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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

8
9 Arely Alejandra Fernández López,

10
11 Petitioner,

12 v.

13
14 MINGA WOFFORD, Mesa Verde ICE
15 Processing Center Facility Administrator;
16 SERGIO ALBARRAN, Acting Field
17 Office Director of the San Francisco
18 Immigration and Customs Enforcement
19 Office; TODD M. LYONS, Acting
20 Director of United States Immigration and
21 Customs Enforcement; KRISTI NOEM,
22 Secretary of the United States Department
23 of Homeland Security; PAMELA BONDI,
24 Attorney General of the United States,

25
26
27 Defendant.
28

No. Case Number 2:25-at-01234

**PETITION FOR WRIT OF HABEAS
CORPUS**

28 U.S.C. §2241

INTRODUCTION

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2 1. Petitioner Arely Alejandra Fernandez Lopez is a Chilean citizen currently detained
3 by Immigration Customs Enforcement (“ICE”) at the Mesa Verde Detention Center in
4 Bakersfield, CA.

5 2. The petitioner is charged with § INA 212(a)(7)(A)(i)(I), “being an immigrant not
6 in possession of a valid unexpired immigrant visa, entry permit, border crossing card, or other
7 valid entry document required by the Immigration Nationality Act; to wit, that she illegally
8 entered the United States by wadding across the Rio Grande River near the Del Rio, Texas Port of
9 Entry 1, on August 7, 2021, with the intention of going to Madison, Alabama to reside and seek
10 employment.” *Exhibit 1*.

11 3. On August 9, 2021, upon entry she was placed under 8 U.S.C. §1225(b)(1)/INA
12 §235(b)(1) expedited removal proceedings, was released by the Defendants under INA
13 §212(d)(5), and released on her own recognizance with supervisory conditions for the remainder
14 of her proceedings. *Exhibit 5*.

15 4. The Petitioner has lived in public since the date of her parole on September 9,
16 2021. She has been an employed working member of society, paid and filed income taxes, and
17 sought asylum based on past persecution and fear of future persecution.

18 5. DHS scheduled the Respondent for a Credible Fear Interview on August 22, 2025
19 and found her fear of returning to Chile not credible. *Exhibit 6*. Without notice of cause or a prior
20 hearing with a neutral decision maker, DHS took her into custody during this appointment. There
21 is no evidence of any other change relevant to her detention status, removability, or anything that
22 makes her a danger to the community or a flight risk.

23 6. While in detention and custody of the Respondent, on August 28, 2025, and
24 Immigration Judge vacated the negative finding because “[U]pon de novo consideration, she was
25

1 not presumed ineligible for asylum under 8 CFR§1208.33(a)((1)-(2) and she had established a
2 significant possibility of eligibility for asylum under section 208 of the INA. Under §208.30(g) an
3 IJ's determination is final." *Exhibit 2*. On September 15, 2025, counsel filed a new application
4 for asylum for the Petitioner.

5
6 7. On May 15, 2025, the BIA held that a noncitizen detained under INA §235(b) who
7 is released from detention pursuant to a grant of parole under INA§212(d)(5)(A), and whose grant
8 of parole is subsequently terminated, is returned to custody under INA 235(b) pending
9 completion of removal proceedings. Subsequently, on September 5, 2025, the Board of
10 Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration
11 judges, holding that an immigration judge has no authority to consider bond requests for any
12 person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. &
13 N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention
14 under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. The Petitioner is
15 unable and unlikely to be scheduled for a bond hearing before a neutral decisions maker from the
16 the Executive Office of Immigration Review. Therefore, she seeks review of her unlawful
17 detention from this Court.

18
19 8. The Petitioner has been unlawfully detained in immigration custody for over three
20 weeks even though no neutral decision maker—federal judge or immigration judge "IJ" has
21 conducted a hearing to determine whether her length incarceration is warranted based on danger
22 or flight risk. Under the recent BIA decisions she is not likely to receive a hearing, under clear
23 violation of the Due Process Clause of the Fifth Amendment.

24
25 9. In addition the Petitioner claims that the conditions of her confinement are
26 unreasonable. The Petitioner suffers from high blood pressure, constipation, depression, and
27 possibly post traumatic stress disorder and is unable to receive care while in detention. Prior to
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1 her detention, she was employed and supporting her partner's family and her family abroad. She
2 has no criminal history and attended all ICE supervision requests. Before the Respondent took her
3 into custody, the Petitioner was happily living and contributing to society in Cameron Park, CA.

4 10. Petitioners prolonged detention without a hearing on danger and flight risk violates
5 the Due Process Clause of the Fifth Amendment.

6 11. Through Counsel, the petitioner requests that this Court issue an immediate writ of
7 habeas corpus, determine that the Petitioner's detention is not justified because the government
8 has not established by clear and convincing evidence that Petitioner presents a flight risk or
9 danger to public safety, and order the Petitioner's immediate release.

11 JURISDICTION

12 12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
13 Mesa Verde Detention Center, Bakersfield, CA.

14 13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
15 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
16 Constitution (the Suspension Clause).

17 14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
18 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

19 VENUE

20 15. Venue is proper because Petitioner is detained at Mesa Verde ICE processing
21 Center at 425 Golden State Ave, Bakersfield, CA 93301 which is within the jurisdiction of this
22 District. *See Doe v. Garland*, 109 F. 4th 1188, 1197-99 (9th Cir. 2024).

23 REQUIREMENTS OF 28 U.S.C. § 2243

24 16. The Court must grant the petition for writ of habeas corpus or issue an order to
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1 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28
2 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a
3 return “within three days unless for good cause additional time, not exceeding twenty days, is
4 allowed.” *Id.* (emphasis added).

5 17. Habeas corpus is “perhaps the most important writ known to the constitutional law
6 . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
7 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
8 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
9 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
10 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Courts have long recognized the significance
11 of the habeas statute in protecting individuals from unlawful detention.
12

13 PARTIES

14 18. Petitioner is a citizen of Chile who has been in immigration detention since August
15 22, 2025. After arresting the Petitioner in San Francisco, Petitioner’s Counsel requested bond or
16 parole and those requests were denied. Thereafter, ICE did not set bond and Petitioner is unable
17 to grant bond pursuant to *Matter of Yajure Hurtado*. 29 I&N Dec. 26 (BIA 2025). (“holding that
18 an immigration judge has no authority to consider bond requests for any person who entered the
19 United States without admission,” *Matter of Yajure Hurtado*. 29 I&N Dec. 26 (BIA 2025).)
20

21 19. Respondent MINGA WOFFORD is the Warden of Mesa Verde Detention Center,
22 and she/he has immediate physical custody of Petitioner pursuant to the facility’s contract with
23 U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of
24 Petitioner. Respondent WOFFORD is a legal custodian of Petitioner.
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26 20. Respondent’s SERGIO ALBARRAN or her replacement is sued in her/his/their
27 official capacity as the Acting Director of the San Francisco Field Office of U.S. Immigration and
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1 Customs Enforcement. Respondent ALBARRAN is a legal custodian of Petitioner and has
2 authority to release her.

3 21. Respondent KRISTI NOEM is sued in her official capacity as the Secretary of the
4 U.S. Department of Homeland Security (DHS). In this capacity, Respondent NOEM is
5 responsible for the implementation and enforcement of the Immigration and Nationality Act, and
6 oversees San Francisco U.S. Immigration and Customs Enforcement / U.S. Customs and Border
7 Protection, the component agency responsible for Petitioner's detention/custody. Respondent
8 NOEM is a legal custodian of Petitioner.

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10 22. Respondent PAMELA BONDI is sued in her official capacity as the Attorney
11 General of the United States and the senior official of the U.S. Department of Justice (DOJ). In
12 that capacity, they have the authority to adjudicate removal cases and to oversee the Executive
13 Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.
14 Respondent BONDI is a legal custodian of Petitioner.
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16 17 **LEGAL ARGUMENT**

18 **A. The Due Process Clause of the Fifth Amendment**

19 23. This action arises under the Constitution of the United States and the Immigration
20 and Nationality Act (INA), 8 U.S.C. § 1101 et seq. This action arises under the Due Process
21 Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C.
22 §§ 1331 (federal question), §2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause);
23 and 5 U.S.C. § 702 (Administrative Procedure Act). This Court may grant relief under the habeas
24 corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.,
25 and the All Writs Act, 28 U.S.C. § 1651.
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27 24. Congress has preserved judicial review of challenges to prolonged detention. *See*
28

1 *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§1226(e),
2 1252(b)(9) do not bar review of challenges to prolonged immigration detention); see also *Id.* at
3 876 (Bryer, J. dissenting). (“8 U.S.C. §1252(b)(9)...by its terms applies only with respect to
4 review of an order of removal”) (internal quotation marks and brackets omitted). The INA allows
5 habeas review of certain determinations made in expedited removal proceedings. See 8 U.S.C.
6 §1252(e)(2). The Court has the authority to review the termination of Petitioner’s parole. See
7 *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that § 1252(g) precludes judicial
8 review only as to the three areas specifically outlined in the subsection); see also *Reno v.*
9 *American–Arab Anti–Discrimination Committee*, 525 U.S. 471, 482 (1999).

10
11 25. In *Coalition for Humane Immigrant Rights, et al., v. Kristi Noem*, the U.S. District Court
12 of the District of Columbia granted the stay for agency (DHS) action, stayed the Huffman
13 Memorandum, to the extent that the Challenged Actions subject to expedited removal individual
14 who were at any point in time paroled into the United States at any point of entry. *Coal. for*
15 *Humane Immigrant Rts. v. Noem*, No. 25-CV-872, 39 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1,
16 2025). To clarify, *Coalition* concluded that the statute “forbids the expedited removal of
17 noncitizens who have been, at any point in time, paroled into the United States.” 2025 WL
18 2192986, at *22.⁶ *Coalition* at *22-*27 conducts an exhaustive analysis of 1225(b)(1)(A)(iii)/§
19 235.3(b)(1), relevant directives, and case authority to come to its holding. *Coalition* holds that §
20 1225(b)(1)(A)(iii) “forbids the expedited removal of noncitizens who have been, at any point in
21 time, paroled into the United States.” 2025 WL 2192986, at *22. *Espinoza v. Kaiser*, No. 1:25-
22 CV-01101 JLT SKO, 2025 WL 2581185, at *5 (E.D. Cal. Sept. 5, 2025)

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25 26. In addition, in *Make the Road New York v. Noem*, No 25-CV-190 (JMC), 2025 WL
26 2494908 (D.D.C. August 29, 2025), the Court found that the petitioners were likely to succeed on
27 the merits that applying expedited removal process set forth in 8 U.S.C. §1225(b)(1) to
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1 noncitizens detained within the interior of the United states (i.e., in all location sont within 100 air
2 miles of a land border) violates Due Process. *Marianela et. Al* at 5. Most relevant, in *Espinoza v.*
3 *Kaiser*, the United States Eastern District of California ordered a motion for a temporary
4 restraining order, their immediate release, and no additional restrictions such as electronic
5 monitoring, unless it was determined to be necessary at a future pre-deprivation/custody hearing
6 for a series of petitioners. *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at
7 *2 (E.D. Cal. Sept. 5, 2025).

9 27. In *Lorgia Bolainez's* case, Lorgia entered without inspection on March 19, 2024, was
10 detained for over a week at a facility near the border she was presented an expedited removal
11 order but expressed fear of return to her home country. Thereafter, Lorgia was given a credible
12 fear interview, where she was found to not have fear of return and an immigration judge vacated
13 the decision. She was thereafter granted an NTA and released on her own recognizance. Then,
14 ICE rearrested her. An IJ vacated *Lorgia's* negative credible fear determination and expedited
15 removal order. She was thereafter released on her own recognizance and thereafter she filed her
16 asylum application. *Id.* The Court further ordered that the Petitioners not rearrest or detain the
17 Petitioners absent compliance with constitutional protections which include at a minimum, pre-
18 deprivation hearing notice describing the change of circumstances necessitating [her] arrest and
19 detention and clear and convincing evidence that the Petitioner poses a danger to the community
20 or a risk of flight, and the Petitioner Shall be allowed to have counsel present. *Id.* at 14.

23 28. The Petitioners case is similar to that of *Lorgia Bolainez*.

24 29. Similarly, the Petitioner entered the United States without inspection on or about August
25 7, 2021. She was placed in expedited removal proceedings under INA §235(b)(1) and she was
26 released on her own recognizance. *Exhibit 1*. Later she was scheduled for a credible fear
27 interview. After a negative determination the Respondent placed the Petitioner in their custody.
28

1 *Exhibit 6.* Similar to Lorgia, her negative credible fear interview was vacated by an immigration
2 judge. She is still in expedited removal proceedings and has an asylum case pending before
3 USCIS. Similar to Lorgia, the Plaintiff challenges her custody under the Due Process Clause of the
4 Fifth Amendment and she challenges the revocation of her parole from custody.

5 **30.** In *Y-Z-H- v. Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9th, 2025), the court
6 explained the parole process in immigration cases and noted that before parole may be revoked,
7 the parolee must be given written notice of the impending revocation, which must include a
8 cogent description of the reasons supporting the revocation. In *Pinchi v. Noem*, No. 5:25-CV-
9 05632-PCP, F. Supp. 3d, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), the court reached a
10 similar conclusion but this time relying on the Due Process Clause. In *Pinchi*, the court held,
11 “even when ICE has the initial discretion to detain or release a noncitizen pending removal
12 proceedings, after that individual is released from custody she has a protected liberty interest in
13 remaining out of custody.” See *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
14 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the
15 present case and finds Petitioner raised serious questions going to the merits of his claim that due
16 process requires a hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-
17 cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-
18 5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just
19 as people on preparole, parole, and probation status have a liberty interest, so too does [a
20 noncitizen released from immigration detention] have a liberty interest in remaining out of
21 custody on bond.”). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No.
22 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); see also *Padilla v.*
23 *U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme
24 Court has consistently held that non-punitive detention violates the Constitution unless it is
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1 strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral
2 decisionmaker to ensure that the imprisonment serves the government's legitimate goals.”).

3 31. Here, the Respondent paroled the Petitioner into the United States on September 1,
4 2021, released her on her own recognizance, and revoked her parole without an opportunity to
5 contest the revocation of her parole before a neutral decision maker. During the time that the
6 Petitioner was freed she developed a liberty interest because the Petitioner lived in the United
7 States for four years. *Exhibit 7*. During those four years the Petitioner paid taxes, lived with her
8 partner, and built a community, and filed a credible asylum application, and therefore has a
9 liberty interest. *Exhibit 8*. The Petitioner has an interest in remaining free because she has enjoyed
10 employment, leasing an apartment, building her community, and contributing to society. The
11 Petitioner has not been ordered removed and has an asylum application pending before USCIS.
12 *Exhibit 4*. In fact, the IJ has found that the applicant has a “significant possibility of asylum under
13 §208 of the act.” *Exhibit 2*. She has no criminal record that requires her re-detention.
14 Accordingly, the petitioner seeks a writ of habeas corpus requiring her immediate release given
15 that she was not afforded hearing before an IJ prior to her re-detention.
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17
18 32. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et.
19 seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C.
20 § 1651.
21

22 STATEMENT OF FACTS

23
24 33. The applicant has a viable claim for asylum based on past persecution and a well
25 founded fear of future persecution. *Exhibit 3*.

26 34. Petitioner is a 41-year-old citizen of Chile. The Petitioner is a mother, is employed
27 at a painting company, and is a [REDACTED]. The Petitioner fears
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1 returning to Chile because she fears that her former partner, Rodrigo will harm and torture her.

2 35. Upon entry, the Department of Homeland Security, hereinafter, “The Department,”
3 released Ms. Fernandez under INA 236 Title 8 CFR pending a final administrative determination
4 in her case. DHS form I-286, Notice of Custody Determination. *Exhibit 1*. In addition, she was
5 identified as having a Risk Factor identified by the district court placing her under a heightened
6 risk of severe illness and death upon contracting the COVID-19 virus because she has a high
7 BMI. *Fraihat v. ICE* F Supp. 3d—2020 WL 1932570 (C.D. Cal Apr. 20, 2020).

8 36. The Department also authorized parole on September 1, 2021 under §212(d)(5)(A)
9 of the INA. *Exhibit 5*. Thereafter, Ms. Fernandez complied with her order of supervisory release
10 attending her check-ins every year as ordered by ICE. She notified ICE of all address changes.

11 37. The Department Scheduled the Petitioner for a Credible Fear Interview and the
12 applicant received a negative determination. *Exhibit 6*.

13 38. On August 22, 2025, Department scheduled her for a credible fear interview
14 without notifying her that she would or could be re-detained or providing a hearing before an
15 immigration judge. She received a negative credible fear finding and was subsequently placed in
16 detention.

17 39. The Petitioner appealed against the negative decision and the Respondent provided
18 a hearing for a review of the negative fear determination. *Exhibit 6*.

19 40. The Executive Office of Immigration Review (“EOIR”) Adelanto Immigration
20 Court vacated the negative credible fear determination. *Exhibit 2*. (“Upon de novo consideration,
21 the Court makes the finding below—for all cases the applicant is not covered by the presumption
22 of asylum ineligibility at 8 C.F.F.R. §1208.33(a)(1)-(2). The applicant has established a significant
23 possibility of eligibility for asylum under INA §208 of the Immigration and Nationality Act (Act),
24 withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the
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1 Convention Against Torture (CAT).... It is hereby ordered that the DHS credible fear
2 determination is vacated. There is no appeal from this decision.) *Exhibit 2.*

3
4 41. Since her detention, the applicant has experienced mental, emotional, and physical
5 distress. She is unable to sleep because the air conditioning is set to freezing temperatures and her
6 blood pressure has spiked. The Respondent experiences neck pain, chest compression, left arm
7 pain. Upon continued pain, she was taken to the doctor for a medical evaluation where she was
8 found to have high blood pressure. The Petitioner is currently on blood pressure medication.

9
10 42. Despite a finding that the Petitioner could significantly demonstrate eligibility for
11 asylum, the Respondent has notified the Petitioner that it intends to deport her on Monday
12 September 21, 2025.

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14 43. In addition, the conditions of the petitioner's confinement are difficult: limited
15 visitation, inedible and inadequate food, lack of rehabilitative programming, among other issues.

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1 **CLAIMS FOR RELIEF**

2 **COUNT ONE**

3 **Violation of Due Process**

4 44. Violation of Fifth Amendment Right to Due Process

5 45. The allegations in the above paragraphs are realleged and incorporated herein.

6 46. The government may not deprive a person of life, liberty, or property without due
7 process of law. U.S. const. Amend V "Freedom from imprisonment—from government custody,
8 detention, or other forms of physical restraint---lies at the heart of the liberty that the Clause
9 protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

10
11 47. The government detention of the Petitioner without a bond redetermination
12 hearing to determine whether she is a flight risk or danger to others violates her right to due
13 process.

14
15 48. Petitioner has fundamental interest in liberty and being free from official restraint.
16 For these reasons Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 19 a. Assume jurisdiction over this matter;
- 20 b. Order that Petitioner shall not be transferred outside the Eastern District while this
21 habeas petition is pending;
- 22 c. Issue an Order to Show Cause ordering Respondents to show cause why this
23 Petition should not be granted within one day;
- 24 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
25 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
26 1226(a) within seven days;
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- 1 e. Declare that Petitioner's detention is unlawful;
- 2 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 3 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 4 law; and
- 5 g. Grant any other and further relief that this Court deems just and proper.
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8 DATED this 17 of September, 2025.



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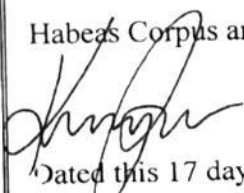
19 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

20 I represent Petitioner, Arely Alejandra Fernandez Lopez, and submit this verification on

21 her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of

22 Habeas Corpus are true and correct to the best of my knowledge.

23

24 

25 Dated this 17 day of September of 2025.

26 s/Attorney Name

27 Karen Pedraza