

all scheduled ICE check-ins. She has no criminal history. On September 8, 2025, Petitioner was taken into ICE custody without warning at one of her required check-ins. When her attorney asked why she was now being detained, she was told that “we have a new president now.”

Petitioner’s detention and her incommunicado confinement are unlawful and unconstitutional and she brings this Petition seeking immediate release. She also asks this Court to enjoin her transfer out of the New York City area and to immediately provide her unfettered access to counsel.

PARTIES

1. Petitioner Helen Sarahi Funes Gamez is citizen of Honduras who lives in Shirely, New York. She does not yet appear in the ICE Detainee locator but on information and belief she is currently detained at 26 Federal Plaza, New York, NY as she was detained at the Field Office located in 26 Federal Plaza.
2. Respondent LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis’s address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.
3. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally

responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. See, e.g., *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on September 8, 2025.
6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

7. Pursuant to 28 U.S.C. § 2241(c)(3), this Court may issue a writ of habeas corpus with respect to a person detained in violation of the Constitution or laws of the United States. “Individuals may rely on this provision to seek release from post-removal-period detention and supervision.” *Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020)

VENUE

8. Venue is proper in this Court because Petitioner was detained by Respondents in Manhattan. She is currently detained in the Southern District of New York or, to the extent that the ICE locator is inaccurate and she is detained elsewhere, Petitioner’s family and her counsel have no means of ascertaining her location.

STATEMENT OF FACTS

9. Petitioner is a 31-year-old citizen of Honduras. On May 21, 2023, she entered the United States with her husband and daughter seeking protection. Upon entry, they were apprehended and detained. Her husband and daughter were released and placed in removal proceedings under INA § 240. Petitioner, however, was subject to reinstatement of a prior *in absentia* removal order from 2004, when she was a minor.
10. On May 23, 2023, Petitioner’s prior removal order was reinstated, and she was released pursuant to an Order of Supervision with intensive supervision requirements. Her release conditions included a requirement that Petitioner report to a local ICE office.
11. Since her release in May 2023, Petitioner has fully complied with the conditions of her supervision. She attended all scheduled ICE check-ins, adhered to all reporting requirements, and has no criminal history.

12. At the time of her entry, Petitioner expressed a fear of return to Honduras and requested a Reasonable Fear Interview (“RFI”). Despite this request, more than two years later, no RFI has been scheduled or conducted.
13. In February 2025, Petitioner’s husband and daughter were granted asylum. Petitioner is the beneficiary of a pending Form I-730 Refugee/Asylee Relative Petition filed on her behalf by her husband on April 15, 2025.
14. On July 14, 2025 Petitioner submitted an application for a Stay of Removal or Deportation (ICE Form I-246) at the ICE Field Office in 26 Federal Plaza.
15. On September 8, 2025, during a scheduled check-in at 26 Federal Plaza, New York, Petitioner was told that her stay of removal application had been denied on August 14, 2025. However, neither she nor her attorney had been notified of this and, in fact, her attorney had inquired about the status of the stay on September 3, 2025 and was told it was still pending. Petitioner, who had her U.S. Citizen toddler with her, was told she would be taken into custody that day. She was told she could choose between having her toddler be detained with her and the two would be sent to a detention center in Texas, or she could be detained without her child if she wanted to be detained closer to home.
16. Counsel and her family believe she is being held at 26 Federal Plaza, which is a short-term holding facility without beds, showers or basic sanitation and hygiene services and with a documented history of not permitting detainees legal calls or privileged personal contact with their counsel of record.
17. Petitioner was never notified of any alleged violations of the conditions of her release under the OSUP. Petitioner was not informed that her OSUP was formally revoked (if it has been), or what legal authority ICE relied upon to justify her re-detention. When her

attorney asked why she was now being detained, an ICE officer told her it was “because we have a new president now.” She was given a choice between having her two-year-old U.S. Citizen child stay with her and have them both sent to a detention center in Texas, or to be detained without her child but closer to home.

18. On information and belief, Respondents have not produced any evidence that ICE complied with its own regulations governing the revocation of an OSUP pursuant to 8 C.F.R. § 241.4(l). Absent such compliance, Respondents lack basis for Petitioner’s continued detention. Petitioner should therefore be released under the same conditions of her prior OSUP. Even if *arguendo* ICE complied with its regulations, the manner and conditions under which she was and is detained constitute a continued denial of substantive and procedural due process which this Court can remedy only through a writ of habeas corpus.

LEGAL FRAMEWORK

19. The INA provides for removal proceedings to be the “sole and exclusive” procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. § 1229a. Section 1229a(a)(3) states that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”¹
20. “Congress has created an expedited process for aliens who reenter the United States without authorization after having already been removed,” set forth at 8 U.S.C. §

¹ “Attorney General” in Section 1254a now refers to the Secretary of the Department of Homeland Security. See 8 U.S.C. § 1103; 6 U.S.C. § 557.

1231(a)(5). Johnson, 594 U.S. at 527. Section 1231(a)(5) provides: “If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.”

21. Reinstatement is a summary proceeding conducted by an ICE official, which involves a determination of whether the alien was subject to a prior order of removal; if the alien was removed or departed voluntarily while under an order of removal, and whether the alien unlawfully reentered the United States. See 8 C.F.R. § 241.8. If those three criteria are met, the ICE official can issue a notice of reinstatement. *Id.*
22. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. See *Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
23. Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a). If released, they are subject to the terms of supervision in accordance with 8 U.S.C. § 1231(a)(3). If the person indicates a fear of return during reinstatement proceedings, DHS must refer him or her to an asylum officer for a reasonable fear interview. 8 C.F.R. §§ 208.31, 241.8(e).
24. Individual released pursuant to an order of supervision may be returned to custody if the conditions of release are violated. 8 C.F.R. § 241.4(l)(1). Upon revocation, however, “the alien will be notified of the reasons for revocation of his or her release or parole” and “afforded an initial informal interview promptly after his or her return to Service custody

to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* In addition, the regulation provides that release may be revoked in the discretion of designated officials only where one of the enumerated grounds is present, including that (i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) enforcement of a removal order or initiation of removal proceedings is appropriate; or (iv) the conduct of the alien, or other circumstances, indicate that release is no longer appropriate. *Id.* § 241.4(l)(2).

25. Courts have repeatedly found due process violations where immigrants are re-detained without warning or individualized assessment when appearing for their regularly scheduled court or ICE appearances. *See Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831, at *4 (S.D.N.Y. Aug. 19, 2025) (“By complying with his legal responsibilities and attending his regularly scheduled immigration court proceeding, Mr. Samb joined the unlucky ranks of Mr. Lopez Benitez and others in losing a perilous game of chance currently taking place outside of immigration court in Manhattan. These seemingly random and arbitrary detentions contravene the basic guarantees of constitutional due process.”); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (Suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk “offends the ordered system of liberty that is the pillar of the Fifth Amendment.”)

CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND
IMPLEMENTING REGULATIONS**

26. The allegations in the above paragraphs are realleged and incorporated herein.
27. Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a)(6). Such individuals may be released under supervision pursuant to § 1231(a)(3).
28. Once an individual has been released under supervision, ICE is bound by 8 C.F.R. § 241.4(l), which sets forth the procedures that must be followed before an Order of Supervision can be revoked and the individual re-detained. The regulations require that the person be given written notice of the reasons for revocation and a prompt informal interview to respond. Revocation may only occur through designated officials, who must determine that release is no longer appropriate — for example, because conditions were violated, removal is now feasible, or other circumstances warrant custody.
29. 8 C.F.R. § 241.4(l) sets forth the procedures ICE must follow in order to revoke an OSUP and return the alien to custody. Section 241.4(l)(1) provides that an individual “who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody.” The alien must be “notified of the reasons for revocation of [] her release” and “afforded an initial informal interview promptly after [] her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* Alternatively, the Executive Associate Commissioner has discretionary authority “to revoke release and return to Service custody an alien previously approved for release under the procedures in

this Section.” *Id.* § 241.4(l)(2). And a district director may also revoke release of an alien when, “in the district director’s opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.” *Id.* To exercise its discretion, the revoking official must find that “(i) the purposes of release have been served; (ii) the alien [has] violate[d] any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” *Id.*

30. While ICE had the statutory authority to detain Petitioner under Section 1231(a)(6), it chose instead to release her under supervision pursuant to § 1231(a)(3). Once ICE released Petitioner on supervision, it was required to adhere to its own regulations before it could revoke Petitioner’s freedom and take her back into custody. When ICE disregards these governing procedures, detention is unlawful. *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (granting petition where petitioner was re-detained at ICE check-in with no individualized review, despite new arrest)
31. For these reasons, Petitioner’s detention violates 8 U.S.C. § 1231(a) (3) and 8 C.F.R. § 241.4(l).

COUNT TWO

VIOLATION OF FIFTH AMENDMENT RIGHT TO DUE PROCESS

32. The allegations in the above paragraphs are realleged and incorporated herein.
33. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. See generally

Reno v. Flores, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). “The Due Process Clause has been interpreted as a ‘protection of the individual against arbitrary action of government,’ which has both a procedural component protecting against the ‘denial of fundamental procedural fairness,’ as well as a substantive component guarding the individual against ‘the exercise of power without any reasonable justification in the service of a legitimate governmental objective.’”

Calderon v. Sessions, 330 F. Supp. 3d 944, 958 (S.D.N.Y. 2018) (citations omitted).

34. It is well established that the “due process right under the Fifth Amendment extends to aliens in removal proceedings.” *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
35. When ICE disregards these governing procedures, detention is unlawful and violates due process. See *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations . . . may result in a violation of an individual’s constitutional right to due process.”). Requiring the Government to adhere to duly promulgated regulations that protect individuals against the arbitrary deprivation of their liberty is essential to maintaining the rule of law.
36. Petitioner’s detention violates the Due Process Clause because no change in Petitioner’s case compels a change in her custody status. She was already determined not to pose danger or flight risk, and no change has occurred to alter this assessment. She has no criminal history. In re-detaining her, Respondents have offered no indication that any permissible statutory purpose is served. Her detention is not rationally related to any immigration purpose. Moreover, she was not accorded sufficient process prior to her sudden re-detention by ICE. She received neither notice nor an opportunity to be heard.

She was told that everyone with a removal order would be detained that day and the only reasoning provided as to why was that “there is a new president.”

37. For these reasons, Petitioner’s detention violates the Due Process Clause of the Fifth

COUNT THREE
SUBSTANTIVE DUE PROCESS VIOLATION

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

39. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The requirement that deprivation of liberty be specific and non-punitive was violated here.

40. There is simply no non-punitive purpose to detaining this petitioner. She was released on an order of supervision and has complied with her order of supervision. She has never been arrested. She has attended every appointment upon her release, showing that she is not a flight risk. Her husband and daughter both won asylum and her husband filed a petition on her behalf. And yet, on September 8, 2025, when she appeared at a regularly scheduled ICE check-in with her U.S. Citizen toddler in tow, she was told that she would not be leaving 26 Federal Plaza. She was forced to choose between being separated from her toddler and being detained at a location closer to her family (as opposed to a detention center in Texas). She was provided with no individualized reason as to why she was being detained.

COUNT FOUR

**VIOLATION OF THE FIFTH AMENDMENT, FIRST AMENDMENT,
ADMINISTRATIVE PROCEDURE ACT AND IMMIGRATION AND NATIONALITY
ACT (Access to Counsel)**

41. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
42. The Immigration and Nationality Act guarantees noncitizens the right to counsel. 8 U.S.C. § 1362; see also 8 U.S.C. § 1229a(b)(4)(A). Petitioner also has a constitutional right to speak with counsel.
43. Upon information and belief, Petitioner is being held at 26 Federal Plaza, which is a short-term holding facility without beds, showers or basic sanitation and hygiene services and a documented history of not permitting detainees legal calls with their counsel of record. Respondents have denied Petitioner's access to counsel.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, pursuant to *Calderon v. Sessions*, 330 F. Supp. 3d 944, 958 (S.D.N.Y. 2018) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Ryan Clough
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Counsel for Petitioner

Dated: September 8, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Helen Funez Gamez, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 8 day of September, 2025.

/s/Ryan Clough
Ryan Clough, Esq.