerns Ms. Mendez Los Santos's current and ongoing unlawful detention.

B. **Ms. Mendez Los Santos's Habeas Claim is Properly Brought to Challenge the Lawfulness of her Detention**

Respondents claim that a judicial review on a decision to terminate Ms. Mendez Los Santos's 8 U.S.C. §1229a proceedings and to then place her into expedited removal proceedings would not automatically entitle Ms. Mendez Los Santos to be released from detention. Yet this is not what Ms. Mendez Los Santos seeks. As Respondents point out, Ms. Mendez Los Santos is not yet in expedited removal proceedings, nor does the habeas petition indicate she is. Rather, the petition alleges Ms. Mendez Los Santos is currently unlawfully

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https://www.nbcbayarea.com/news/local/another-san-francisco-immigration-judge-fired/3937760/

detained and would unlawfully be placed in expedited removal proceedings in violation of the INA, APA and the Constitution. For example, Count Two of the Petition challenges Respondents' decision to detain Ms. Mendez Los Santos even though she had been granted parole that neither expired nor was terminated with the requisite written notice and individualized consideration of her case and circumstances. Count Two further alleges that for these reasons, her detention is unlawful.

Because Ms. Mendez Los Santos seeks the traditional habeas remedy of release from unlawful detention rather than additional administrative review of her underlying claims, her petition presents precisely the type of threshold legality-of-detention question that section 2241 was designed to address. See INS v. St. Cyr, 533 U.S. 289, 301 (2001); see also Lopez-Marroquin v. Barr, 955 F.3d 759, 759 (9th Cir. 2020) (citing Singh, 638 F.3d at 1211-12)).

Respondents also claim in passing that causes of action under the Administrative Procedure Act ("APA") may not be brought in a habeas petition. Yet the case they cite for this proposition does not support this assertion. Rather, the decision states judicial review is generally brought under the APA and habeas is brought under a different statute and focuses on unlawful confinement. Flores-Miramontes v. INS., 212 F.3d 1133, 1140 (9th Cir. 2000). The Ninth Circuit did not state that causes of action concerning violations of the APA are improperly brought in a habeas action. This is especially the case given the APA causes of action here challenge the basis for Ms. Mendez Los Santos' unlawful detention. Respondents contend she is subject to mandatory detention because her parole was terminated and she reverts to her prior status which Respondents erroneously claim was mandatory detention.

The habeas petition alleges that Ms. Mendez Los Santos' parole was terminated arbitrarily and capriciously in violation of the APA and her detention is therefore unlawful.

A habeas action properly challenges detentions that are unlawful not only under the Constitution but also under a statute. See 28 U.S.C. § 2241(c)(3) (habeas applies to a person "in custody in violation of the Constitution or laws or treaties of the United States"). Here, Ms. Mendez Los Santos alleges violations of the Constitution (due process) but also violations of the INA and APA as these statutes concern her unlawful detention. As such, this habeas action is properly brought and Respondents' arguments fail.

C. **Ms. Mendez Los Santos' Habeas Claim is Not Barred by 8 U.S.C. § 1252**

Contrary to Respondents' contention, 8 U.S.C. § 1252 does not apply to bar jurisdiction here because this action does not request the judicial review of a removal order nor does the petition challenge any discretionary decision to place Ms. Mendez Los Santos in expedited removal proceedings.

Ms. Mendez Los Santos contends that the government lacks the lawful authority to initiate the expedited removal process against her because of her current status (e.g., a noncitizen with a valid parole).[2] She does not challenge the statutory framework, nor does she challenge any discretionary decision to place her in expedited removal proceedings. "Although the INA precludes direct review of discretionary decisions, it does not bar [courts] from reviewing predicate legal questions." Gebhardt v. Nielsen, 879 F.3d 980, 985

[2] The plain language of the statute indicates expedited removal applies only to those noncitizens "not inspected or paroled." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

(9th Cir. 2018). Such "predicate legal questions" include claims that the discretionary process itself was constitutionally or legally flawed. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017). This is precisely what Ms. Mendez Los Santos alleges here. See, e.g., Count Five of the Petition (alleging that under the INA and APA Ms. Mendez Los Santos is not subject to the expedited removal process to begin with because she is a parolee).

A "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question…forms the backdrop against which the Attorney General later will exercise discretionary authority." United States v. Hovsepian, 359 F.3d 1144, 1155 (9th Cir. 2004); see also Madu v. U.S. Attorney Gen., 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [§ 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions."). Here, Count Two of the Petition asks the Court to interpret the legal "backdrop" against which Respondents seek to detain her – namely, to find that the detention of Ms. Mendez Los Santos without written notice of the individualized termination of her parole is in contravention of the INA, the APA and her Due Process rights under the Constitution.

In other words, while this Court lacks jurisdiction to review the government's discretionary decisions to initiate removal proceedings, district courts can review how the Respondents exercise their discretion because such a claim asks whether the way the Respondents acted accords with the Constitution and the laws of this country. District courts can—and do—entertain challenges to the procedural processes that the executive branch

follows during the removal process. Here, Respondents violated the statutory framework as well as the Constitution when they detained Ms. Mendez Los Santos (a parolee not subject to expedited removal proceedings). That is a question that falls squarely within this Court's habeas jurisdiction. And for that reason, section 1252(g) also does not bar this Court's hearing Ms. Mendez Los Santos's habeas petition.

D. **Ms. Mendez Los Santos is Not Lawfully Detained**

1. Ms. Mendez Los Santos is detained under 8 U.S.C. § 1226 and not 8 U.S.C. § 1225

Respondents erroneously contend that Ms. Mendez Los Santos is currently detained under 8 U.S.C. § 1225(b)(2) and is subject to mandatory detention. This is not correct. Instead, Ms. Mendez Los Santos is currently detained pursuant to 8 U.S.C. § 1226.

First, although neither Ms. Mendez Los Santos nor her counsel were provided a copy of the warrant at the time of the arrest, Respondents contend they served her with a warrant and have filed it in this action. Yet warrants are only issued if the noncitizen is detained under 8 U.S.C. § 1226, not 8 U.S.C. § 1225. "Section 1226(a) provides that **'[o]n a warrant** issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a)(emphasis added)." The statute also provides for release from custody on bond or conditional parole. 8 U.S.C. § 1226(a)(2). The existence of a warrant here belies Respondents' contention that Ms. Mendez Los Santos is currently mandatorily detained under 8 U.S.C. § 1225.

Moreover, as stated above, the Respondents' termination of Ms. Mendez Los Santos' parole was not lawful in that it was not in compliance with the APA. First, Ms. Mendez Los

Santos never received notice terminating her parole. Even if she had, the notice was a mass email with no explanation or consideration of her individualized circumstances.[3] Ms. Mendez Los Santos only received the April 30, 2025 form letter indicating an intent to revoke her employment authorization with no explanation. As such, the purported termination of her parole was arbitrary and capricious, the parole was not lawfully terminated, and Ms. Mendez Los Santos is unlawfully detained.

But there is another fallacy in Respondents' arguments rendering Ms. Mendez Los Santos' detention unlawful, even if her parole had been lawfully revoked. Respondents contend she was "rearrested" at her court hearing on August 26, 2025. "The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). Again, in so contending the Respondents are effectively conceding that section 1226 applies. But most importantly, Ms. Mendez Los Santos was not "rearrested." Here, she has not previously been arrested and detained, and then subsequently released. Ms. Mendez Los Santos' first and only arrest and detention happened at her August 26, 2025 court hearing.

Respondents cite *Matter of Q. Li* but fail to mention the central holding. "**An applicant for admission who is arrested and detained without a warrant while arriving** in the United States, whether or not at a port of entry, and subsequently placed in removal

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[3] While Ms. Mendez Los Santos did not receive any such email, the email purporting to terminate her parole appears to have been a mass email without any explanation for the parole termination and instead urging the recipients to depart the country. See e.g., Y.Z.L.H. v. Bostock et al, 3:25-cv-965-SI, p. 10 (District of Oregon July 9, 2025) a copy of which is attached as Exhibit **E** to the Declaration of Kirsten Zittlau filed concurrently herewith.

proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018)….". *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025)(emphasis added). In that case, the noncitizen entered unlawfully and was arrested and taken to an ICE processing center and then paroled from there the following day. *Matter of Q. Li*, 29 I. & N. Dec. at 67. This is entirely distinct from what occurred here. Moreover, it should be noted that Ms. Mendez Los Santos never had any ICE appointments, as someone who has been previously arrested and detained would have.

Ms. Mendez Los Santos's Form I-213 arrest report, Notice to Appear, and Form I-94 confirm that Ms. Mendez Los Santos presented herself at the Port of Entry on October 29, 2023 after receiving an appointment through the CBPOne application. She provided identification documents and a DNA sample, was thoroughly inspected and screened, and then was issued a Notice to Appear and paroled into the U.S. with a Form I-94 that same day. At no point was she ever arrested and detained. As a prior "arrest and detention" is a key component upon which Respondents rely to justify the current detention of the Ms. Mendez Los Santos, their arguments fail and Ms. Mendez Los Santos' detention is unlawful.

2. Ms. Mendez Los Santos is neither an application for admission nor an arriving alien.

Ms. Mendez Los Santos is also not subject to mandatory detention because she is neither an applicant for admission nor is she arriving in the U.S. per 8 U.S.C. § 1225(b)(1). Rather, Ms. Mendez Los Santos is a noncitizen who was paroled into the U.S. and who has been living within the U.S. Ms. Mendez Los Santos was not arrested at or near the border

arriving in the U.S. – she was arrested at her court hearing after having lived here for almost two years.

As explained in *Matter of M-S-*, 8 U.S.C. § 1225 and 8 U.S.C. § 1226 each cover distinct, nonoverlapping classes of aliens. 27 I&N Dec. at 516. Section 1225(b)(2)(A) provides that applicants for admission who are determined to not be clearly and beyond a doubt entitled to be admitted shall be detained for a proceeding under 8 U.S.C. § 1229a.

a. Ms. Mendez Los Santos Did Not Submit an Application for Admission and Falls Outside the Scope of Section 212(a)(7) of the INA, 8 U.S.C. § 1182(a)(7).

The government argues that Ms. Mendez Los Santos applied for admission at the port of entry and was paroled into the United States, making her inadmissible under section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I). The government's argument, however, appears to rely on *Minto v. Sessions*, 854 F.3d 619 (9th Cir. 2017), for the proposition that a noncitizen makes a continuous application for admission by her mere presence in the United States and, as such, respondent's application for admission begins on the date that she entered the United States.

The Ninth Circuit, however, overruled *Minto* on this point in *Torres v. Barr,* 976 F.3d 918, 926 (9th Cir. 2020) (en banc). The en banc court held that "the phrase 'at the time of application for admission' . . . . refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." 976 F.3d at 924.

Although the facts in *Torres* differ from those in this case, the Ninth Circuit's reasoning and holding squarely apply here. In that case, the petitioner argued that because she never submitted an application for admission into the United States, she fell outside the

scope of section 212(a)(7) of the INA, 8 U.S.C. § 1182(a)(7). Torres v. Barr, 976 F.3d at 923. The court agreed, reasoning that "inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id.* at 926. It held that, under section 212(a)(7), a noncitizen only makes an application for admission when they seek permission to physically enter the United States, regardless of whether they are seeking entry from outside the United States or inside the country at a port of entry. *Id.* at 924.

Similarly, in *Matter of Y-N-P*—a case that *Minto* ignored and to which the Ninth Circuit deferred—the BIA concluded that an applicant for admission under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), only determines a respondent's legal status for purposes of removal proceedings but differs from 'applying . . . for admission to the U.S.' within the meaning of section 212(h) of the INA, 8 U.S.C. § 1182(h). 26 I&N Dec. 10 (BIA 2012).

In *Torres*, the court made a parallel holding. It held that just as the BIA concluded in *Matter of Y-N-P-* that it is a mistake to read the deeming provision of section 235(a)(1) as altering the meaning of "applying . . . for admission" in section 212(h) of the INA, 8 U.S.C. § 1182(h), it is similarly erroneous to read that provision as changing the meaning of "the time of application for admission under 212(a)(7) of the INA, 8 U.S.C. § 1182(a)(7)." 976 F.3d at 929.

In short, Torres clarified there is a temporal limitation to a classification of applicant for admission. See United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024) (stating that "Torres merely rejected the view that an alien remains in a perpetual state of applying

for admission"). Someone like Ms. Mendez Los Santos —who has been physically present in the United States for almost two years – cannot be deemed an applicant for admission. To be sure, **an individual "detained near the border shortly after they crossed it" is considered an applicant for admission.** Gambino-Ruiz, 91 F.4th at 990; see *Q. Li*, 29 I&N Dec. at 69 (emphasis added). This is further supported by Jennings v. Rodriguez, 583 U.S. ___ (2018). Section 1225(b) "applies primarily to **aliens seeking entry into the United States**" and authorizes DHS to "detain an alien without a warrant **at the border**." Jennings, 583 U.S. at 297, 302 (emphasis added).

These were not the circumstances here. Ms. Mendez Los Santos was not detained at the border. Moreover, as in Torres, Ms. Mendez Los Santos never sought admission into the United States. She never submitted such an application to physically enter the United States because neither asylum nor parole constitutes an admission under the INA.

b. Ms. Mendez Los Santos Sought Asylum and Asylum is Not an Applicant for Admission

The BIA has held that those seeking asylum are not applicants for admission. In *Matter of V-X-*, 26 I&N Dec. 147, 150 (BIA 2013), the BIA relied on the INA's definition of "admission"—section 101(a)(13)(A) of the INA, 8 U.S.C. § 1101(a)(13)(A) ("T]he terms 'admission' and 'admitted' mean . . . the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.")—and concluded that a grant of asylum is not an admission at all. *Id.* at 152.

The BIA's holding also means that the adjudication of an asylum application is not an "inspection." The BIA noted that federal regulations:

> clarif[y] that a grant of asylum does not require a threshold inspection for inadmissibility, the sine qua non of an 'admission,' either at a port of entry or through adjustment of status. On the contrary, 8 CFR § 1208.14(c) contemplates that an inspection for inadmissibility will occur only "[i]f the asylum officer does *not* grant asylum."

Matter of V-X-, 26 I&N Dec. at 151 n.3 (emphasis in original). It thus follows that if an asylum seeker was not admitted, then that asylum seeker was not inspected.

And if a grant of asylum is not an admission, and if the adjudication is not even an inspection, it necessarily follows that one applying for asylum does not make an application for admission at the port of entry or, later, when prosecuting that application.

Thus, Ms. Mendez Los Santos —an asylum applicant—made no application for admission and section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), cannot apply to her.

c. Ms. Mendez Los Santos Received Parole, and Parole is Not an Admission

"Parole allows an individual who may be inadmissible or otherwise ineligible for admission into the United States to be in the United States for a temporary period for urgent humanitarian reasons or significant public benefit." *See* USCIS Information Sheet for Afghan Nationals Paroled into the United States, dated Dec. 2, 2022.

And under the statute, a parole "shall not be regarded as an admission." *See* INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).

Thus, as with requesting asylum (which is not admission), in receiving parole (which is also not an admission), Ms. Mendez Los Santos made no application for admission. And

again, if she made no application, then section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), cannot apply to her.

And even assuming that Ms. Mendez Los Santos' parole was lawfully terminated and her status reverted to what it was at the time of entry, the government incorrectly contends that her status at entry was that of an applicant for admission. Rather, as detailed *supra*, her request for asylum at entry was not an application for admission. Nor is her current application for asylum before an IJ. And thus, section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), does not apply to her and she is not subject to mandatory detention under 8 U.S.C. § 1225.

E. Ms. Mendez Los Santos has procedural due process rights that she was not afforded prior to her detention

Courts analyze procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989).

a. Ms. Mendez Los Santos has a liberty interest under the Due Process Clause

Ms. Mendez Los Santos's liberty from immigration custody is protected by the Due Process Clause: "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 v. Davis, 533 U.S. 678, 690 (2001). Following her parole into the United States, Ms. Mendez Los Santos retained a weighty liberty interest under the Due

Process Clause of the Fifth Amendment in not being incarcerated. See Young v. Harper, 520 U.S. 143, 146-47 (1997); Morrissey v. Brewer, 408 U.S. 471, 482-483 (1972).

In Morrissey, the Supreme Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." 408 U.S. at 482. The Court further noted that "the 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. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." Id. In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." Id.

At stake for Ms. Mendez Los Santos is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior parole decision and be able to take away her physical freedom, i.e., her "constitutionally protected interest in avoiding physical restraint." Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." Foucha v. Louisiana, 504 U.S. 71, 80 (1992). See also Zadvydas, 533 U.S. at 690 ("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.").

Thus, Ms. Mendez Los Santos has a profound liberty interest, which must be weighed heavily in determining what process she is owed under the Constitution. See Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976).

b. Ms. Mendez Los Santos was not given any procedural due process prior to being deprived of her liberty interest

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." Haygood v. Younger, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing Morrissey, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. Id. at 1357.

Under the test set forth in Mathews v. Eldridge, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." Mathews, 424 at 335.

The Matthews v. Eldridge factors all favor Ms. Mendez Los Santos. The government's interest in keeping Ms. Mendez Los Santos in detention without a due process hearing is low, and when weighed against Ms. Mendez Los Santos' significant private

interest in her liberty, the scale tips sharply in favor of releasing Ms. Mendez Los Santos from custody. Moreover, as immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See Zadvydas, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Ms. Mendez Los Santos at her August 26, 2025 court hearing. The Form I-213 arrest report is devoid of any mention of danger or flight risk, and a border official previously determined she was not a danger or flight risk and paroled her into the U.S. As such, Ms. Mendez Los Santos is entitled to the remedy she requests, namely release from custody.

In short, the government's interest in detaining Ms. Mendez Los Santos is extremely low at best. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a valid increase in the government's interest in detaining her. Moreover, the "fiscal and administrative burdens" that release from custody would provide are nil. The same goes with respect to providing Ms. Mendez Los Santos with a bond hearing. See Mathews, 424 U.S. at 334-35. In the alternative to immediate release, Ms. Mendez Los Santos seeks a bond hearing – this is not a unique or expensive form of process, but rather a bond hearing before a neutral arbiter.

Moreover, release from custody is far less costly for the government than keeping her detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the

public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." Hernandez v. Session, 872 F.3d 976, 996 (9th Cir. 2017).

Finally, on August 29, 2025 a district court in Washington D.C. issued Make The Road New York v. Noem, 1:25-cv-00190, (D.D.C.) affirming that parolees like Ms. Mendez Los Santos have a liberty interest and in the country's interior, the Constitution requires the Government to "turn square corners." See Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 24 (2020). The court stated that means affording due process to individuals like the Ms. Mendez Los Santos. As such, the district court in Make the Road New York v. Noem enjoined the administration's memos of earlier this year purporting to expand expedited removal to apply to parolees without affording them due process.

Dated: September 3, 2025

LAW OFFICES OF BASHIR GHAZIALAM, PC

By: /s/ Bashir Ghazialam
Bashir Ghazialam

Attorney for Petitioner
Email: bg@lobg.net

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: September 3, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam

DECLARATION OF KIRSTEN ZITTLAU

I, Kirsten Zittlau, declare the following to be true based upon my own personal knowledge or upon information and belief:

1. I am Ms. Mendez Los Santos' counsel in her asylum proceedings before the San Diego Immigration Court. I also represent her sister in her asylum proceedings.
2. Because their work authorizations were revoked in April of this year, Ms. Mendez Los Santos and her sister had great difficulty affording an attorney.
3. I agreed to represent them on a low bono basis because they have strong asylum cases ([redacted]) and began my representation of them in approximately April of this year.
4. My cocounsel Bashir Ghazialam and I are representing Ms. Mendez Los Santos in this habeas action pro bono.
5. On August 26, 2025, Ms. Mendez Los Santos and I appeared before Immigration Judge ("IJ") Amelia Anderson in the downtown San Diego Immigration Court for Ms. Mendez Los Santos' first court hearing.
6. At the hearing, counsel for DHS moved to dismiss proceedings for the purpose of placing Ms. Mendez Los Santos in expedited removal. IJ Anderson gave me time to oppose the motion in writing and continued the court hearing to September 17, 2025.
7. IJ Anderson asked counsel for DHS whether Ms. Mendez Los Santos was likely to be detained, and counsel said it was "very likely." I asked for the legal basis of the detention and counsel stated mandatory detention under 8 USC 1225.

8. Upon exiting the courtroom, several ICE officers detained Ms. Mendez Los Santos. I stated I was her counsel and had not had any notice of the detention and wished to confer with her.

9. The officers allowed me to go down to the basement in the elevator with Ms. Mendez Los Santos, but then quickly whisked her inside a room in the basement while preventing me from entering and depriving Ms. Mendez Los Santos of the right to confer with her counsel.

10. Neither I nor Ms. Mendez Los Santos were given a warrant or any documents at the time of her arrest. The first time I saw the warrant was when it was filed with this Court by Respondents' counsel. I have visited Ms. Mendez Los Santos at the Otay Mesa Detention Facility and have confirmed with her that she received no documents associated with her arrest.

11. On October 29, 2023 when Ms. Mendez Los Santos presented at the Port of Entry via her CBPOne appointment, she was issued a Form I 94 paroling her into the U.S. A true and correct copy of Ms. Mendez Los Santos' Form I 94 is attached hereto as **Exhibit A**.

12. Ms. Mendez Los Santos' employment authorization was approved and issued in March of 2024.

13. Ms. Mendez Los Santos has never had any appointments or check-ins with ICE.

14. On April 30, 2025, Ms. Mendez Los Santos received a notification that there was action on her USCIS account, and when she logged in, she downloaded a form letter. Attached as Exhibit B is a true and correct copy of the April 30, 2025 notice of intent to revoke employment authorization.

15. While the April 30, 2025 notice references an earlier email purportedly terminating her parole, Ms. Mendez Santos never received any such email prior to (or after) April 30, 2025.

16. On May 14, 2025, Ms. Mendez Los Santos again received a notification of activity in her USCIS account. When she logged in, she saw a case status update of which a true and correct copy is attached as **Exhibit C**. While the May 14, 2025 case status update refers to a notice revoking "approval of her case," Ms. Mendez Los Santos never received such a notice.

17. Attached as **Exhibit D** is a true and correct copy of a screenshot of her case history with USCIS. This further affirms that all Ms. Mendez Los Santos received with respect to revocation/termination of her parole and employment authorization was the April 30, 2025 notice of intent to revoke. The May 14, 2025 entry states a revocation notice was issued, but Ms. Mendez Los Santos never received any other revocation notice (aside from the April 30, 2025 form notice of intent to revoke).

18. On August 26, 2025 after she was arrested and taken into the ICE processing area in the basement (without access to counsel), the ICE officers presented Ms. Mendez Los Santos with a document in English. The officers did not provide this document in Spanish (even though Ms. Mendez Los Santos does not speak English).

19. The officers spoke Spanish but did not explain what the document was. They demanded she sign the document. When Ms. Mendez Los Santos refused to sign the document, an ICE officer grabbed her arm and hand and attempted to physically force her to sign the document.

20. Because of the traumatic events that happened to her and her sister in Venezuela, Ms. Mendez Los Santos has been diagnosed with [redacted]. She was seeing a therapist weekly prior to her detention and had medication prescribed. Ms. Mendez Los Santos also cultivated community ties and ties to her church in San Diego in the almost two years she has resided in the U.S.

21. After an in-person visit by friends on August 30, 2025 at the Otay Mesa Detention facility, Ms. Mendez Los Santos was subjected to a strip search. Given her history of being raped, this wholly unnecessary strip search greatly traumatized Ms. Mendez Los Santos further and caused her much distress.

22. The above facts are known to me personally or have been provided to me directly by Ms. Mendez Los Santos and she would swear under penalty of perjury that these facts are true and correct.

23. Attached as **Exhibit E** hereto is a true and correct copy of Y.Z.L.H. v. Bostock et al, 3:25-cv-965-SI, p. 10 (District of Oregon July 9, 2025). On page 10 the district court judge quotes the language from a CBPOne parole termination email. Ms. Mendez Los Santos did not receive this email, but even if she had, the email provides no explanation whatsoever for the termination of her parole.

I declare that the aforementioned is true and correct under penalty of perjury of the laws of the United States.

Dated: September 2, 2025 /s/ Kirsten Zittlau